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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 870

**RIN 3206–AM96**

## Federal Employees' Group Life Insurance Program: Options B and C

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees' Group Life Insurance (FEGLI) regulation to provide a second reduction election opportunity for annuitants and compensationers enrolled in FEGLI Option B and Option C. This new procedure replaces the procedure by which FEGLI enrollees elect the allowable multiples of coverage they wish to continue during retirement or while receiving compensation.

**DATES:** Effective May 5, 2016.

**ADDRESSES:** Send written comments to Ronald Brown, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4312, 1900 E Street NW., Washington, DC 20415. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ronald Brown, Policy Analyst, (202) 606–0004, or by email to *Ronald.Brown@opm.gov.*

**SUPPLEMENTARY INFORMATION:** On October 30, 1998, Public Law 105–311,112 Stat. 2950, was signed into law. This law, the Federal Employees Life Insurance Improvement Act, changed many parts of the FEGLI Program. Before the enactment of Public Law 105–311, Option B and C coverage began to reduce for annuitants when they reached age 65. Both coverages reduced by 2% per month until there was no coverage left. This reduction was automatic, and annuitants had no choice.

Public Law 105–311 allows annuitants and persons becoming insured as compensationers to make an election at retirement as to whether they want their Option B and Option C coverage to reduce.

Previous FEGLI regulations provided that shortly before an individual's 65th birthday, he/she would receive a reminder notice, showing what reduction the annuitant/compensationer elected at the time of retirement and what the premiums would be for coverage beyond age 65. The individual then had an opportunity to change his/her reduction election; including choosing to have some multiples of Optional insurance reduce and others not reduce. For persons who were already over age 65 at the time of retirement or becoming insured as a compensationer, the reminder notice was sent as soon as the retirement processing was completed.

On October 1, 2010, OPM published FEGLI final regulations (75 FR 60573) with miscellaneous changes, clarifications, and corrections, including a change made to 5 CFR 870.705(b) and 870.705(d) ending the reduction election opportunity at age 65.

OPM published a FEGLI proposed rule in the **Federal Register**, 78 FR 77365, December 23, 2013, proposing to reverse the changes to 5 CFR 870.705(b) and 870.705(d) authorized on October 1, 2010, and inviting public comments. The December 23, 2013 rule proposed to restore the second election opportunity for annuitants and compensationers who attain age 65. OPM received no comments and will implement the rule as proposed.

### Changes

Public Law 105–311, the Federal Employees Life Insurance Improvement Act, 112 Stat. 2950, enacted October 30, 1998, amended chapter 87 of title 5, U.S. Code, to allow retiring employees to elect either No Reduction or Full Reduction for their Option B and Option C coverage. This election was to be made at the time of retirement, the same as the election for Basic insurance. Implementing this provision required programming changes to the electronic records system for annuitants to allow for ''mixed'' elections, *i.e.,* electing reductions for some coverage, but not for other coverage. While these system changes were being made, annuitants were required to elect either No Reduction or Full Reduction for all Option B and Option C multiples at the time of retirement. Then, shortly before the annuitant's 65th birthday, the insured was given a second opportunity to make a reduction election, this time being allowed to choose No Reduction for some multiples and Full Reduction for others. While the law states that the reduction election must be made at the time of retirement, enrollees affected by this provision have expressed interest in having a second reduction election opportunity. Thus, we are restoring the opportunity for a second election at age 65. This change can be found in § 870.705(b) and § 870.705(d).

### Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs 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). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because there will be a minimal impact on costs to Federal agencies.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects life insurance benefits of Federal employees and retirees.

### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and

responsibilities of State, local, or tribal governments.

**List of Subjects in 5 CFR Part 870**

Administrative practice and procedure, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

**Beth F. Cobert,**

*Acting Director.*

Accordingly, OPM is amending 5 CFR part 870 as follows:

## PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 1. The authority citation for 5 CFR part 870 is revised to read as follows:

**Authority:** 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104–106, 110 Stat. 521.

### Subpart G—Annuitants and Compensationers

■ 2. Amend § 870.705 by revising paragraph (b)(3)(ii), adding paragraph (b)(4), and revising paragraph (d)(1)(i) to read as follows:

**§ 870.705 Amount and election of Option B and Option C.**

* * * * *

(b) * * *

(3) * * *

(ii) Except as provided in paragraph (b)(4) of this section, after reaching age 65, an annuitant or compensationer cannot change from Full Reduction to No Reduction.

(4)(i) Shortly before an annuitant or compensationer's 65th birthday, an annuitant's retirement system will send a reminder about the post-age-65 reduction election he/she made and will offer the individual a chance to change the initial election made at the time of retirement.

(ii) If the individual is already 65 or older at the time of retirement or becoming insured as a compensationer, the retirement system will process the retirement using the current Continuation of Life Insurance Coverage (SF 2818) on file, send the reminder, and give the opportunity to change the election as soon as the retirement processing or compensation transfer is complete.

(iii) If the individual assigned his/her insurance as provided in subpart I of this part, and if the employee elected No Reduction for Option B coverage at the time of retirement or becoming insured as a compensationer, the retirement system will send the reminder notice for Option B coverage to the assignee.

(iv) An annuitant or compensationer who wishes to change his/her reduction election must return the notice by the end of the month following the month in which the individual turns 65, or if already over age 65, by the end of the 4th month after the date of the letter. An annuitant or compensationer who does not return the election notice will keep his/her initial election or the default election, as applicable.

* * * * *

(d)(1) * * *

(i) Annuitants and compensationers who were under age 65 were notified of the option to elect No Reduction. The retirement system will send these individuals an actual election notice before their 65th birthday, as provided in paragraph (b)(4) of this section.

* * * * *

[FR Doc. 2016–10539 Filed 5–4–16; 8:45 am]

**BILLING CODE 6325–63–P**

## DEPARTMENT OF ENERGY

### 10 CFR Parts 430 and 431

**RIN 1904–AD63**

### Energy Conservation Program: Establishment of Procedures for Requests for Correction of Errors in Rules

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (''DOE'' or the ''Department'') is establishing a procedure through which an interested party can, within a 30-day period after DOE posts a rule establishing or amending an energy conservation standard, identify a possible error in such a rule and request that DOE correct the error before the rule is published in the **Federal Register**.

**DATES:** The effective date of this rule is June 6, 2016.

**ADDRESSES:** See the companion document titled ''Notice of Opportunity to Submit a Petition to Amend the Rule Establishing Procedures for Requests for Correction of Errors in Rules'' published elsewhere in this issue of the **Federal Register** for addresses to submit a petition to amend, or a comment on a petition to amend, this rule.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692 or *John.Cymbalsky@ee.doe.gov.*

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### I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975, as amended (''EPCA'' or, in context, ''the Act'') establishes a program designed to improve the energy efficiency of consumer products (other than automobiles) and of certain industrial equipment. Pursuant to EPCA, the Department sets energy conservation standards and other requirements for covered products and equipment; prescribes protocols to test products and equipment against the standards; requires labeling of covered products and equipment; and establishes procedural mechanisms such as certification programs and enforcement procedures. See 42 U.S.C. 6291, *et seq.* This rule establishes error-correction procedures that DOE will use in the course of prescribing energy conservation standards under EPCA. It also interprets several provisions of EPCA that may be relevant to the functioning of those procedures.

One of EPCA's many purposes is to improve energy efficiency for a variety of major consumer products and industrial equipment. To achieve this purpose, the Act directs the Department both to undertake certain rulemakings to establish or revise energy conservation standards and to consider amending such standards on a periodic basis—for many products within six years of issuance of a prior final rule. 42 U.S.C. 6295(m)(1). The Act contemplates that such a rulemaking or periodic review will result in a new or amended standard if the Department concludes that such standard would be technologically feasible and

economically justified and would result in significant conservation of energy. The Act also bars DOE from ''prescrib[ing] any amended standard which increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency'' of a covered product. 42 U.S.C. 6295(o)(1). This prohibition against ''backsliding,'' together with the periodic reviews just described, has the effect over the long term of gradually increasing the energy efficiency of regulated products and equipment.

The process of developing an amendment to an energy conservation standard ordinarily involves extensive technical analyses and voluminous amounts of data. The Department weighs a range of competing technological and economic considerations, such as the feasibility and cost of various energy-saving technologies, the effects of implementing those technologies in products on the market, and the need for national energy and water conservation. It must make predictive judgments regarding the expected effect of its standards over decades, in part because compliance with a standard is usually required a few years out from the rulemaking and in part because many products have decades of useful life. Meanwhile, the drafting of an energy conservation standard on its own (separate from the deliberation involved in selecting the standard) involves substantial technical analysis. In short, an energy conservation standards rulemaking is usually a highly complicated undertaking.

In light of all the considerations described in this preamble, DOE also recognizes that, given the complexity of these rules, it is conceivable that a standards regulation, as issued, may occasionally contain an error. For example, an accidental transposition of digits could result in a standard that is inconsistent with the Department's analysis. Often, it will be evident from the full context what standard DOE intended to set, but the text of a regulation, even if erroneous, has legal effect. Moreover, should such an error go uncorrected for too long, there is a risk that the Department would be unable to undo it because of the limitations on reducing the stringency of its standards. Meanwhile the relevant industries would face uncertainty about the standard, as well as some difficult choices—whether to comply with it, hope that the error is addressed sometime later, or challenge it in court. The process established by this document is meant to avoid undesirable outcomes like these by providing interested parties with an opportunity to timely point out errors to DOE and request that DOE correct them.

## II. Summary of the Rule

This rule establishes DOE's procedures for accepting error-correction requests for its energy conservation standards rules. Specifically, after issuing an energy conservation standards rule subject to this process, the Department will not publish that rule in the **Federal Register** for 30 days. This 30-day period begins upon the posting of the rule on a publicly-accessible Web site. During the 30-day window, interested parties can review it, including the regulatory text which is to be placed in the Code of Federal Regulations. If, during this period, a party (as defined in this rule) identifies an error in the regulatory text, that party can submit a request that DOE correct the error. An error-correction request must identify the claimed error, explain how the record demonstrates the regulatory text to be erroneous, and state what the corrected version should be.[1]

The error-correction process is not an opportunity to submit new evidence or comment on the rule, seek to reopen issues that DOE has already addressed or argue for policy choices different from those reflected in the final rule. DOE will not accept new evidence included in or with error-correction requests, and a submitter must rest its explanation solely on the materials already in the record. The Department posts a rule with the appropriate official's signature only after concluding its deliberations and reaching decisions on the relevant factual determinations and policy choices. Consistent with this approach, the Department considers the record with respect to a rule subject to the error correction process closed upon posting of the rule.

After reviewing error-correction requests meeting the criteria set out in this rule, the Department will have a range of options with respect to a rule. If it concludes that the claims of error are not valid, and if it has identified no errors on its own, DOE will proceed to submit the rule for publication in the **Federal Register** in the same form it was previously posted. By doing so, the Department will effectively be rejecting any error-correction requests it has received; DOE will ordinarily not respond directly to a requester or provide additional notice regarding the request. If, on the other hand, DOE identifies an error in a rule, DOE can correct the error.

As noted in this preamble, in some circumstances, an error may lead the standard contained in DOE's regulation, as originally posted, to require higher energy efficiency or lower energy use than the Department intended based on the record and its deliberations. Correcting such an error through the process established by this rule would not be inconsistent with section 325(o)(1) (or its analogs applicable to certain types of product or equipment). The error-correction process occurs during a window between DOE's posting of a rule and publication of the rule in the **Federal Register**. As discussed more fully below, DOE interprets section 325(o)(1) and its analogs to permit corrections of a rule that has not yet been published in the **Federal Register**.

## III. Paragraph-by-Paragraph Analysis

The following discussion describes the provisions of this rule in detail, so as to explain further how the error-correction process will work.

### *§ 430.5(a): Scope and Purpose*

This section describes the purpose of this rule. Consistent with the discussion in this preamble, the rule describes procedures through which the Department will accept and consider submissions regarding possible errors in its standards rules. The section also states the scope of the rule. DOE will apply the procedures described in the rule to those rulemakings establishing or amending energy conservation standards under EPCA. ''Energy conservation standard'' is a term defined in EPCA, although it has a slightly different definition for consumer products and commercial equipment. With respect to the former, an ''energy conservation standard'' is generally a performance standard that prescribes a minimum efficiency level or maximum quantity of energy usage for a covered product or, in certain instances, a design requirement. See 42 U.S.C. 6291(6).

Similarly, for commercial equipment, an ''energy conservation standard'' is a performance standard prescribing a minimum level of energy efficiency or a maximum quantity of energy use for the covered equipment at issue or a design requirement. See 42 U.S.C. 6311(18).

When the Department posts a rule establishing or amending an energy conservation standard, per the statutory definition, for a given type of product or equipment, the Department will engage

[1] This error-correction process would not supplant or otherwise replace the error correction process established under 1 CFR Chapter 1 applicable generally to all documents published in the **Federal Register**.

in the error-correction process established by this rule.

DOE undertakes a variety of other rulemakings under the Act, such as rules to set test procedures, requirements for labeling or certification, and procedures for enforcement. DOE will not routinely utilize this error-correction process for such rules. The Department recognizes the importance of correcting errors in any of its rules, and consistent with the principles of good government, it intends to be responsive to input from members of the public that point out such errors. However, the combination of features described in this preamble—the regular occurrence of high complexity, potentially large significance of the rules, and the possibility that uncorrected errors will have unavoidable long-term consequences—is specific, for rules under the Act, to energy conservation standards. Therefore, the Department considers it appropriate to implement a routine error-correction mechanism only for such rules.

This rule also excludes from its scope any energy conservation standards that DOE sets by issuing direct final rules pursuant to section 325(p)(4) (42 U.S.C. 6295(p)(4)) of EPCA. Section 325(p)(4) allows the Department to set an energy conservation standard, in some circumstances, by issuing a direct final rule. Before doing so, DOE must receive ''a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view,'' and the Department must determine that the recommended standard is ''in accordance with'' either section 325(o) or section 342(a)(6)(B) (*i.e.,* 42 U.S.C. 6313(a)(6)(B)) as appropriate depending on the product or equipment at issue. 42 U.S.C. 6295(p)(4). Together with issuing a direct final rule, DOE must publish a notice of proposed rulemaking proposing a standard identical to that established in the direct final rule, and DOE must allow a period of at least 110 days for public comment on the direct final rule. See 42 U.S.C. 6295(p)(4)(B). If the Department receives one or more adverse comments related to the rule and concludes that the comments ''may provide a reasonable basis for withdrawing the direct final rule,'' the Department can withdraw the direct final rule and proceed with the proposed rule. A withdrawn rule ''shall not be considered to be a final rule for purposes of [section 325(o)].'' 42 U.S.C. 6295(p)(4)(C)(iii).

DOE notes that, as a practical matter, the mechanisms of the direct final rule process provide an opportunity for correcting errors that is at least as effective as what this rule achieves. If a direct final rule contains an error, the public has an opportunity to identify that error through the comment process provided by statute and any error that a person would have identified during the 30-day window set by this rule could also be identified in the 110-day comment period required by EPCA. See 42 U.S.C. 6295(p)(4)(B). The Department's options for responding to a claim of error in a direct final rule are essentially equivalent to what this rule provides for other standards rules. Absent an error (and if there is no other reason to withdraw the rule), the Department can let a direct final rule stand as-is. Should there be an error, DOE can withdraw the direct final rule. It can then issue a final rule that is based on the notice of proposed rulemaking and avoid the error.

Moreover, withdrawing a direct final rule and replacing it with a final rule based on the associated proposal would not violate section 325(o) even if the change resulted in a lower standard. The direct final rule procedure enacted by Congress is a unique one that provides DOE with the authority to withdraw a direct final rule when certain conditions are met. See 42 U.S.C. 6295(p)(4)(C). Accordingly, that specific procedure already provides a means for DOE to address an error if one is identified.

In sum, the statutory mechanisms for direct final rules permit the correction of errors in a manner similar to what this rule lays out for other EPCA standards rules. Accordingly, the Department considers it unnecessary to apply this particular error-correction process to direct final rules.

*§ 430.5(b): Definitions*

This paragraph sets forth several definitions that clarify the meaning of this section and the application of the error-correction process.

DOE is defining the term, *''Secretary,''* as referring to the Secretary of Energy or the Secretary's delegate.

The term, *''Act,''* under this rule means the Energy Policy and Conservation Act, as amended.

The term, ''*Error*'' for purposes of this rule is defined as an aspect of the regulatory text of a rule that is inconsistent with what the Secretary intended regarding the rule at the time of posting. The ''regulatory text,'' for these purposes, means the material that is to be placed in the Code of Federal Regulations (''CFR''), together with the amendatory instructions by which the rule communicates what should go in the CFR. In most cases, the Department encapsulates everything about a rule that is legally binding by setting forth specific text in the CFR. The point of the error-correction process is to avoid the harmful consequences of errors in that legally binding material. Errors in explanatory material or interpretive matter in the preamble of a rule may be important, but they can ordinarily be corrected without use of a procedure like the one established by this rule (*e.g.,* issuing a correction notice to clarify or otherwise resolve an error without the need for notice and comment.)

The definition provides illustrative examples of mistakes that might produce Errors. For example, a typographical mistake might cause the text of a regulation to be incorrect; suppose, for example, the text of the regulation stated a party has 50 days to submit an error-correction request, even though the Department has made clear in the preamble that it intends to allow 30 days. As a second example, a calculation mistake might cause the numerical value of a standard to differ from what DOE's technical analyses would justify. The calculations involved in deriving a standard are complex, which could result in an error that causes the regulatory text to codify a standard different from what DOE described in its preamble. As a third example, an amendment to the relevant portions of the regulations might renumber them, but DOE might overlook a cross-reference in another portion of its regulations, which would then refer to the wrong formula. These examples—and those detailed in the regulatory text—are not meant to be exhaustive but highlight two common features: (1) The regulatory text departs from what DOE intended it to be and (2) the rulemaking record reveals what DOE intended. These are the sorts of problems that the Department seeks to offer the opportunity to correct through this rule.

The term, *''Party,''* means a person that has participated in a rulemaking by submitting timely comments during the rulemaking or by providing substantive input during a public meeting regarding the rulemaking.

This definition is relevant because, as discussed in this preamble, the Department will accept requests for error-correction under this rule only from a person that is a ''party'' to the rulemaking proceeding in accordance with this definition. The error-correction process is intended to be rapid and streamlined. By pausing to receive suggestions of error, DOE will be delaying the eventual benefits to be produced by an amended standard.

Accordingly, the Department is setting the period for error submissions at 30 calendar days.

In furtherance of expeditious review, these requests must be sufficiently detailed to readily identify and resolve the error. In DOE's view, those persons who actively participated during the rulemaking process by providing the agency with substantive feedback regarding its proposal and analyses are in the best position to readily and quickly identify errors that this rule seeks to address in a timely manner. The complexity and comprehensive nature of these analyses also make it more likely that active participants during the rulemaking proceeding would have the requisite foundation to be able to assist DOE with identifying errors and accompanying solutions. Without this procedural limit, DOE's review of error requests would likely be hampered by overly broad (or otherwise inaccurate) submissions from non-party persons that would hinder the agency's ability to expeditiously address meritorious claims identifying erroneous regulatory text. For these reasons, in DOE's view, it is appropriate to accept submissions only from those persons that have engaged in the rulemaking and are already familiar with the record.

The principal means for participating in a rulemaking proceeding is by submitting written comments in response to a notice. Many of DOE's rulemakings to establish or amend its energy conservation standards involve several rounds of public comment, such as notices of proposed rulemaking and supplemental notices of proposed rulemaking. The Department also occasionally publishes notices of data availability through which it solicits comment on its technical analyses, as well as requests for information in which DOE solicits information from the public regarding particular issues. All of these procedures involve the substance of a rule under consideration, and the Department accordingly considers comment on any of them to be sufficient participation to qualify a person as a party. ''Comment,'' for these purposes, also includes *ex parte* submissions, which often represent as much engagement with the issues of a rulemaking as do ordinary comment filings. Similarly, the Department seeks public input by hosting public meetings (both in person and online through webinars), at which it presents some substantive information on a given proposed rule and permits participants to speak. This form of participation can also qualify a person as a party. (The definition of ''party'' requires ''substantive input'' at a public meeting. DOE does not intend to judge the substantiality of each participant's statements at a public meeting. By ''substantive input,'' the Department means simply to exclude merely procedural statements such as a participant's identifying himself or herself for the record.)

It bears emphasis, however, that an untimely or improperly submitted comment—including an *ex parte* submission made after the close of the relevant comment period—will not qualify the submitter as a ''party'' for purposes of this rule. While a late-filed comment may address substantive issues raised as part of the relevant energy conservation standards rulemaking, DOE is not obligated to consider late comments when reaching its decisions. For the Department to engage in a case-by-case assessment of whether a given person did in fact submit a comment would be inconsistent with the streamlined nature of the error-correction process. Accordingly, for the sake of administrative simplicity, DOE will not entertain an error-correction request from a person whose only participation in the rulemaking was an untimely or improper submission.

Lastly, for purposes of this error-correction process, DOE is defining a ''rule'' as a rule establishing or amending an energy conservation standard under the Act. DOE will not apply this rule's error-correction process for documents such as general statements of policy, guidance documents, and interpretive guidelines.

*§ 430.5(c): Posting of Rules*

This section describes the beginning of the error-correction process. At the outset, DOE will post a rule bearing the signature of an appropriate official of DOE on a publicly-accessible Web site. The record of the rulemaking is closed, and the Department has concluded its deliberations.

However, the Department will not publish the rule in the **Federal Register** for 30 calendar days. This period of time will allow the public an opportunity to review the rule in order to identify any potential errors and submit a request to DOE to correct such errors. DOE recognizes that it has an obligation under the Administrative Procedure Act to publish a ''rule,'' as defined in this part, in the **Federal Register**. The time for error-correction contemplated by this rule will not be a departure from that obligation. The Administrative Procedure Act does not specify that publication in the **Federal Register** must occur at a particular point following a specified period of time after posting. Meanwhile, as discussed in this preamble, and as is currently the case, no energy conservation standards rule will be effective for some period of time after it has been published in the **Federal Register**, and the start of the lead-time provided to manufacturers to comply with the standards will begin at publication in the **Federal Register**. Consequently, the delay in publication in the **Federal Register** will comply with the Administrative Procedure Act and will not cause prejudice to any interested parties.

*§ 430.5(d): Requests for Correction*

This section explains how to submit a request that DOE correct an error in a rule and describes what a request must contain.

A request must be submitted within 30 calendar days of the posting of the rule. As discussed in this preamble, the error-correction process is meant to be rapid and streamlined. In undertaking the procedure, DOE must balance the value of being able to correct errors in its regulations against the cost of delay (*e.g.,* delayed energy savings). The Department believes 30 days should be enough time for persons already familiar with a rulemaking to review the text of the regulation being adopted and identify any errors. In light of that assessment and bearing in mind the cost of delay, a longer period would be inappropriate.

A request must identify an Error, as that term is defined in this rule. A request must identify the claimed Error with particularity by stating what text is erroneous and providing a corrected substitute. Because the error-correction process is focused on the regulatory text, an Error will necessarily involve some piece of text that should be changed. DOE expects a party requesting a change to identify specifically what text is mistaken and why, as well as how DOE should change it.

Consistent with the definition of Error, the error-correction process is not an opportunity to dispute the Department's determinations or policy choices. An energy conservation standards rulemaking is usually a lengthy process, in which the Department provides repeated indications of its proposals, stakeholders have multiple opportunities to provide input, and the Department engages in extensive deliberation. To achieve the energy conservation goals of the Act, as well as to minimize uncertainty for industry and consumers, it is important that the issues in a rulemaking come to a

resolution. The error-correction process should not undermine the stability of DOE's already well-established energy conservation standards-setting process, because it will simply ensure that the regulatory text accurately reflects the determinations that DOE has already reached. Accordingly, an error-correction request must identify how the regulatory text departs from DOE's decision, rather than criticizing it on the requester's own grounds or reviving issues from comments previously raised and addressed.

As noted, for the sorts of errors for which this process is appropriate, the rulemaking record should indicate what the correct regulatory text ought to be. Consistent with that observation, an error-correction request must base its claims of what DOE intended on materials in the rulemaking record, such as the preamble to the rule, technical support documents, published notices, comments, and other record materials. A request may not include new evidence, as new evidence would not be relevant for illuminating what the Secretary meant for the regulation to say. Given the ample opportunity for comment and other public input during the rulemaking process, in DOE's view, there is a need to bring finality to a given rulemaking and to avoid having an open-ended regulatory process, and, therefore, the agency will not accept new evidence and further defer the energy saving benefits of the energy conservation standards that are the subject of the rulemaking. Meanwhile, the task of evaluating new evidence would require time beyond what is appropriate for the error-correction process.

Because only parties are allowed to file error-correction requests, a submitter must demonstrate that the requester is a ''party'' in accordance with this rule's definition of that term. The requester must identify the comment(s) or other input that the requester submitted in the course of the rulemaking.

Finally, this rule requires that requests be submitted electronically by email. This rule does not specify an email address to which requests should be sent, as each final rule will specify the appropriate email address for error-correction requests. The Department may consider a filing submitted by another mechanism if email filing is not feasible; a party seeking to use a different mechanism should consult first with the DOE program point of contact identified in the notice of the final rule for further information.

*§ 430.5(e): Correction of Rules*

This section describes the courses of action that the Department may undertake if it believes a request for correction may have identified an error. DOE may undertake to correct the rule, if doing so would be consistent with the applicable requirements of EPCA and the Administrative Procedure Act. In such cases, DOE will ordinarily make the correction before submitting the rule to the Office of the Federal Register for publication. *Publication of the submitted rule will take place pursuant to the ordinary procedures of the Office of the Federal Register.*

*§ 430.5(f): Publication in the* ***Federal Register***

This section describes how the Department will eventually publish a final rule in the **Federal Register**. If, after 30 calendar days have elapsed since DOE posted a rule subject to this process, DOE receives no proper requests for correction of errors, and identifies no errors on its own, it will simply submit the rule as posted to the Office of the Federal Register for publication. If DOE receives error-correction requests but decides not to undertake any corrections to the rule, it will submit the rule as posted to the Office of the Federal Register for publication. Such submission indicates that the Department has rejected the requests it received, and the Department will ordinarily provide no other response to such requests. Barring extenuating circumstances, the Department will review proper error-correction submissions and submit the rule to the Office of the Federal Register for publication within 30 calendar days after the close of the 30-day period for submitting error-correction requests. Publication of submitted rules will take place in accordance with the ordinary procedures of the Office of the Federal Register.

The Department's rejection of a request does not necessarily mean the claim of error was mistaken. The regulatory text in the posted rule may indeed have been inconsistent with the Department's decision as reflected in the rulemaking record. However, DOE may choose not to correct the regulation because it concludes the regulatory text is nonetheless acceptable; for instance, because it considers the error insignificant.

This section also reiterates certain mandates from EPCA and from the Administrative Procedure Act with respect to publication. DOE will not make any rule subject to this part effective until after DOE has published the rule in the **Federal Register**. Further, DOE notes that compliance with a new or amended standard is generally linked to a specified lead-time from the date of publication in the **Federal Register** to provide the affected industries with sufficient time to adjust their products and manufacturing to satisfy the new or amended standard. *See, e.g.*, 42 U.S.C. 6313(f)(4)(B) (providing a lead-time of two to five years for walk-in cooler and freezer performance standards); see also 42 U.S.C. 6295(m)(4) (specifying applicable lead-times for a variety of different consumer products) and 42 U.S.C. 6295(l) (providing that energy conservation standards for newly covered products shall not apply to ''products manufactured within five years after the publication of a final rule establishing such standard.''). The Department will adhere to that framework for all rules subject to this part.

*§ 430.5(g): Alteration of Standards*

This paragraph articulates the Department's conclusion that it may change a standard that it has posted but has not yet published in the **Federal Register**. A change pursuant to this process is permissible even if the effect of such a change is to increase the maximum energy use or decrease the energy efficiency that the standard would reflect.

The Department interprets section 325(o)(1) (and its analogs applicable to certain types of equipment) to permit this approach. These provisions prohibit DOE from ''increas[ing] the maximum allowable energy use'' or ''decreas[ing] the minimum required energy efficiency.'' However, they do not indicate unambiguously what are the relevant maximum ''allowable'' use and minimum ''required'' efficiency against which an amended standard should be compared. Applying these terms to refer only to rules published in the **Federal Register** is consistent with the Act and will further its purposes.

DOE notes that the Act uniformly sets compliance dates based on the ''publication'' of rules.[2] For example, for certain consumer products, compliance with an amended standard is required for products manufactured three years after publication; for others, compliance is required five years after an amended standard is published. 42 U.S.C. 6295(m)(4). ''Publication'' does not appear to be simply the term used in the

[2] Because EPCA involves rulemaking and the APA specifies that substantive rules shall be published in the **Federal Register** and not effective until they have been, the Department takes ''published'' in EPCA to refer to publication in the **Federal Register**.

Act for producing a rule. For example, EPCA distinguishes issuance from publication by stating that DOE is to begin a rulemaking to review a standard within six years after ''issuance''—rather than ''publication''—of the standard. 42 U.S.C. 6295(m)(1).

Thus, ''publication,'' rather than other steps involved in rulemaking, is the trigger for eventual manufacturer compliance. A manufacturer can lawfully make products that do not meet the amended standards until the compliance date, and until the rule has been published there is not even a date certain at which a manufacturer will have to comply.

Besides being consistent with the text and structure of EPCA, the Department's interpretation furthers the Act's purposes. DOE understands the overall purpose of the Act's standards provisions to be achieving an increase, over time, in the conservation of energy in the United States. Other goals of EPCA include mitigating adverse economic consequences that energy conservation can sometimes cause, and reducing the costs of the changes required to increase conservation. Those goals are revealed in multiple provisions, such as those that set compliance dates several years after publication of amended standards.

If the Department made an error in the regulatory text of a rule, and that error had the effect of increasing a standard beyond what the Department had concluded—after reasoned deliberations—was appropriate, the error-correction process set forth in this document would permit the Department to correct it. For section 325(o) to prohibit that result would undermine the multiple goals of EPCA. Were an erroneous standard to remain in place, its economic costs might be higher than what DOE had concluded could be justified, at that time, by the resulting energy savings or the standard might be technologically infeasible. That outcome would be inconsistent with EPCA's requirement to ensure that a standard be one that the Secretary determines is ''economically justified,'' and it could itself lead to uncertainty (*e.g.,* legal challenge to the standard), which would be likely to generate further economic costs. And, contrary to the purposes of EPCA identified above, the outcome might include the invalidation of the standard—or the entire final rule—by a court, thereby leaving the Nation with no new standard that would have provided the increased energy savings DOE had intended to provide until completion of a replacement rulemaking by DOE, which could take considerable time. In contrast, the error-correction process set forth in this rule allows DOE to align the text of its regulations with the assessment it has already made of what standard would be appropriate—and ultimately achieve the significant energy savings that the Secretary determines are economically justified and technologically feasible as mandated by the Act. Accordingly, in DOE's view, section 325(o) permits the Department to correct an error in the text of a rule in the manner prescribed in this rule.

*§ 430.5(h): Judicial Review*

This section clarifies the timing related to a potential petition for review that a person may file pursuant to 42 U.S.C. 6306. The section states that a rule is prescribed on the date of its publication in the **Federal Register**. Accordingly, for purposes of filing a legal challenge regarding an energy conservation standard rule, the date of publication in the **Federal Register** must be used when determining whether a given petition for review is timely in accordance with the statute.

## IV. Procedural Issues and Regulatory Review

### *A. Administrative Procedure Act*

This rule of agency procedure and practice is not subject the requirement to provide prior notice and an opportunity for public comment pursuant to authority at 5 U.S.C. 553(b)(A). The Administrative Procedure Act's exception to the notice-and-comment rulemaking requirement for rules of agency procedure and practice reflects Congress's judgment that such rules typically do not significantly benefit from notice-and-comment procedures, and that judgment is particularly applicable here, where the agency perceives no specific need for notice and comment. In addition, DOE has concluded that seeking comment on this rule would inappropriately divert valuable agency resources from other rulemakings that Congress has directed DOE to complete according to certain statutory timelines.

This rule is also not a substantive rule subject to a 30-day delay in effective date pursuant to 5 U.S.C. 553(d).

### *B. Review Under Executive Orders 12866 and 13563*

This regulatory action is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB). DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (January 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. As a result, EO 13563 also does not apply to this rule.

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because this rule is not subject to the requirement to provide prior notice and an opportunity for public comment, it is not subject to the analytical requirements of the Regulatory Flexibility Act.

### *D. Review Under the Paperwork Reduction Act*

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

### *E. Review Under the National Environmental Policy Act of 1969*

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *F. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by

State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

*G. Review Under Executive Order 12988*

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

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

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

*J. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988),that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

*L. Review Under Executive Order 13211*

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

This final rule is not a significant energy action because the ability to correct regulations will not, in itself, have a significant adverse effect on the supply, distribution, or use of energy. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation

of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**V. Approval of the Office of the Secretary**

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

**List of Subjects**

*10 CFR Part 430*

Administrative practice and procedure, Energy conservation test procedures, Household appliances.

*10 CFR Part 431*

Administrative practice and procedure, Energy conservation test procedures, Commercial and industrial equipment.

Issued in Washington, DC, on February 9, 2016.

**Kathleen B. Hogan,**

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

For the reasons set forth in the preamble, DOE amends parts 430 and 431 of Chapter II of title 10 of the Code of Federal Regulations as set forth below:

## PART 430—ENERGY CONSERVATION STANDARDS FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.5 is added to subpart A to read as follows:

### § 430.5 Error correction procedures for energy conservation standards rules.

(a) *Scope and purpose.* The regulations in this section describe procedures through which the Department of Energy accepts and considers submissions regarding possible Errors in its rules under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291–6317). This section applies to rules establishing or amending energy conservation standards under the Act, except that this section does not apply to direct final rules issued pursuant to section 325(p)(4) of the Act (42 U.S.C. 6295(p)(4)).

(b) *Definitions.*

As used in this section:

*Act* means the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291–6317).

*Error* means an aspect of the regulatory text of a rule that is inconsistent with what the Secretary intended regarding the rule at the time of posting. Examples of possible mistakes that might give rise to Errors include:

(1) A typographical mistake that causes the regulatory text to differ from how the preamble to the rule describes the rule;

(2) A calculation mistake that causes the numerical value of an energy conservation standard to differ from what technical support documents would justify; or

(3) A numbering mistake that causes a cross-reference to lead to the wrong text.

*Party* means any person who has provided input during the proceeding that led to a rule by submitting timely comments (including *ex parte* communications properly made within the relevant comment period) in response to a notice seeking comment or by providing substantive input at a public meeting regarding the rulemaking. For purposes of this definition, notices seeking comment include notices of proposed rulemaking, supplemental notices of proposed rulemaking, requests for information, and notices of data availability.

*Rule* means a rule establishing or amending an energy conservation standard under the Act.

*Secretary* means the Secretary of Energy or an official with delegated authority to perform a function of the Secretary of Energy under this section.

(c) *Posting of rules.* (1) The Secretary will cause a rule under the Act to be posted on a publicly-accessible Web site.

(2) The Secretary will not cause a rule to be published in the **Federal Register** during 30 calendar days after posting of the rule pursuant to paragraph (c)(1) of this section.

(3) Each rule posted pursuant to paragraph (c)(1) of this section shall bear the following disclaimer:

NOTICE: The text of this rule is subject to correction based on the identification of errors pursuant to 10 CFR 430.5 before publication in the **Federal Register**. Readers are requested to notify the United States Department of Energy, by email at *XXX@ee.doe.gov,* of any typographical or other errors, as described in such regulations, by no later than midnight on [INSERT DATE 30 CALENDAR DAYS AFTER DATE OF POSTING OF THE DOCUMENT ON THE DEPARTMENT'S WEB SITE], in order that DOE may consider whether corrections should be made before the document is submitted to the Office of the Federal Register for publication.

(d) *Request for correction.* (1) A party identifying an Error in a rule subject to this section may request that the Secretary correct the Error. Such a request must be submitted within 30 calendar days of the posting of the rule pursuant to paragraph (c) of this section.

(2)(i) A request under this section must identify an Error with particularity. The request must state what text is claimed to be erroneous and provide text that the requester argues would be a correct substitute. The request must also substantiate the claimed Error by citing evidence from the existing record of the rulemaking that the text of the rule as issued is inconsistent with what the Secretary intended the text to be.

(ii) A party's disagreement with a policy choice that the Secretary has made will not, on its own, constitute a valid basis for a request under this section.

(3) The evidence to substantiate a request (or evidence of the Error itself) must be in the record of the rulemaking at the time of the rule's issuance, which may include the preamble accompanying the rule. The Secretary will not consider new evidence submitted in connection with a request.

(4) A request must also demonstrate that the requester is a party by identifying one or more timely comment(s) or other substantive input that the requester previously provided in the proceeding leading to the rule.

(5) A request under this section must be filed in electronic format by email to the address that the rule designates for correction requests. Should filing by email not be feasible, the requester should contact the program point of contact designated in the rule regarding an appropriate alternative means of filing a request.

(6) A request that does not comply with the requirements of this section will not be considered.

(e) *Correction of rules.* The Secretary may respond to a request for correction under paragraph (d) of this section or address an Error discovered on the Secretary's own initiative by submitting to the Office of the Federal Register either a corrected rule or the rule as previously posted.

(f) *Publication in the* ***Federal Register.*** (1) If, after receiving one or more properly filed requests for correction, the Secretary decides not to undertake any corrections, the Secretary will submit the rule for publication to the Office of the Federal Register as it was posted. If the Secretary submits a rule to be so published without altering the rule in the respects requested, the requests are deemed rejected. The

Secretary will ordinarily provide no written response to a rejected request.

(2) If the Secretary receives no properly filed requests after the posting of a rule and identifies no errors on the Secretary's own initiative, the Secretary will in due course submit the rule as it was posted to be Office of the Federal Register for publication. This will occur after the 30-day period prescribed by paragraph (c)(2) of this section has elapsed.

(3) If the Secretary receives a properly filed request after issuance of a rule and determines that a correction is necessary, the Secretary will absent extenuating circumstances, submit a corrected rule for publication in the **Federal Register** within 30 days after the 30-day period prescribed by paragraph (c)(2) of this section has elapsed.

(4) Consistent with the Act, compliance with an energy conservation standard will be required upon the specified compliance date as published in the relevant rule in the **Federal Register**.

(5) Consistent with the Administrative Procedure Act, and other applicable law, the Secretary will ordinarily designate an effective date for a rule under this section that is no less than 30 days after the publication of the rule in the **Federal Register**.

(g) *Alteration of standards.* Until an energy conservation standard has been published in the **Federal Register**, the Secretary may correct such standard, consistent with the Administrative Procedure Act.

(h) *Judicial review.* For determining the prematurity, timeliness, or lateness of a petition for judicial review pursuant to section 336(b) of the Act (42 U.S.C. 6306), a rule is considered ''prescribed'' on the date when the rule is published in the **Federal Register**.

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 4. Section 431.3 is added to subpart A to read as follows:

### § 431.3 Error correction procedure for energy conservation standards rules.

Requests for error-corrections pertaining to an energy conservation standard rule for commercial or industrial equipment shall follow those procedures and provisions detailed in 10 CFR 430.5.

[FR Doc. 2016–03190 Filed 5–4–16; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 902

## 50 CFR Part 660

**[Docket No. 151005920–6371–02]**

**RIN 0648–BF39**

## Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Flow Scale Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This action revises scale requirements for processing vessels that are required to weigh fish at sea, *i.e.,* mothership and catcher/processor vessels, and Shorebased Individual Fishery Quota Program (IFQ) first receivers. For motherships and catcher/processors that weigh fish at sea, the action requires the use of updated scale technology, requires enhanced daily scale testing for flow scales (also known as belt scales), and requires the use of video to monitor the flow scale and the area around the flow scale. For Shorebased IFQ first receivers, the action adds criteria for inseason flow scale tests. In addition, the action includes housekeeping changes that are intended to better align the regulations with defined terms, and to provide clarity and consistency between paragraphs. Action is needed to provide precise and accurate catch estimates and to reduce the likelihood that vessels will under report harvests.

**DATES:** Effective June 6, 2016.

**ADDRESSES:** Address all comments concerning this rule to: William W. Stelle Jr., Regional Administrator, West Coast Region NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

**FOR FURTHER INFORMATION CONTACT:** Miako Ushio, (206) 526–4644.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html* and at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

### Motherships and Catcher/Processors

An at-sea scale program was developed for the Alaska groundfish fishery in 1998 to provide catch accounting that was more precise and verifiable at the individual haul level and less dependent on estimates generated by at-sea observers (February 4, 1998; 63 FR 5836). The at-sea scale program supported implementation of a large-scale quota share program that required verifiable and defensible estimates of harvest. Since implemenation of those weighing requirements in 1998, at-sea scales have been used to provide reliable, precise and accurate estimates of catch in the Alaskan groundfish fisheries. At the same time, scale technology has evolved and NMFS has developed greater expertise in monitoring processing activity.

Recent fraud on some vessels was found to have resulted in systematic underestimates of scale weights used for catch accounting. As a result, at-sea flow scale regulations for the Alaska Region at 50 CFR 679.28 were revised on December 18, 2014 (November 18, 2014; 79 FR 68610) to improve scale accuracy and reduce bias. Revisions to the Alaska regulations included a suite of modifications to the at-sea scales program that included the use of flow scales capable of logging and printing the frequency and magnitude of scale calibrations relative to previous calibrations as well as the time and date of each scale fault (or error) and scale startup time; revised daily scale test methods; and new requirements for video monitoring.

In 2011, a trawl rationalization program was implemented for the Pacific Coast groundfish fishery which included scale requirements specified in regulation at § 660.15(b) (December 15, 2010; 75 FR 78344). These regulations require mothership and catcher/processor vessels to use scales certified for the Alaska groundfish fisheries. This action modifies the Pacific Coast groundfish fishery regulations to be consistent with the Alaska Region's 2014 regulation updates, thereby bringing them up to date with current technology, reducing the potential for scale tampering, and improving catch

accounting accuracy. Catch estimates based on inaccurate scale weights could systematically underestimate harvests. Given the importance of using accurate and reliable catch accounting data for management of the groundfish stocks, NMFS is implementing revisions consistent with the revisions made for the Alaska groundfish fishery, and with the intent of enforcement and monitoring provisions implemented under Amendment 20 to the Pacific Coast groundfish fishery management plan (FMP).

This final rule updates the requirements for scales consistent with Alaska regulations at § 679.28. Improved scale technology includes features that allow NMFS to determine how well the flow scales are performing, and improve the accuracy and reliability of flow scale measurements. Because the mothership and catcher/processor vessels already have upgraded scale systems for the Alaska Fisheries, and the scales are certified through annual testing provided by the Alaska Region, aligning the performance and technical requirements is reasonable and not expected to result in added costs to the vessels.

Regulatory revisions include improvements to daily scale tests. The types of material used for the daily scale test are limited to test materials (*i.e.*, pre-weighed sand bags) supplied by the scale manufacturer or approved by a NMFS-authorized scale inspector. The minimum amount of weight for each test and the number of runs are stated in regulations. In addition, new requirements for documenting failed scale tests, and printing audit and calibration reports are specified.

Regulatory revisions require that all mothership and catcher/processors vessels use video monitoring systems that meet the Alaska fishery system requirements, specified at § 679.28(e), when they are fishing in the Pacific Coast groundfish fishery. The video monitoring systems allow the activities around the flow scale to be monitored to ensure that the flow scale is functioning properly (*e.g.*, that the flow scale is not running while in a fault (error) state); ensure that all fish are being weighed; detect when crew members are working on the flow scale; and ensure that daily flow scale tests are being conducted on the required schedule and with the appropriate test weights. The video systems are required to capture imagery of areas where the catch enters, moves across, and leaves the scale; of any access points that may be adjusted or modified by crew; and of the scale display and the indicator of when the scale is operating in a fault state. Consistent with the Alaska requirements, the vessel operator is required to maintain the video imagery for at least 120 days and make the imagery available to NMFS upon request.

**IFQ First Receivers**

Regulations at § 660.15(c) define the performance and technical requirements for scales used to weigh fish at Shorebased IFQ first receivers. Since the Shorebased IFQ program was implemented in 2011, some Shorebased IFQ first receivers located in Oregon and Washington have installed flow scales. The states of Oregon and Washington test the flow scales consistent with national weights and measures standards. This action revises regulations to include performance and technical requirements for flow scales used at IFQ first receivers. In addition, several minor technical changes are made. The regulatory changes for first receivers include revisions to inseason scale test requirements specific to flow scales; adding catch monitors to the list of individuals that have access to scale displays and printouts; revisions to inseason scale test requirements specific to flow scales; and the correction of a value for maximum error in scale divisions.

**Housekeeping**

Numerous minor changes are made throughout the regulations at 50 CFR 660.15, 660.113, 660.150 and 660.160 for clarity, to better align different sections of the regulations, to update cross references, and for consistency in the use of terms. Paragraph 660.15(a) is revised to remove reporting requirements that are repeated in other more appropriate sections of the regulations. Regulatory language originally adopted from the Alaska Groundfish fisheries is not consistent with language used for the Pacific Coast groundfish fishery; therefore, minor revisions are made to paragraph § 660.15(b) for clarity and to be consistent with other sections of the Pacific Coast groundfish regulations. Minor changes are made at § 660.15(c) to revise terms for consistent use throughout the regulations. Minor changes are made at § 660.113 to revise terms for consistent use throughout the regulations and to update cross references. Minor changes are made at §§ 660.150(b) and 660.160(b) to revise terms for consistent use throughout the regulations, and update cross references, to add missing references for cease fishing reports and to add clarity to the vessel responsibilities relative to observer platform scale.

NMFS published a proposed rule for this action on January 19, 2016 (81 FR 2831). The comment period for the proposed rule ended on February 18, 2016, and no comments were received. Therefore, no changes were made from the proposed rule in response to comments.

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule adds requirements for scale test report recording and maintenance, 15 CFR 902.1(b) is revised to reference correctly the section resulting from this final rule.

**Classification**

NMFS has determined that this action is consistent with the FMP, the Magnuson Stevens Conservation and Management Act, and other applicable laws.

The Office of Management and Budget has determined that this action is not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required, and none has been prepared.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB as revisions to OMB collection 0648–0619. The public reporting burden for the at-sea scale requirements, including daily test reports (30 minute per response), daily catch and cumulative weight reports (10 min per response), the audit trail (1 minute per response), calibration log (1 minute per response), fault log (1 minute per response) and video monitoring (0 minute per response), is estimated to average 43 minutes per response. Send comments on the burden estimate or any other aspects of the collection of information

to West Coast Region at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 660*

Fisheries, Fishing, and Indian fisheries.

Dated: April 29, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 660 are amended as follows:

**Title 15—Commerce and Foreign Trade**

## PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR'', revise the entry for ''660.13'' and add an entry in alphanumeric order for ''660.15'' to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

* * * * *

(b) * * *

| CFR Part or section where the information collection requirement is located | Current OMB Control No. (All numbers begin with 0648–) |
|---|---|
| * * * * * | |
| 50 CFR: | |
| * * * * * | |
| 660.13 | –0573 and –0619. |
| * * * * * | |
| 660.15 | –0619. |
| * * * * * | |

**Title 50—Wildlife and Fisheries**

## PART 660—FISHERIES OFF WEST COAST STATES

■ 3. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 4. In § 660.15, revise paragraphs (a), (b), and (c) and add paragraph (e) to read as follows:

**§ 660.15 Equipment requirements.**

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh fish at sea, scales used to weigh fish at IFQ first receivers, video monitoring systems, computer hardware for electronic fish ticket software, and computer hardware for electronic logbook software.

(b) *Scales used to weigh fish at sea.* Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with the requirements specified in this section.

(1) *Performance and technical requirements for scales in the MS and C/P Coop Programs.* A scale used to weigh fish in the MS and C/P Coop Programs must meet the type evaluation, initial inspection, and annual reinspection requirements set forth in 50 CFR 679.28(b)(1) and (2), and must be approved by NMFS to weigh fish at sea.

(2) *Annual inspection.* Once a scale is installed on a vessel and approved by NMFS for use to weigh fish at sea, it must be reinspected annually within 12 months of the date of the most recent inspection to determine if the scale meets all of the applicable performance and technical requirements as described in 50 CFR 679.28(b).

(3) *Daily testing.* Each scale used to weigh fish must be tested at least once each calendar day to ensure that each scale meets the maximum permissible error requirements described at paragraph (b)(4) of this section.

(4) *Daily at-sea scale tests.* To verify that the scale meets the maximum permissible errors specified in this paragraph, each scale used to weigh fish must be tested at least one time during each calendar day when use of the scale is required. The tests must be performed in an accurate and timely manner.

(i) *Flow or Belt scales*—(A) *Maximum permissible errors.* The maximum permissible errors for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material.

(B) *Test Procedure.* A test must be conducted by weighing no less than 400 kg (882 lb) of test material, supplied by the scale manufacturer or approved by a NMFS-authorized scale inspector, on the scale under test. The test material may be run across the scale multiple times in order to total 400 kg; however, no single run of test material across the scale may weigh less than 40 kg (88.2 lb). The known weight of test material must be determined at the time of each scale test by weighing it on a platform scale approved for use under 50 CFR 679.28(b)(7).

(ii) *Platform scales required for observer sampling or to determine known weight of test material on mothership and catcher/processor vessels*—(A) *Maximum permissible errors.* The maximum permissible errors for the daily at-sea scale test for platform scales is plus or minus 0.5 percent of the weight tested.

(B) *Test Procedure.* A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. Any combination of test weights that will allow the scale to be tested at 10 kg, 25 kg, and 50 kg may be used. A platform scale used to weigh fish must be tested at a weight equal to the largest amount of fish that will be weighed on the scale in one weighing.

(C) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology-approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(iii) *Requirements for all at-sea scale tests.* The following conditions must be met:

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test by placing the test material or test weights on or across the scale and recording the following information on the at-sea scale test report form:

(*1*) Vessel name;

(*2*) Month, day, and year of test;

(*3*) Time test started to the nearest minute in local time;

(*4*) Known weight of test materials or test weights;

(*5*) Weight of test material or test weights recorded by scale;

(*6*) Percent error as determined by subtracting the known weight of the test material or test weights from the weight recorded on the scale, dividing that amount by the known weight of the test

material or test weights, and multiplying by 100; and

(*7*) Signature of operator.

(C) Maintain the scale test report form from all at-sea scale tests, including test report forms from failed scale tests on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the scale test report forms must be retained for 3 years after the end of the fishing year during which the tests were performed. Each scale test report form must be signed by the operator immediately following completion of each scale test.

(5) *Scale maintenance.* The scale must be maintained in proper operating condition throughout its use; adjustments made to the scale must be made to bring the performance errors as close as practicable to a zero value; and no adjustment may be made that will cause the scale to weigh fish inaccurately.

(6) *Printed reports from the scale* (not applicable to observer sampling scales). Printed reports are provided to NMFS as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made, and made available to observers, NMFS staff or authorized officers. In addition, printed reports must be retained for 3 years after the end of the year during which the printouts were made.

(i) *Printed reports of catch weight and cumulative weight.* Reports must be printed at least once every calendar day when use of the scale is required. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, slime, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal vessel permit number;

(B) The date and time the information was printed;

(C) The haul number;

(D) The total weight of the haul; and

(E) The total cumulative weight of all fish and other material weighed on the scale since the last annual inspection.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of the observer, NMFS personnel or an authorized officer.

(iii) *Printed report from calibration log.* The operator must print the calibration log on request by NMFS staff or an authorized officer, or person authorized by NMFS. The calibration log must be printed and retained before any information stored in the scale computer memory is replaced. The calibration log must detail either the prior 1,000 calibrations or all calibrations since the scale electronics were first put into service, whichever is less. The printout from the calibration log must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The month, day, and year of the calibration;

(C) The time of the calibration to the nearest minute in local time;

(D) The weight used to calibrate the scale; and

(E) The magnitude of the calibration in comparison to the prior calibration.

(iv) *Printed reports from the fault log.* The operator must print the fault log on request by NMFS staff, an authorized officer or person authorized by NMFS. The fault log must be printed and retained before any information stored in the scale computer memory is replaced. The fault log must detail either the prior 1,000 faults and startups, or all faults and startups since the scale electronics were first put into service, whichever is less. A fault, for the purposes of the fault log, is any condition other than underflow detected by the scale electronics that could affect the metrological accuracy of the scale. The printout from the fault log must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The month, day, year, and time of each startup to the nearest minute in local time;

(C) The month, day, year, and time that each fault began to the nearest minute in local time; and

(D) The month, day, year, and time that each fault was resolved to the nearest minute in local time.

(v) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record.

(7) *Video monitoring for scales used by the vessel crew to weigh catch.* Mothership or Catcher/Processor vessels required to weigh fish under the regulations in this section must provide and maintain a NMFS-approved video monitoring system as specified in paragraph (e) of this section.

(c) *Scales used to weigh fish at IFQ first receivers—performance and technical requirements.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is located, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh fish that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid sticker indicating that the scale is currently approved in accordance with the laws of the state where the scale is located.

(2) *Visibility.* The IFQ first receiver must ensure that the scale and scale display are visible simultaneously to the catch monitor. Catch monitors, NMFS staff, NMFS-authorized personnel, or authorized officers must be allowed to observe the weighing of fish on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.*

(i) An IFQ first receiver must ensure that printouts of the scale weight of each delivery or offload are made available to the catch monitor, NMFS staff, to NMFS-authorized personnel, or to authorized officers at the time printouts are generated. An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by the catch monitor, NMFS staff, NMFS-authorized personnel, or authorized officers for 3 years after the end of the fishing year during which the printout was made.

(ii) All scales identified in a catch monitoring plan (see § 660.140(f)(3)) must produce a printed record for each landing, or portion of a landing, weighed on that scale. NMFS may exempt, through approval of the NMFS-accepted catch monitoring plan, scales not designed for automatic bulk weighing from part or all of the printed record requirements. IFQ first receivers that receive no more than 200,000 pounds of groundfish in any calendar month may be exempt under § 660.140(j)(2). For scales that must produce a printed record, the printed record must include:

(A) The IFQ first receiver's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each landing, or portion of the landing that was weighed on that scale;

(D) For belt scales and weight belts, the total cumulative weight of all fish or other material weighed on the scale since the last inspection;

(E) The date the information is printed; and

(F) The name and vessel registration or documentation number of the vessel making the landing. The person operating the scale may write this information on the scale printout in ink at the time of printing.

(4) *Inseason scale testing.* IFQ first receivers must allow, and provide reasonable assistance to NMFS staff, NMFS-authorized personnel, and authorized officers to test scales used to weigh IFQ fish. A scale that does not pass an inseason test may not be used to weigh IFQ fish until the scale passes an inseason test or is approved for continued use by the weights and measures authorities of the State in which the scale is located.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or authorized officers must be able to verify that:

(A) The scale display and printed information are clear and easily read under all conditions of normal operation;

(B) Weight values are visible on the display until the value is printed;

(C) The scale does not exceed the maximum permissible errors specified in this paragraph:

(*1*) *Flow scales (also known as belt scales and weight belts).* The maximum permissible error is plus or minus 0.25 percent of the known weight of the test material with repeatability between tests of no more than 0.25 percent. Percent error is determined by subtracting the known weight of the test material or test weights from the weight recorded on the scale, dividing that amount by the known weight of the test material or test weights, and multiplying by 100.

(*2*) *All other scales.*

| *Test load in scale divisions* | *Maximum error in scale divisions* |
|---|---|
| (*i*) 0–500 | 1 |
| (*ii*) 501–2,000 | 2 |
| (*iii*) 2,001–4,000 | 3 |
| (*iv*) >4,000 | 5 |

(D) *Automatic weighing systems.* An automatic weighing system must be provided and operational that will prevent fish from passing over the scale or entering any weighing hopper unless the following criteria are met:

(*1*) No catch may enter or leave a weighing hopper until the weighing cycle is complete;

(*2*) No product may be cycled and weighed if the weight recording element is not operational; and

(*3*) No product may enter a weighing hopper until the prior weighing cycle has been completed and the scale indicator has returned to a zero.

(ii) [Reserved]

* * * * *

(e) *Video monitoring systems used monitor at-sea scales*—(1) *Performance and technical requirements for video monitoring systems for the MS and C/P Coop Programs.* A video monitoring system used to monitor at-sea scales must meet the system requirements and system inspections, set forth in 50 CFR 679.28(e)(1) through (4) and be issued a Video Monitoring Inspection Report verifying that the video system meets all applicable requirements for use in the Alaska Pollock fishery. Any change to the system must meet the requirements specified at 50 CFR 679.28(e)(7) and be approved by the Alaska Regional Administrator in writing before any changes are made.

(i) MS or C/P vessels required to weigh fish at sea under the regulations in this section must:

(A) Provide and maintain a video monitoring system that provides sufficient resolution and field of view to monitor: All areas where catch enters the scale, moves across the scale and leaves the scale; any access point to the scale from which the scale may be adjusted or modified by vessel crew while the vessel is at sea; and the scale display and the indicator for the scale operating in a fault state.

(B) Record and retain video for all periods when catch that must be weighed is on board the vessel.

(ii) [Reserved]

(2) *Video Monitoring System Inspection Report.* A current NMFS-issued Video Monitoring System Inspection Report must be maintained on board the vessel at all times the vessel is required to have an approved video monitoring system. The Video Monitoring System Inspection Report must be made available to the observer, NMFS staff, or to an authorized officer upon request.

(3) *Retention of records.* Consistent with the requirements set forth at 50 CFR 679.28(e)(1), the video data must be maintained on the vessel and made available on request by NMFS staff, or any individual authorized by NMFS. The data must be retained on board the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the operator in writing that the video data may be retained for less than this 120-day period.

■ 3. In § 660.112, add paragraphs (c)(5) and (6) to read as follows:

**§ 660.112 Trawl fishery—prohibitions.**

* * * * *

(c) * * *

(5) Fail to weigh all fish taken and retained aboard the vessel on a scale that meets the performance and technical requirements specified at § 660.15(b).

(6) Weigh fish taken and retained aboard the vessel without operating and maintaining a video monitoring system that meets the performance and technical requirements specified at § 660.15(e).

* * * * *

■ 4. In § 660.113, revise paragraphs (c)(2) and (d)(2) to read as follows:

**§ 660.113 Trawl fishery—recordkeeping and reporting.**

* * * * *

(c) * * *

(2) *NMFS-approved scale*—(i) *Scale test report form.* Mothership vessel operators are responsible for conducting scale tests and for recording the scale test information on the scale test report form as specified at § 660.15(b), for mothership vessels.

(ii) *Printed scale reports.* Requirements pertaining to printed scale reports and scale weight printouts are specified at § 660.15(b), for mothership vessels.

(iii) *Retention of scale records and reports.* Vessels must maintain scale test report forms on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the scale test report forms must be maintained for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the operator.

* * * * *

(d) * * *

(2) *NMFS-approved scales*—(i) *Scale test report form.* Catcher/processor vessel operators are responsible for conducting scale tests and for recording the scale test information on the scale test report form as specified at § 660.15(b), for catcher/processor vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight printouts are specified at § 660.15(b), for catcher/processor vessels.

(iii) *Retention of scale records and reports.* The vessel must maintain the scale test report form on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the scale test report forms must be maintained for 3 years after the

end of the fishing year during which the tests were performed. All scale test report forms must be signed by the operator.

* * * * *

■ 5. In § 660.150, revise paragraphs (b)(1)(ii) introductory text and (b)(1)(ii)(A) and (C) to read as follows:

**§ 660.150 Mothership (MS) Coop Program.**

* * * * *

(b) * * *

(1) * * *

(ii) *Mothership vessel responsibilities.* The owner and operator of a mothership vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(C) *Catch weighing requirements.* The owner and operator of a mothership vessel must:

(*1*) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § 660.15(b);

(*2*) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in section § 660.15(b).

* * * * *

■ 6. In § 660.160, revise paragraphs (b)(1)(ii) introductory text and (b)(1)(ii)(A) and (C) to read as follows:

**§ 660.160 Catcher/processor (C/P) Coop Program.**

* * * * *

(b) * * *

(1) * * *

(ii) *Catcher/processor vessel responsibilities.* The owner and operator of a catcher/processor vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(C) *Catch weighing requirements.* The owner and operator of a catcher/processor vessel must:

(*1*) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b);

(*2*) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in § 660.15(b).

* * * * *

[FR Doc. 2016–10476 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9767]**

**RIN 1545–BN24**

## Additional Limitation on Suspension of Benefits Applicable to Certain Pension Plans Under the Multiemployer Pension Reform Act of 2014

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** The Multiemployer Pension Reform Act of 2014 (''MPRA''), which was enacted by Congress as part of the Consolidated and Further Continuing Appropriations Act of 2015, relates to multiemployer defined benefit pension plans that are projected to have insufficient funds, within a specified timeframe, to pay the full plan benefits to which individuals will be entitled (referred to as plans in ''critical and declining status''). Under MPRA, the sponsor of such a plan is permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions and limitations are satisfied (referred to in MPRA as a ''suspension of benefits''). One specific limitation governs the application of a suspension of benefits under any plan that includes benefits directly attributable to a participant's service with any employer that has withdrawn from the plan in a complete withdrawal, paid its full withdrawal liability, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries equal to any benefits for such participants and beneficiaries reduced as a result of the financial status of the plan. This document contains final regulations that provide guidance relating to this specific limitation. These regulations affect active, retired, and deferred vested participants and beneficiaries under any such multiemployer plan in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans.

**DATES:** *Effective date:* These regulations are effective on May 5, 2016.

*Applicability date:* These regulations apply to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, the final regulations apply with respect to any modified suspension implemented on or after April 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** The Department of the Treasury MPRA guidance information line at (202) 622–1559 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 432(e)(9) of the Internal Revenue Code (Code), as amended by section 201 of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (128 Stat. 2130 (2014)) (MPRA).[1] As amended, section 432(e)(9) permits plan sponsors of certain multiemployer plans to reduce the plan benefits payable to participants and beneficiaries by plan amendment (referred to in the statute as a ''suspension of benefits'') if specified conditions are satisfied. A plan sponsor that seeks to implement a suspension of benefits must submit an application for approval of that suspension to the Secretary of the Treasury. The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor (generally referred to in this preamble as the Treasury Department, PBGC, and Labor Department, respectively), is required by the statute to approve the application upon finding that certain specified conditions are satisfied.

One condition, set forth in section 432(e)(9)(D)(vii), is a specific limitation on how a suspension of benefits must be applied under a plan that includes benefits that are directly attributable to a participant's service with any employer described in section 432(e)(9)(D)(vii)(III). An employer is described in section 432(e)(9)(D)(vii)(III) if the employer has, prior to the date MPRA was enacted (December 16, 2014): (1) Withdrawn from the plan in a complete withdrawal under section

[1] Section 201 of MPRA makes parallel amendments to section 305 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA). The Treasury Department has interpretive jurisdiction over the subject matter of these provisions under ERISA as well as the Code. See also section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713). Thus, these final Treasury regulations issued under section 432 of the Code apply as well for purposes of section 305 of ERISA.

4203 of ERISA; (2) paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan; and (3) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for these participants and beneficiaries reduced as a result of the financial status of the plan. Such an employer is referred to in this preamble as a ''subclause III employer,'' and a collective bargaining agreement under which the employer assumes liability for those benefits is referred to as a ''make-whole agreement.''

If section 432(e)(9)(D)(vii) applies to a plan then, under section 432(e)(9)(D)(vii)(I), the suspension of benefits must first be applied to the maximum extent permissible to benefits attributable to a participant's service with an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan. Such an employer is referred to in this preamble as a ''subclause I employer.'' Second, under section 432(e)(9)(D)(vii)(II), except as provided in section 432(e)(9)(D)(vii)(III), a suspension of benefits must be applied to all other benefits under the plan that may be suspended. Third, under section 432(e)(9)(D)(vii)(III), a suspension must be applied to benefits under the plan that are directly attributable to a participant's service with a subclause III employer. An employer under the plan is referred to in this preamble as a ''subclause II employer'' if it is neither a subclause I employer nor a subclause III employer.

On October 23, 2015, the Treasury Department published a notice in the **Federal Register** (80 FR 64508) regarding an application for a proposed suspension of benefits, which represented that the plan is of the type to which section 432(e)(9)(D)(vii) applies. The notice requested public comments on all aspects of the application, including with respect to the interpretation of section 432(e)(9)(D)(vii) that is reflected in the application.

On February 11, 2016, the Treasury Department and the IRS published proposed regulations (REG–101701–16) regarding the specific limitation on a suspension of benefits under section 432(e)(9)(D)(vii) in the **Federal Register** at 81 FR 7253. Comments were received on the proposed regulations and a public hearing was held on March 22, 2016.

After consideration of the written comments received and the oral comments presented at the public hearing, the provisions of the proposed regulations are adopted as revised by this Treasury decision. The Treasury Department consulted with PBGC and the Labor Department in developing these regulations.[2]

**Explanation of Provisions**

These regulations amend the Income Tax Regulations (26 CFR part 1) to provide guidance regarding section 432(e)(9)(D)(vii). Section 432(e)(9)(D)(vii) sets forth a rule that limits how a suspension may be applied under a plan that includes benefits that are directly attributable to a participant's service with a subclause III employer. In determining how a suspension should be allocated consistent with MPRA's framework and purpose, the Treasury Department and the IRS analyzed the statute and applied well-established principles of statutory construction to interpret section 432(e)(9)(D)(vii). In so doing, the Treasury Department and the IRS interpreted section 432(e)(9)(D)(vii) in the context of section 432(e)(9) as a whole, which requires, among other things, that any suspension be subject to certain limitations, including that the suspension be equitably distributed across the participant and beneficiary population.

*I. Application of a Suspension of Benefits to Subclause I Benefits to the Maximum Extent Permissible*

Subclause (I) of section 432(e)(9)(D)(vii) provides that the suspension of benefits must first be applied ''to the maximum extent permissible'' to benefits attributable to service with a subclause I employer (referred to in this preamble as ''subclause I benefits''). Accordingly, the proposed regulations provided that, for a plan that is subject to section 432(e)(9)(D)(vii), a suspension of benefits must be applied to the maximum extent permissible to subclause I benefits before reductions are permitted to be applied to any other benefits. Under the proposed regulations, only if such a suspension is not reasonably estimated to achieve the level that is necessary to enable the plan to avoid insolvency may a suspension then be applied to other benefits that are permitted to be suspended and that are attributable to a participant's service with other employers. No commenters objected to this provision of the proposed regulations, and these final regulations adopt this provision as proposed.

*II. Relationship Between Subclause II Benefits and Subclause III Benefits*

In contrast to subclause (I) of section 432(e)(9)(D)(vii), subclause (II) does not include the phrase ''to the maximum extent permissible.'' Accordingly, the Treasury Department and the IRS developed the rules in the proposed regulations based on the interpretation that a suspension need not be applied to the maximum extent permissible to benefits described in subclause (II) before any suspension is applied to benefits described in subclause (III).

A number of commenters expressed views regarding the rules under the proposed regulations describing how the suspension of benefits is permitted to apply to benefits attributable to service with a subclause II employer (referred to in this preamble as ''subclause II benefits'') and benefits directly attributable to service with a subclause III employer (referred to in this preamble as ''subclause III benefits''). Many of these commenters agreed with the analysis set forth in the preamble to the proposed regulations and supported an interpretation of the statute that subclause II benefits are not required to be reduced to the maximum extent permissible before any subclause III benefits can be reduced.

Two commenters advocated that the statute be interpreted to require that subclause II benefits be suspended to the maximum extent permissible before a suspension is permitted to apply to any subclause III benefits. These commenters maintained that this result is required by the ordinal numbering of the three subclauses and asserted that Congress intended to favor any withdrawing employer that not only paid the full amount of its withdrawal liability but also entered into a make-whole agreement. If such an approach were applied under section 432(e)(9)(D)(vii), then the benefits described in each of the first two subclauses would be required to be suspended to the maximum extent permissible before any suspension could apply to benefits described in the successive subclause. Under that approach, subclause III benefits would be permitted to be suspended only if all benefits attributable to participants' service with all subclause I and

[2] The Treasury Department and the IRS have published final regulations providing general guidance regarding section 432(e)(9). *See* § 1.432(e)(9)–1 (TD 9765), published in the **Federal Register** on April 28, 2016 (81 FR 25539).

subclause II employers were suspended to the maximum extent permissible. In support of this position, one commenter asserted that the Treasury Department and the IRS misinterpreted the import of the absence of the phrase ''to the maximum extent permissible'' in subclause (II). This commenter asserted that the combined use in subclause (II) of ''second,'' ''except as provided by subclause (III),'' and ''all other benefits'' has the same effect with respect to subclause II benefits as the use in subclause (I) of ''to the maximum extent permissible'' has with respect to subclause I benefits. This commenter argued that the difference in language between subclause (I) and subclause (II) does not prevent the two rules from having the same effect, and cited to *Kirtsaeng* v. *John Wiley & Sons, Inc.,* 568 U.S. ___, 133 S. Ct. 1351, 1364 (2013) in support of this argument.

After carefully considering this argument and applicable authorities, the Treasury Department and the IRS have concluded that this interpretation is incorrect; the statute does not require subclause II benefits to be suspended to the maximum extent permissible before any subclause III benefits are permitted to be suspended, and the rule set forth in the proposed regulations is the correct interpretation of the statute. Applicable case law establishes that a difference in language between one statutory provision and the next immediately following provision should be given meaning. *See Loughrin* v. *United States,* 573 U.S. __,134 S. Ct. 2384, 2390 (2014) (''We have often noted that when 'Congress includes particular language in one section of a statute but omits it in another'—let alone in the very next provision—this Court 'presume[s]' that Congress intended a difference in meaning.'' (quoting *Russello* v. *United States,* 464 U.S. 16, 23 (1983)). To read subclause (II) to require that subclause II benefits be suspended ''to the maximum extent permissible'' even though that language does not appear in subclause (II) would effectively rewrite the statute either by moving the phrase the ''to the maximum extent permissible'' from subclause (I) to the introductory language of section 432(e)(9)(D)(vii) or by adding it to subclause (II).[3] The interpretation in the proposed regulations is also consistent with the language in subclause (II) (''except as provided in subclause (III)''), which contemplates a coordinated application of two provisions that are to be applied ''second'' and ''third;'' this language in subclause (II) is not consistent with an interpretation that requires application of a suspension to subclause II benefits that is independent of (and entirely preceding) the application of the suspension to subclause III benefits.

*Kirtsaeng,* which the one commenter cited to contest this interpretation in the proposed regulations, involved two phrases that ''mean roughly the same thing.'' *Id.* at 1358–59, 1364 (''The language of [the relevant statute] read literally favors [petitioner's] interpretation, namely, that 'lawfully made under this title' means made 'in accordance with' or 'in compliance with' the Copyright Act.''). There are no ''roughly'' similar phrases across subclauses (I) and (II). *Kirtsaeng* is therefore inapposite.[4]

The Treasury Department and the IRS recognize that the language of section 432(e)(9)(D)(vii) bears some similarity to other statutory provisions that establish priority categories requiring claims to be fully satisfied under each earlier category before any claims are permitted to be satisfied under any subsequent category—for example, section 4044(a) of ERISA and sections 507(a) and 726(a) and (c) of the Bankruptcy Code, which in each instance prescribes ordering rules relating to the distribution of limited assets. However, in contrast to the language in section 432(e)(9)(D)(vii), these other statutory provisions do not include language in one category instructing that the category must be fully exhausted before reaching the next category, while omitting that language in other categories. Furthermore, if the ordinal numbering of section 432(e)(9)(D)(vii) were to be interpreted to require that each category be fully exhausted before reaching the next category, then the phrase ''to the maximum extent permissible'' in subclause (I) would not serve any purpose and would be superfluous.[5]

The broad scope of benefits included in subclause (III) further supports the conclusion that a suspension need not be applied to the maximum extent permissible to subclause II benefits before any suspension is applied to subclause III benefits. As explained in Section D of this preamble, subclause III benefits include all benefits that are directly attributable to service with a subclause III employer, without regard to whether those benefits are subject to a make-whole agreement. If subclause II benefits were required to be reduced to the maximum extent permissible before any subclause III benefits could be reduced (including subclause III benefits not subject to a make-whole agreement), then participants with subclause III benefits who are not subject to the make-whole agreement could experience significantly smaller reductions than participants with subclause II benefits (including benefits attributable to service with employers that never withdrew from the plan), without regard to whether that difference is consistent with the equitable distribution requirement.

For these reasons, these final regulations adopt the rule under the proposed regulations that subclause II benefits are not required to be suspended ''to the maximum extent permissible'' before any suspension is permitted to be applied to subclause III benefits.

*III. Standard for Application of Suspension to Subclause III Benefits Relative to Subclause II Benefits*

In order to give effect to the requirement that a suspension of benefits be applied ''second'' to subclause II benefits and ''third'' to subclause III benefits, the proposed regulations provided that a suspension would not be permitted to reduce subclause III benefits unless subclause II benefits were reduced to at least the same extent as subclause III benefits were reduced. Under the proposed regulations, this limitation would be satisfied if no participant's benefits that are directly attributable to service with a subclause III employer were reduced more than that participant's benefits would have been reduced if, holding constant the benefit formula, work history, and all relevant factors used to compute benefits, those benefits were attributable to service with any other employer. The effect of the proposed rule is to protect a subclause III employer from the possibility that the suspension would be expressly designed to take advantage of the employer's commitment to make participants and beneficiaries whole for the reductions.

Most commenters agreed with the analysis set forth in the preamble to the proposed regulations and supported the rule that a suspension would not be permitted to reduce subclause III benefits unless subclause II benefits are reduced to at least the same extent. However, one commenter maintained

[3] *See Hall* v. *United States,* 566 U.S. __, 132 S. Ct. 1882, 1893 (2012) (''[I]t is not for us to rewrite the statute.'')

[4] *Kirtsaeng* is further inapposite because the statutory provisions of the Copyright Act that were compared to each other in that case (*i.e.,* 17 U.S.C. 109 and 602) were not in immediate proximity to each other unlike the subclauses at issue here.

[5] *See Marx* v. *General Revenue Corp.,* 568 U.S. __, 133 S. Ct. 1166, 1178 (2013) (''[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.'').

that, if the Treasury Department and the IRS were to adopt the rule set forth in the proposed regulations intended to protect a subclause III employer, then the rule should be modified to prohibit facially neutral suspension provisions that have a disparate impact on subclause III benefits or that are intentionally designed to produce such an impact. Under such a rule, a suspension of benefits that disproportionally reduces subclause III benefits in the aggregate relative to subclause II benefits in the aggregate would be prohibited under section 432(e)(9)(D)(vii) even if the suspension does not by its terms treat individuals with subclause III benefits in a less favorable manner than similarly situated individuals with subclause II benefits.

Nothing in the statute or preexisting case law requires the application of a disparate impact standard. Both Congress and the Supreme Court have required such a standard only in the unique context in which ''barriers operate invidiously to discriminate on the basis of racial or other impermissible classification,'' *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 431 (1971); *see, e.g.,* 42 U.S.C. 2000e–2(k)(1)(A)(i) (prohibiting ''a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin''); *see also Texas Department of Housing and Community Affairs, et al.,* v. *Inclusive Communities Project, Inc., et al.,* 576 U. S. ___, 135 S. Ct. 2507, 2513 (2015) (''a disparate-impact claim challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale''). Those unique circumstances are not present here.

After considering the public comments, the Treasury Department and the IRS have determined that the rule set forth in the proposed regulations appropriately protects a subclause III employer from the possibility that the suspension would be expressly designed to take advantage of the employer's commitment to make participants and beneficiaries whole for the reductions in a manner that is most consistent with all of the statutory language.[6] However, in response to comments identifying potential ambiguities in the proposed regulations, the application of this rule in the final regulations has been clarified. Accordingly, these final regulations provide that a suspension does not violate the required relationship between subclause III benefits and subclause II benefits if no individual's benefits that are subclause III benefits are reduced more than that individual's benefits would have been reduced if, holding constant the benefit formula, work history, and all other relevant factors used to determine the individual's benefits, those benefits were attributable to service with any other employer.

*IV. Treatment of Participants With Service for a Subclause III Employer Who Are Not Covered by a Make-Whole Agreement*

The proposed regulations provided that the benefits described in section 432(e)(9)(D)(vii)(III) are any benefits that are directly attributable to a participant's service with a subclause III employer, without regard to whether the employer has assumed liability for providing benefits to the participant or beneficiary that were reduced as a result of the financial status of the plan. For example, if, before the date a subclause III employer entered into a make-whole agreement, a participant commenced receiving retirement benefits under a plan that are directly attributable to service with that employer, then the participant's benefits would be described in section 432(e)(9)(D)(vii)(III) even if those benefits were not covered by the make-whole agreement. This interpretation is based on the statutory language in section 432(e)(9)(D)(vii)(III), which defines the benefits to which that subclause applies as those benefits that are directly attributable to service with an employer that has met the conditions set forth in section 432(e)(9)(D)(vii)(III)(aa) and (bb). In other words, the statutory provision refers to benefits directly attributable to service with an employer described in subclause (III) and not only to benefits covered by the make-whole agreement.

Some of the commenters on the proposed regulations expressed views regarding whether subclause III benefits should include benefits that are not covered by a make-whole agreement. Two commenters supported the rule set forth in the proposed regulations, under which subclause III benefits include all benefits directly attributable to service with a subclause III employer. Two other commenters expressed the view that subclause III benefits include only benefits that are covered by a make-whole agreement. The latter two commenters asserted that Congress included this provision in order to prevent a suspension from unreasonably shifting costs onto an employer that had entered into a make-whole agreement, and that this Congressional intent suggests that only benefits subject to the make-whole agreement were intended to be protected. They also noted that interpreting this provision to include benefits that are not covered by a make-whole agreement could result in benefits for many participants being covered under subclause III even if an employer entered into a make-whole agreement covering only a few participants, and argued that Congress did not intend such a result.

After considering the public comments, the Treasury Department and the IRS remain convinced that the rule set forth in the proposed regulations reflects the plain language of the statute. The statute defines subclause III benefits as benefits attributable to service with a subclause III employer, not benefits covered by a make-whole agreement. Furthermore, the ability of an employer to take advantage of this interpretation by entering into a make-whole agreement that covers only a few participants is limited by the fact that subclause (III) applies only if all the conditions of subclause (III) (including the condition that the employer enter into a make-whole agreement) were satisfied prior to December 16, 2014 (the date of enactment of MPRA). Because this date has passed, there is no cause for concern that an employer could plan to become a subclause (III) employer. Accordingly, these regulations adopt the rule set forth in the proposed regulations under which subclause III benefits include all benefits attributable to a participant's service with a subclause III employer without regard to whether the participant or beneficiary is covered by a make-whole agreement.

**Effective/Applicability Dates**

These regulations apply to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, these regulations apply with respect to any modified suspension implemented on or after April 26, 2016.

**Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative

[6] The preamble to the proposed regulations requested comments on an alternative interpretation of section 432(e)(9)(vii) that would require that any suspension of benefits be applied to provide for a lesser reduction in benefits that are directly attributable to service with a subclause III employer than to benefits that are attributable to any other service. No commenters recommended adopting the alternative interpretation.

Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In this case, the IRS and the Treasury Department believe that the regulations likely would not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. This certification is based on the fact that the number of small entities affected by this rule is unlikely to be substantial because it is unlikely that a substantial number of small multiemployer plans in critical and declining status are subject to the limitation contained in section 432(e)(9)(D)(vii). Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Contact Information**

For general questions regarding these regulations, please contact the Department of the Treasury MPRA guidance information line at (202) 622–1559 (not a toll-free number). For information regarding a specific application for a suspension of benefits, please contact the Treasury Department at (202) 622–1534 (not a toll-free number).

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.432(e)(9)–1 is amended by revising paragraph (d)(8) to read as follows:

**§ 1.432(e)(9)–1 Benefit suspensions for multiemployer plans in critical and declining status.**

* * * * *

(d) * * *

(8) *Additional rules for plans described in section 432(e)(9)(D)(vii)*—(i) *In general.* In the case of a plan that includes the benefits described in paragraph (d)(8)(i)(C) of this section, any suspension of benefits under this section shall—

(A) First, be applied to the maximum extent permissible to benefits attributable to a participant's service for an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan;

(B) Second, except as provided by paragraph (d)(8)(i)(C) of this section, be applied to all other benefits that may be suspended under this section; and

(C) Third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer that has, prior to December 16, 2014—

(*1*) Withdrawn from the plan in a complete withdrawal under section 4203 of ERISA and paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan; and

(*2*) Pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(ii) *Application of suspensions to benefits that are directly attributable to a participant's service with certain employers*—(A) *Greater reduction in certain benefits not permitted.* A suspension of benefits under this section must not be applied to provide for a greater reduction in benefits described in paragraph (d)(8)(i)(C) of this section than the reduction that is applied to benefits described in paragraph (d)(8)(i)(B) of this section. The requirement in the preceding sentence is satisfied if no individual's benefits that are directly attributable to service with an employer described in paragraph (d)(8)(i)(C) of this section are reduced more than that individual's benefits would have been reduced if, holding the benefit formula, work history, and all other relevant factors used to compute benefits constant, those benefits were attributable to service with an employer that is not described in paragraph (d)(8)(i)(C) of this section.

(B) *Application of limitation to benefits of participants with respect to which the employer has not assumed liability.* Benefits described in paragraph (d)(8)(i)(C) of this section include all benefits of a participant or beneficiary that are directly attributable to service with an employer described in paragraph (d)(8)(i)(C) of this section without regard to whether the employer has assumed liability for providing benefits to that participant or beneficiary that are reduced as a result of the financial status of the plan as described in paragraph (d)(8)(i)(C)(*2*) of this section. Thus, the rule of paragraph (d)(8)(ii)(A) of this section limits the amount by which a suspension of benefits is permitted to reduce benefits under a plan that are directly attributable to a participant's service with such an employer, even if the employer has not, pursuant to a collective bargaining agreement that satisfies the requirements of paragraph (d)(8)(i)(C)(*2*) of this section, assumed liability with respect to that participant's benefits.

* * * * *

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: April 29, 2016.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2016–10560 Filed 5–3–16; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 110

**[Docket Number USCG–2015–0825]**

**RIN 1625–AA01**

## Anchorage Regulations; Delaware River, Philadelphia, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending the geographic coordinates and modifying the regulated use of anchorage ''10'' in the Delaware River in the vicinity of the Navy Yard in Philadelphia, Pennsylvania. The change alters the size and use of the anchorage, reducing the anchorage in size and allowing the anchorage to be used as a general anchorage ground in the Delaware River.

**DATES:** This rule is effective June 6, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–0825 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard Sector Delaware Bay, Chief Waterways Management Division; telephone (215) 271–4851, email *Brennan.P.Dougherty@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background Information and Regulatory History

On December 12, 1967, the Coast Guard published a final rule (32 FR 17726, 17749) establishing an anchorage ground on the Delaware River in Philadelphia, Pennsylvania in 33 CFR part 110. The anchorage ground established is contained in 33 CFR 110.157(a)(11). The anchorage currently remains unused by the Navy Yard. Removing the restrictions on anchorage ''10'' will alleviate congestion within the port, allowing the anchorage to be used as a general anchorage for commercial traffic.

On January 5, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Anchorage Regulations, Delaware River; Philadelphia, PA (81 FR 194). It proposed to change the shape and the dimensions of anchorage ''10'', and to remove the ''restricted naval anchorage'' verbiage from § 110.157(a)(11). We invited comments on this proposed change. During the comment period that ended February 4, 2016, we received no public comments, but we did receive a comment from National Oceanic and Atmospheric Administration (NOAA) which we discuss below.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471, 1221 through 1236, and 2071; and in 33 CFR 1.05–1.

This rule changes the shape and the dimensions of anchorage ''10.'' The anchorage currently remains unused by the Navy Yard. Removing the restrictions on anchorage ''10'' will alleviate congestion within the port by allowing the anchorage to be used as a general anchorage ground for commercial traffic.

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

As noted above, we received no public comments on our NPRM published January 5, 2016. Based on comments from NOAA, however, we make two changes in the regulatory text of this rule from our proposed.

The first change identifies the horizontal reference datum for the latitudes and longitudes of the boundaries of the anchorage grounds as the World Geodetic System 1984 (WGS 84). The second change replaces the verbiage ''West Horseshoe Range'' with ''Eagle Point Range'' within the anchorage rule text. The original anchorage regulation, 33 CFR 110.157(a)(11) Anchorage 10, uses ''West Horseshoe Range'' as a boundary reference, however, the National Oceanic and Atmospheric Administration (NOAA) Nautical Charts identifies the range as ''Eagle Point Range''. Therefore, we changed the boundary reference in our rule from ''West Horseshoe Range'' to ''Eagle Point Range.''

The revised anchorage ground runs parallel to the north side of the channel along Eagle Point range, is narrower north to south, and is slightly longer east to west than the existing anchorage ground. Additionally, as proposed, we removed the ''restricted naval anchorage'' verbiage from the regulation. This permits commercial and other vessels to anchor within its bounds. The regulatory text appears at the end of this document.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This rule is not a significant regulatory action because it will not interfere with existing maritime activity on the Delaware River. Moreover, it enhances navigational safety along the Delaware River by providing an additional anchorage for commercial and recreational vessels. The anchorage maintains the same parallel distance along the channel boundaries as the existing anchorage. The impacts to navigational safety are expected to be minimal because the anchorage area will not unnecessarily restrict traffic, as it is located outside of the established navigation channel. Vessels may navigate in, around, and through the anchorage.

### *B. Impact on Small Entities*

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

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

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

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

small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the alteration of the size and use of anchorage ''10,'' restricted Naval Anchorage. It is categorically excluded from further review under paragraph 34(f) of Figure 2–1 of Commandant Instruction M16475.lD. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.157(a)(11) to read as follows:

**§ 110.157 Delaware Bay and River.**

(a) * * *

(11) *Anchorage 10 at Naval Base, Philadelphia.* On the north side of the channel along Eagle Point Range, bounded as follows: Beginning off of the southeasterly corner of Pier 1 at 39°53′07″ N., 075°10′30″ W., thence south to the to the north edge of the channel along Eagle Point Range to 39°52′58″ N., 075°10′29″ W., thence east along the edge of the channel to 39°52′56″ N., 075°09′53″ W., thence north to 39°53′07″ N., 075°09′54″ W., thence continuing west to the beginning point at 39°53′07″ N., 075°10′30″ W. These coordinates are based on WGS 84.

* * * * *

Dated: April 22, 2016.

**Robert J. Tarantino,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 2016–10577 Filed 5–4–16; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2015–0855; FRL–9946–00–Region 10]**

## Approval and Promulgation of Implementation Plans; Idaho: Interstate Transport Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a submittal by the Idaho Department of Environmental Quality (Idaho DEQ) demonstrating that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for nitrogen dioxide ($NO_2$) on January 22, 2010. Specifically, the Idaho DEQ reviewed monitoring and modeling data to show that sources within Idaho do not significantly contribute to nonattainment, or interfere with maintenance, of the $NO_2$ NAAQS in any other state.

**DATES:** This action is effective on June 6, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2015–0855. All documents in the docket are listed on the *http://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 the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that 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 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information please contact John Chi at (206) 553–1185, or *chi.john@epa.gov.*

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

**Table of Contents**



## I. Background

In a notice of proposed rulemaking published on February 12, 2016 (81 FR 7489), the EPA proposed to find that the Idaho SIP adequately addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 $NO_2$ NAAQS. Please see our February 12, 2016, proposed rulemaking for further explanation and the basis for our finding. The public comment period for the proposed rule ended on March 14, 2016, and we received one comment.

## II. Response to Comment

*Comment:* The commenter stated that the implementation of this law is crucial in Idaho because of the pollution coming from farming communities and cities and suggested lowering the allowed $NO_2$ standard because of the small population of people that live in Idaho, when compared to Utah. The commenter proposed that the amount of pollution produced by each person should be made a standard and that companies should be held accountable for the pollution they produce. Although the commenter supports approval, the commenter believes that the law should have stricter requirements.

*Response:* Under section 110 of the CAA, states are responsible for developing provisions to address air pollution for incorporation into the SIP. The EPA's role is to evaluate these state choices to determine if the revisions meet the requirements of the CAA. The EPA must approve state submissions so long as they meet the minimum requirements established by the CAA. *Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976). In this case, the state's submission included provisions selected by Idaho for inclusion in its SIP to meet the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2010 $NO_2$ NAAQS. The commenter does not suggest that the state's submission does not meet the applicable requirements. We have determined that the state's submission met those requirements, and thus we are approving the SIP. States have authority to adopt or enforce standards or requirements for the control or abatement of air pollution (except as specifically limited by the CAA) under section 116 of the CAA, so we provided a copy of the comment to Idaho Department of Environmental Quality for consideration during future state rulemaking, but we are otherwise taking no further action in response to the comment.

## III. Final Action

The EPA finds that the Idaho SIP meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 $NO_2$ NAAQS. This action is being taken under section 110 of the CAA.

## 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).

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 it 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 July 5, 2016. 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, Reporting and recordkeeping requirements.

Dated: April 25, 2016.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

For the reasons set forth in the preamble, 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 N—Idaho

■ 2. In § 52.670, the table in paragraph (e) is amended by adding an entry at the end of the table for ''Interstate Transport Requirements for the 2010 $NO_2$ NAAQS'' to read as follows:

**§ 52.670 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

| Name of SIP provision | Applicable geographic or non-attainment area | State submittal date | EPA Approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| Interstate Transport Requirements for the 2010 $NO_2$ NAAQS. | State-wide ..... | 12/24/2015 | 5/5/2016 [Insert **Federal Register** citation]. | This action addresses the following CAA elements: 110(a)(2)(D)(i)(I). |

* * * * *

[FR Doc. 2016–10452 Filed 5–4–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2015–0324; FRL–9945–48]**

### Fluxapyroxad; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fluxapyroxad in or on multiple commodities which are identified and discussed later in this document. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective May 5, 2016. Objections and requests for hearings must be received on or before July 5, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0324, 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:** Susan Lewis, 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.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0324 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 July 5, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0324, 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 August 26, 2015 (80 FR 51759) (FRL–9931–74), 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 5F8344) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.666 be amended by establishing tolerances for residues of the fungicide fluxapyroxad, in or on citrus, dried pulp at 2.7 parts per million (ppm); citrus oil at 19 ppm; fruit, citrus group 10–10 at 1.0 ppm; grass forage, fodder and hay group 17 at 30 ppm; non-grass animal feed, group 18 at 30 ppm; and poultry, fat at 0.005 ppm. The petition also requested that the existing tolerance for residues of fluxapyroxad on egg be amended from 0.002 ppm to 0.01 ppm and that the tolerance for inadvertent residues of fluxapyroxad on nongrass animal feeds, group 18 at 0.3 ppm be removed upon establishment of the superceding group 18 tolerance. That document referenced a summary of the petition prepared by BASF Corporation, 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 has recommended tolerances for poultry meat, poultry meat byproduct, and milk fat for which there were no established tolerances previously due to low dietary burden and falling under category 3 of CFR 180.6(a). The reason for these changes are explained in Unit IV.D.

## 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 fluxapyroxad including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluxapyroxad follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fluxapyroxad is of low acute toxicity by the oral, dermal and inhalation routes, is not irritating to the eyes and skin, and is not a dermal sensitizer. The primary target organ for fluxapyroxad exposure via the oral route is the liver with secondary toxicity in the thyroid for rats only. Liver toxicity was observed in rats, mice, and dogs, with rats as the most sensitive species for all durations of exposure. In rats, adaptive effects of hepatocellular hypertrophy and increased liver weights and changes in liver enzyme activities were first observed. As the dose or duration of exposure to fluxapyroxad increased, clinical chemistry changes related to liver function also occurred, followed by hepatocellular necrosis, neoplastic changes in the liver, and tumors. Thyroid effects were observed only in rats. These effects were secondary to changes in liver enzyme regulation, which increased metabolism of thyroid hormone, resulting in changes in thyroid hormones, thyroid follicular hypertrophy and hyperplasia, and thyroid tumor formation. Tumors were not observed in species other than rats or in organs other than the liver and thyroid.

Fluxapyroxad is classified as ''Not likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. There is no mutagenicity concern from *in vivo* or *in vitro* assays. The hypothesized mode of action (*i.e.,* a non-genotoxic) for treatment related tumors (*i.e.,* the liver and thyroid) was supported by a full panel of *in vitro* and *in vivo* studies that showed no evidence of genotoxicity, together with mechanistic studies in the liver and thyroid of rats that satisfied stringent criteria for establishing tumorigenic modes of action. The studies clearly identified the sequence of key events, dose-response concordance and temporal relationship to the tumor types. The Agency has determined that the chronic population adjusted dose (PAD) will adequately account for all chronic effects, including carcinogenicity that could result from exposure to fluxapyroxad because the points of departure (POD) for the chronic population adjusted dose (cPAD) is based on the most sensitive endpoint, liver effects. Effects in the liver preceded liver tumors and the effects observed in the thyroid (in rats only) were believed to be secondary to the liver effects.

No evidence of neurotoxicity was observed in response to repeated administration of fluxapyroxad. An acute neurotoxicity study showed decreased rearing and motor activity. This occurred on the day of dosing only and in the absence of histopathological effects or alterations in brain weights. This indicated that any neurotoxic effects of fluxapyroxad are likely to be transient and reversible due to alterations in neuropharmacology and not from neuronal damage. There were no neurotoxic effects observed in the subchronic dietary toxicity study. No evidence of reproductive toxicity was observed. Developmental effects observed in both rats and mice (thyroid follicular hypertrophy and hyperplasia in rats and decreased defecation, food consumption, body weight/body weight gain, and increased litter loss in rabbits) occurred at the same doses as those that caused adverse effects in maternal animals, indicating no quantitative susceptibility. Since the maternal toxicities of thyroid hormone perturbation in rats and systemic toxicity in rabbits likely contributed to the observed developmental effects there is low concern for qualitative susceptibility. An immunotoxicity study in mice showed no evidence of immunotoxic effects from fluxapyroxad.

Subchronic oral toxicity studies in rats, developmental toxicity studies in rabbits, and *in vitro* and *in vivo* genotoxicity studies were performed for fluxapyroxad metabolites F700F001, M700F002, and M700F048. Like

fluxapyroxad, no genotoxic effects were observed for any of these metabolites. All three metabolites displayed lower subchronic toxicity via the oral route than fluxapyroxad, with evidence of non-specific toxicity (decreased body weight) observed only for M700F0048 at the limit dose. Only M700F0048 exhibited developmental toxicity at doses similar to those that caused developmental effects in rabbits with fluxapyroxad treatment. However, these effects (abortions and resorptions) were of a different nature than for fluxapyroxad (paw hyperflexion) and are considered secondary to maternal toxicity. The Agency considers these studies sufficient for hazard identification and characterization and concludes that these metabolites do not have hazards that exceed those of fluxapyroxad in nature, severity, or potency.

Specific information on the studies received and the nature of the adverse effects caused by fluxapyroxad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Human Health Risk Assessment for Use of Fluxaproxad on Citrus Crop Group 10–10, Grass Crop Group 17, and Non-Grass Crop Group 18.'' on pp. 56 in docket ID number EPA–HQ–OPP–2012–0638.

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

Summary of the toxicological endpoints for used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUXAPYROXAD FOR USE IN DIETARY, RESIDENTIAL AND NON-OCCUPATIONAL HUMAN HEALTH RISK ASSESSMENTS

| Exposure/scenario | Point of departure | Uncertainty/FQPA safety factors | RfD, PAD, level of concern for risk assessment | Study and toxicological effects |
|---|---|---|---|---|
| Acute Dietary (General Population, including Infants and Children and Females 13–49 years of age). | NOAEL = 125 mg/kg/day. | $UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 1.25 mg/kg/day.<br>aPAD = 1.25 mg/kg/day | Acute neurotoxicity study in rats.<br>LOAEL = 500 mg/kg/day based on decreased motor activity (both sexes) and decreased rearing (males only). |
| Chronic Dietary (All Populations). | NOAEL = 2.1 mg/kg/day. | $UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.021 mg/kg/day.<br>cPAD = 0.021 mg/kg/day | Chronic toxicity/carcinogenicity study in rats.<br>LOAEL = 11 mg/kg/day based on non-neoplastic changes in the liver (foci, masses). |
| Incidental Oral Short-Term (1–30 days). | NOAEL = 7.3mg/kg/day. | $UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Residential LOC for MOE = 100. | 90-day dietary study in rats.<br>MIRD 47923567.<br>LOAEL = 35.1 mg/kg/day based on thyroid follicular hypertrophy/hyperplasia. |
| Dermal Short- and Intermediate-Term. | No hazard identified. | | | |
| Inhalation, Short-Term (1–30 days) and Intermediate-term (1–6 months). | NOAEL = 7.3 mg/kg/day. | $UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Residential LOC for MOE = 100. | 90-day dietary study in rats.<br>MIRD 47923567.<br>LOAEL = 35.1 mg/kg/day based on thyroid follicular hypertrophy/hyperplasia. |
| Cancer (oral, dermal, inhalation). | Classification: Not likely to be carcinogenic to humans below a defined dose range. | | | |

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOA = mode of action.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluxapyroxad, EPA considered exposure under the petitioned-for tolerances as well as all existing fluxapyroxad tolerances in 40 CFR 180.666. EPA assessed dietary exposures from fluxapyroxad in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for fluxapyroxad. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance-level residues adjusted to account for the metabolites of concern (M700F008, and M700F010 (milk only)) and 100 percent crop treated (PCT) assumptions were used. DEEM default and empirical processing factors were used to modify the tolerance values.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 CSFII. As to residue levels in food, a moderately refined chronic dietary exposure analysis was performed for the general U.S. population and various population subgroups. Combined average residue for parent and highest residue for metabolite M700F008 and 100 PCT assumptions were used. For livestock commodities tolerance-level residues adjusted to account for the metabolites of concern (M700F008, M700F010) were used. An assumption of 100 PCT was also used for the chronic dietary analysis. DEEM default and empirical processing factors were used to modify the tolerance values.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluxapyroxad does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

The Agency did not use PCT information in the dietary assessment for fluxapyroxad; 100 PCT was assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for fluxapyroxad in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluxapyroxad. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of fluxapyroxad for acute exposures are 127 ppb parts per billion (ppb) for surface water and 203 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are 127 ppb for surface water and 188 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 203 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 184 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

There are no residential exposure associated with the proposed uses in this action; however, there are existing turf uses that were previously assessed for fluxapyroxad. Although the Agency had conducted a residential exposure assessment for previous fluxapyroxad actions, the Agency completed an updated turf assessment to reflecting an update in the single maximum application rate from 2.47 pounds active ingredient/gallon (lb ai/gallon) to 0.005 lb ai/gallon. The present assessment assumed the following exposure scenarios:

- *Residential handler:* The Agency assessed inhalation exposures to adults from applications only because fluxapyroxad does not pose a dermal risk. Residential handler exposure is expected to be short-term in duration. Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners.
- *Post-application exposures:* Dermal exposures were not assessed because there is no identified systemic dermal hazard for fluxapyroxad. Post-application inhalation exposure while engaged in activities on or around previously treated turf is generally not quantitatively assessed. The combination of low vapor pressure for chemicals typically used as active ingredients in outdoor residential pesticide products and dilution in outdoor air is likely to result in minimal inhalation exposure. Incidental oral exposure for children is anticipated. The quantitative oral exposure/risk assessment for residential post-application exposures is based on the incidental oral scenario for children 1<2.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluxapyroxad to share a common mechanism of toxicity with any other substances, and fluxapyroxad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluxapyroxad does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply

an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of quantitative susceptibility was observed in a reproductive and developmental toxicity study in rats or in developmental toxicity studies in rats and rabbits. Developmental toxicity data in rats showed decreased body weight and body weight gain in the offspring at the same dose levels that caused thyroid follicular hypertrophy/hyperplasia in parental animals. Effects in rabbits were limited to paw hyperflexion, a malformation that is not considered to result from a single exposure and that usually reverses as the animal matures. Developmental effects observed in both rats and rabbits occurred at the same doses as those that caused adverse effects in maternal animals, indicating no quantitative susceptibility. The Agency has low concern for developmental toxicity because the observed effects were of low severity, were likely secondary to maternal toxicity, and demonstrated clear NOAELs. Further, the NOAELs for these effects were at dose levels higher than the points of departure selected for risk assessment for repeat-exposure scenarios. Therefore, based on the available data and the selection of risk assessment endpoints that are protective of developmental effects, there are no residual uncertainties with regard to pre- and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluxapyroxad is complete.

ii. There is no indication that fluxapyroxad is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Although an acute neurotoxicity study showed decreased rearing and motor activity, this occurred on the day of dosing only in the absence of histopathological effects or alterations in brain weights. This indicated that any neurotoxic effects of fluxapyroxad are likely to be transient and reversible due to alterations in neuropharmacology and not from neuronal damage. The Agency has low concern for neurotoxic effects of fluxapyroxad at any life stage.

iii. Based on the developmental and reproductive toxicity studies discussed in Unit III.D.2., there are no residual uncertainties with regard to prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The residue database is adequate. The dietary risk assessment is conservative and will not underestimate dietary exposure to fluxapyroxad. There are residential uses proposed for fluxapyroxad and the assessment will not underestimate residential exposure via handler for adults and incidental oral for children. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluxapyroxad in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. There are residential uses proposed for fluxapyroxad and the assessment will not underestimate residential exposure via handler for adults and incidental oral for children.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluxapyroxad will occupy 12% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluxapyroxad from food and water will utilize 66% of the cPAD for infants (< 1 year old). Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluxapyroxad is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluxapyroxad is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluxapyroxad. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1139 for adults and 431 for children. Because EPA's level of concern for fluxapyroxad is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, fluxapyroxad is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluxapyroxad.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has classified fluxapyroxad as ''Not likely to be Carcinogenic to Humans'' based on convincing evidence that carcinogenic effects are not likely below a defined dose range. The Agency has determined that the quantification of risk using the cPAD for fluxapyroxad will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to fluxapyroxad. Because the Agency has determined fluxapyroxad will not cause a chronic risk, the Agency concludes that fluxapyroxad will not pose a cancer risk for the U.S. population.

6. *Determination of safety.* Based on these risk assessments, EPA concludes

that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluxapyroxad residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

There are suitable residue analytical methods available for enforcement of fluxapyroxad tolerances (BASF Methods L0137/01 for plants and L0140/02 for animal matrices) which have been radio-validated and have underwent successful validation by an independent laboratory. These are liquid chromatography with tandem mass spectrometry (LC/MS/MS) methods and monitor two ion transitions. The Limit of Quantitation (LOQ) for BASF method L0137/01 is 0.01 ppm for various matrices. The LOQ for BASF method L0140/02 is 0.01 ppm for liver and muscle, and 0.001 ppm for milk and eggs.

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.

There are no Codex MRLs for citrus or grass and non-grass animal feed at present. US and Codex use different dietary burden evaluations and calculations which result in US tolerances for residues in ruminant meat byproduct, milk, and milk fat generally much lower than corresponding Codex MRLs.

### *C. Revisions to Petitioned-for Tolerances*

EPA is establishing tolerances for milk fat and poultry meat, and meat byproduct that the applicant did not request. There have been no established tolerances for poultry tissues because residues were not expected to be found in those tissues due to the low dietary burden; *i.e.,* category 3 of 40 CFR 180.6(a) applied for those poultry matrices previously. However, because of expectation of higher residues on the feed items associated with the proposed uses (mainly grass and non-grass), the livestock dietary burdens have increased, and residues are now expected to be transferred to poultry tissues. Consequently, the Agency is establishing poultry tolerances. Similarly, due to the higher livestock dietary burdens, EPA is establishing a new tolerance for residues in milk fat, and increasing current tolerances on milk, ruminant fat and meat byproduct (to include fat and meat byproduct of cattle, goat, horse and sheep). EPA is also establishing higher tolerances than what the applicant proposed for grass (group 17), citrus oil, dried pulp, and poultry fat. The difference in the group 17 grass tolerance is due to the fact that EPA is using residues from 0-day postharvest interval (PHI) from grass samples (instead of 14-day PHI used by the applicant). With regard to citrus oil, the difference between the petitioned-for and established tolerance is due to the use of the highest average field trial (HAFT) data by EPA (instead of median used by the applicant), times processing factor. Dried pulp tolerance difference is due to EPA rounding of the calculated tolerance. Lastly, the difference in the tolerance in poultry fat is due to recalculating dietary burden for livestock, taking into account residues on feed commodities from (0-day PHI) grass, alfalfa and clover which resulted in higher than previously calculated dietary burdens and therefore higher tolerances.

## V. Conclusion

Therefore, tolerances are established for residues of fluxapyroxad, in or on cattle, fat at 0.06 ppm; cattle, meat byproduct at 0.04 ppm; citrus, dried pulp at 3.0 ppm; citrus, oil at 40 ppm; fruit, citrus, group 10–10 at 1.0 ppm; goat, fat at 0.06 ppm; goat, meat byproduct at 0.04 ppm; grass, forage, fodder, and hay, group 17 at 40 ppm; horse, fat at 0.06 ppm; horse, meat byproduct at 0.04 ppm; milk at 0.01 ppm; milk, fat at 0.15 ppm; non-grass animal feeds, group 18 at 30 ppm; poultry, fat, poultry, meat and meat byproduct, each at 0.01 ppm; sheep, fat at 0.06 ppm; and sheep, meat byproduct at 0.04 ppm. Finally, the Agency is removing the tolerance for inadvertent residues of fluxapyroxad on non-grass animal feeds, group 18 contained in paragraph (d) of section 180.666, as it is subsumed by the tolerance for non-grass animal feeds, group 18 being established in paragraph (a) of the same section.

## 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: April 26, 2016.

**Susan Lewis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.666, amend the table in paragraph (a) as follows:
■ i. Add alphabetically the entries ''Citrus, dried pulp'', ''Citrus, oil'', ''Fruit, citrus, group 10–10'', ''Grass forage, fodder and hay, group 17'', ''Milk, fat'', ''Non-grass animal feed, group 18'', ''Poultry, fat'', ''Poultry, meat'' and ''Poultry, meat byproduct''.
■ ii. Revise the following entries ''Cattle, fat'', ''Cattle, meat byproduct'', ''Egg'', ''Goat, fat'', ''Goat, meat byproduct'', ''Horse, fat'', ''Horse, meat byproduct'', ''Milk'', ''Sheep, fat,'' and ''Sheep, meat byproduct''.
■ iii. Remove from the table in paragraph (d) the entry ''non-grass animal feeds, group 18''.

The amendments read as follows:

**§ 180.666 Fluxapyroxad; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Cattle, fat | 0.06 |
| * * * * * | |
| Cattle, meat byproduct | 0.04 |
| Citrus, dried pulp | 3.0 |
| Citrus, oil | 40 |
| * * * * * | |
| Egg | 0.01 |
| Fruit, citrus, group 10–10 | 1.0 |
| * * * * * | |
| Grass, forage, fodder and hay, group 17 | 40 |
| Goat, fat | 0.06 |
| * * * * * | |
| Goat, meat byproduct | 0.04 |
| * * * * * | |
| Horse, fat | 0.06 |
| * * * * * | |
| Horse, meat byproduct | 0.04 |
| Milk | 0.01 |
| Milk, fat | 0.15 |
| Non-grass animal feed, group 18 | 30 |
| * * * * * | |
| Poultry, fat | 0.01 |
| Poultry, meat | 0.01 |
| Poultry, meat byproduct | 0.01 |
| * * * * * | |
| Sheep, fat | 0.06 |
| * * * * * | |
| Sheep, meat byproduct | 0.04 |
| * * * * * | |

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[FR Doc. 2016–10581 Filed 5–4–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2015–0213; FRL–9945–58]**

## Butanedioic Acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, Disodium Salts; Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts (CAS Reg. No. 815583–91–6) when used as an inert ingredient (surfactant) in pesticides applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 limited to maximum concentration of 10% by weight in pesticide formulations. Keller and Heckman LLP on behalf of Cytec Industries, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts.

**DATES:** This regulation is effective May 5, 2016. Objections and requests for hearings must be received on or before July 5, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0213, 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:** Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following

list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0213 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 July 5, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0213, 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. Petition for Exemption

In the **Federal Register** of May 20, 2015 (80 FR 28925) (FRL–9927–39), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10760) by Keller and Heckman LLP, (1001 G Street NW., Suite 500, Washington, DC 20001) on behalf of Cytec Industries, Inc. (5 Garret Mountain Plaza, Woodland Park, NJ 07424). The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts (CAS Reg. No. 815583–91–6) when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. That document referenced a summary of the petition prepared by Keller and Heckman LLP, on behalf of Cytec Industries, Inc., the petitioner, 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 has limited the maximum concentration of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts to 10% by weight in pesticide formulations. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document ''Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts (CAS Reg No. 815583–91–6); Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations'' in docket ID number EPA–HQ–OPP–2015–0213.

## III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

## IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and 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 or exemption 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. . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate

exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), 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 butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered their 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. Specific information on the studies received and the nature of the adverse effects caused by butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts is of low acute oral and dermal toxicity in rats. The acute oral and dermal $LD_{50}$s are >1,600 milligram/kilogram (mg/kg). It is irritating to the eyes but not the skin of rabbits. Neither inhalation nor sensitization studies are available.

90-day oral toxicity studies are available in rats and dogs. In the rat, toxicity is manifested as decreased body weight and food efficiency at 4% (equivalent to 3,080 milligram/kilogram/day (mg/kg/day)) of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts. In dogs, toxicity is manifested as testicular atrophy at 0.5% (equivalent to 125 mg/kg/day). The NOAEL in this study is 0.12% (equivalent to 30 mg/kg/day). The chronic reference dose (cRfD) is based on this study.

A combined reproductive and developmental study on rats is available with butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts. Quantitative fetal susceptibility is observed as reduced pup weight at 1% (equivalent to 750 mg/kg/day). Maternal toxicity is reported only with regard to reproduction toxicity and included a reduced number of viable embryos and live-born per litter, and reduced fertility, viability and lactation indices at 4% (equivalent to 3,000 mg/kg/day).

Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts is not expected to be carcinogenic based on the absence of structural alerts using the Derek Nexus program and the lack of mutagenicity in two Ames tests.

Neurotoxicity and immunotoxicity studies with butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts are not available for review. However, no evidence of potential neurotoxicity or immunotoxicity is observed in the submitted studies.

Metabolism studies with butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts are not available for review. However, it is expected that these salts will readily hydrolyze (primarily in the intestine, blood and liver) by carboxylesterases resulting in the corresponding alcohol (C9-C l1 isoalkyl, Cl0 rich). The fatty alcohol is expected to be metabolized via normal metabolic pathways (oxidation, followed by normal fatty acid metabolism).

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

An acute effect was not found in the database therefore an acute dietary assessment was not conducted. The cRfD as well as all exposure scenarios was based on the 90-day oral toxicity study in the dog. In this study, the LOAEL was 0.5% (equivalent to 125 mg/kg/day) based on testicular atrophy in males. The NOAEL was 0.12% (equivalent to 30 mg/kg/day). This represents the lowest NOAEL in the most sensitive species in the toxicity database. The standard uncertainty factors were applied to account for interspecies (10x) and intraspecies (10x) variations. Default values of 100% absorption were used for the dermal and inhalation factors.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts in food as follows:

Dietary exposure (food and drinking water) to butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts can occur following ingestion of foods with residues from treated crops. Because no adverse effects attributable to a single exposure of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts are seen in the toxicity databases, an acute dietary risk assessment was not conducted. For the chronic dietary risk assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID™, Version 3.16, and food consumption information from the U.S. Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, no residue data were submitted for butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high use insecticides, herbicides, and fungicides. 100 percent crop treated (PCT), default processing

factors, and tolerance-level residues were assumed for all foods, and the assessment incorporated the use limitation that the ingredient will be present in pesticide formulations at a concentration of not more than 10% by weight. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts,'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts may be used in inert ingredients in products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home. Based on the available data for products registered for residential use, the Agency concluded that products containing inert chemicals similar to butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts (ie surfactant) usually comprise no more than 2–5% of the inert ingredient in the final product. Therefore, the Agency conducted an assessment to represent conservative residential exposure by assessing butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts in pesticide formulations (outdoor scenarios) and in disinfectant-type uses (indoor scenarios) at no more than 5% in the final formulation.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts to share a common mechanism of toxicity with any other substances, and butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

### *D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicity database for butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts contains subchronic, combined reproduction/teratology and mutagenicity studies. There is no indication of potential neurotoxicity or immunotoxicity in the available studies. Quantitative increased fetal susceptibility was observed in the combined reproduction/teratology study in rats. Fetal toxicity (reduced pup weight) was observed at the lowest dose tested, 750 mg/kg/day. Maternal/reproduction toxicity was observed at 3,000 mg/kg/day and manifested as a reduction in the number of viable embryos, live-born per litter, fertility, viability, and lactation indices. The addition of a 10x FQPA safety factor to account for quantitative susceptibility and LOAEL to NOAEL extrapolation is not necessary because it would result in a cRfD of 0.75 mg/kg/day and the established cRfD is 0.30 mg/kg/day. The cRfD is considerably lower and will be protective of fetal susceptibility and effects observed at 750 mg/kg/day. Therefore, retention of the FQPA safety factor is unnecessary. There is low concern for reproduction toxicity since the aforementioned effects occurred above the limit dose of 1,000 mg/kg/day and a clear NOAEL of 750 mg/kg/day was established. Therefore, the established cRfD will be protective of these effects. In addition, the Agency used the most conservative (highest) exposure estimates and assumptions, including 100 PCT and tolerance-level residues for all foods, conservative estimates of drinking water exposure, and a conservative assessment of potential residential exposure for infants and children. Therefore, the FQPA SF of 10x is reduced to 1x.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts from food and water will utilize 47.9% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water

(considered to be a background exposure level).

Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts may be used as inert ingredients in pesticide products that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts. Using the exposure assumptions described above, EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in MOEs of 126 for both adult males and females. Adult residential exposure combines high end dermal and inhalation handler exposure from liquids/trigger sprayer/home garden use with a high end post application dermal exposure from contact with treated lawns. Also, EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 135 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts may be used as inert ingredients in pesticide products that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts. Using the exposure assumptions described above, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 480 for adult males and females. Adult residential exposure combines liquids/trigger sprayer/home garden use with a high end post application dermal exposure from contact with treated lawns. As the level of concern is for MOEs that are lower than 100, this MOE is not of concern. EPA has concluded the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 158 for children. Children's residential exposure includes total exposures associated with contact with treated surfaces (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on a DEREK structural alert analysis and the lack of mutagenicity, butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts residues.

## V. Other Considerations

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts in or on any food commodities. EPA is establishing limitations on the amount of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts that may be used in pesticide formulations applied to growing crops. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for use on growing crops or raw agricultural commodities after harvest for sale or distribution that exceeds 10% by weight of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts unless additional data are submitted.

## VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180. 910 for of butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts (CAS Reg. No. 815583–91–6) when used as inert ingredients (surfactant) at a maximum concentration of 10% by weight in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

## VII. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

### VIII. 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: April 26, 2016.

**Susan Lewis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, add alphabetically the inert ingredient ''Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts (CAS Reg. No. 815583–91–6)'' to the table to read as follows:

**§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.**

* * * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * | * * * | * |
| Butanedioic acid, 2-sulfo-, C-C9-11-isoalkyl esters, C10-rich, disodium salts (CAS Reg. No. 815583–91–6). | Not to exceed 10% by weight in pesticide formulation for agricultural use. | Surfactant. |
| * * * | * * * | * |

[FR Doc. 2016–10582 Filed 5–4–16; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 36

**[Docket No. FWS–R7–NWRS–2014–0003; FF07RKNA00 FXRS12610700000 167]**

**RIN 1018–AX56**

## Refuge-Specific Regulations; Public Use; Kenai National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are amending the regulations for Kenai National Wildlife Refuge (Kenai NWR or Refuge) that govern existing general public use and recreation. These changes will implement management direction and decisions from our June 2010 Kenai NWR revised comprehensive conservation plan and June 2007 Skilak Wildlife Recreation Area final revised management plan. The amendments to the regulations are designed to enhance natural resource protection, public use activities, and public safety on the Refuge; are necessary to ensure the compatibility of public use activities with the Refuge's purposes and the Refuge System's purposes; and ensure consistency with management policies and approved Refuge management plans.

**DATES:** This rule is effective June 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** Andy Loranger, Refuge Manager, Kenai NWR, P.O. Box 2139, Ski Hill Rd., Soldotna, AK 99669; telephone: 907–262–7021; facsimile 907–262–3599. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

President Franklin D. Roosevelt established the Kenai National Moose Range (Moose Range) on December 16, 1941, for the purpose of ''protecting the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska, which in this area presents a unique wildlife feature and an unusual opportunity for the study in its natural environment of the practical management of a big game species that has considerable local economic value'' (Executive Order 8979; see 6 FR 6471, December 18, 1941).

Section 303(4) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3101 *et seq.*) substantially affected the Moose Range by modifying its boundaries and broadening its purposes from moose conservation to protection and conservation of a broad array of fish, wildlife, habitats, and other resources, and to providing educational and recreational opportunities. ANILCA also redesignated the Moose Range as the Kenai National Wildlife Refuge (NWR or Refuge) and increased the size of the Refuge to 1.92 million acres, of which approximately two-thirds were designated as Wilderness and made part of the National Wilderness Preservation System.

ANILCA sets out additional purposes for each refuge in Alaska; the purposes of Kenai NWR are set forth in section 303(4)(B) of ANILCA. The purposes identify some of the reasons why Congress established the Refuge and set the management priorities for the Refuge. The purposes are as follows:

(1) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonoids and other fish, waterfowl and other migratory and nonmigratory birds;

(2) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(3) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in (1), above, water quality and necessary water quantity within the Refuge;

(4) To provide, in a manner consistent with (1) and (2), above, opportunities for scientific research, interpretation, environmental education, and land management training; and

(5) To provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

The Wilderness Act of 1964 (16 U.S.C. 1131–1136) provides the following purposes for wilderness areas, including the Kenai wilderness area:

(1) To secure an enduring resource of wilderness;

(2) To protect and preserve the wilderness character of areas within the National Wilderness Preservation System; and

(3) To administer the areas for the use and enjoyment of the American people in a way that will leave the areas unimpaired for future use and enjoyment as wilderness.

Under our regulations implementing ANILCA in title 50 of the Code of Federal Regulations at part 36 (50 CFR part 36), all refuge lands in Alaska are open to public recreational activities as long as such activities are conducted in a manner compatible with the purposes for which the refuge was established (50 CFR 36.31). Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, hunting, fishing, boating, camping, hiking, picnicking, and other related activities (50 CFR 36.31(a)).

The National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, defines ''wildlife-dependent recreation'' and ''wildlife-dependent recreational use'' as ''hunting, fishing, wildlife observation and photography, or environmental education and interpretation'' (16 U.S.C. 668ee(2)). We encourage these uses, and they receive emphasis in management of the public use on national wildlife refuges. All six of these priority uses have been determined to be compatible on the Refuge, subject to adherence to applicable State and Federal regulations.

Section 304(g) of ANILCA requires the Service to prepare refuge comprehensive conservation plans (CCPs) for all refuges in Alaska. The Service completed its first comprehensive management plan for the Kenai NWR in 1985, and a revised CCP was finalized and approved in 2010. These plans include management direction and specific actions related to administration of public uses on the Refuge. The refuge-specific public use regulations for Kenai NWR are set forth at 50 CFR 36.39(i). These regulations include provisions concerning the operation of aircraft, motorboats, off-road vehicles, and snowmobiles; hunting and trapping; camping; timber removal; personal property; use of non-motorized wheeled vehicles; canoeing; and area closures on the Refuge.

**Proposed Rule**

On May 21, 2015, we published a proposed rule (80 FR 29277) to amend the Refuge's public use regulations. We accepted public comments on the proposed rule for 60 days, ending July 20, 2015. We also held two public hearings on the proposed rule, one on June 17, 2015, in Soldotna, Alaska, and one on June 18, 2015, in Anchorage, Alaska.

We developed the changes to existing Refuge public use regulations included in our May 21, 2015, proposed rule to meet our legal mandates; to ensure consistency with policy, directives, and approved management plans, including implementing management direction and/or specific actions in our 2010 revised Kenai NWR CCP and 2007 Skilak Wildlife Recreation Area (WRA) final revised management plan; and to ensure public safety. The proposed changes included: (1) Amending regulations affecting use of aircraft, motorboats, motorized vehicles, and snowmobiles in order to enhance resource protection and public use opportunities; (2) codifying restrictions on hunting and trapping within the Skilak WRA recently established (in 2013) in accordance with procedures set forth at 50 CFR 36.42 (public participation and closure procedures) and implementing our 2007 Skilak WRA final revised management plan; (3) expanding a prohibition on the discharge of firearms to include areas of intensive public use along the Russian and Kenai rivers in order to enhance public safety; (4) clarifying the intent of existing regulations that require a special use permit for hunting black bears over bait by specifying that only the take of black bears is authorized under this requirement; (5) amending regulations associated with camping, use of public use cabins and public use facilities, unattended equipment, livestock (including pack animals), and public gatherings to enhance resource protection and public use opportunities; (6) establishing permanent regulations for managing wildlife attractants in the Russian River Special Management Area to reduce potential for negative human-bear interactions, thereby enhancing public safety and resource protection; (7) establishing regulations allowing for noncommercial gathering of natural resources, including collection of edible wild foods and shed antlers; and (8) codifying existing restrictions on certain uses within areas of the Refuge under conservation easements and easements made under section 17(b) of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*; see 43 U.S.C. 1616(b)).

**Response to Public Comments**

We received 28 written comments on the May 21, 2015, proposed rule during the comment period, and four individuals and representatives of two organizations provided oral testimony at the public hearings. We reviewed and considered all substantive information we received during the comment period. In this final rule, we incorporate changes to the proposed rule as outlined in our responses below. As comments were often similar or covered multiple topics, we have grouped comments and responses by topic areas, which generally correspond to specific sections of the proposed Refuge public use regulations in the May 21, 2015, proposed rule.

*Aircraft—50 CFR 36.39(i)(1)*

*(1) Comment:* Some commenters expressed support for the changes to Refuge regulations opening additional areas of the Refuge for airplane use (Chickaloon Flats, lake in Kenai Wilderness) citing the benefits of expanded access to users; some commenters expressed opposition to these changes citing impacts to the quality of experience for users accessing wilderness areas using non-motorized means. Some commenters stated that the additional lake being opened in the Kenai Wilderness for hunters drawing Alaska Department of Fish and Game hunt permits should be open to all users. Some commenters expressed opposition to continued closures to airplane use on the Refuge under existing regulations, stating that they unnecessarily restricted access for hunters, and/or recommended that the Service expand areas of the Refuge open for aircraft use beyond that proposed to increase access opportunities. Some commenters inquired about the status of the Service's commitment to evaluate effects of the regulations that restrict airplane access to lakes otherwise open based on the presence of nesting or brood-rearing trumpeter swans. One commenter requested that a legal description be included for the expanded area open to airplane use on the Chickaloon Flats.

*Our Response:* The changes to the Refuge aircraft regulations in this rule implement decisions from the Refuge's 2010 CCP and the record of decision (ROD) for its accompanying environmental impact statement. Regulations governing use of aircraft on the Refuge are in place to protect refuge resources, consistent with meeting Refuge purposes including the conservation of fish and wildlife

populations in their natural diversity and its Wilderness purposes.

Consistent with its commitment in the ROD, the Service will complete an analysis of trumpeter swan use of Refuge wetlands and evaluate its effect on airplane access under the regulations. Any further changes to Refuge aircraft regulations would be the subject of a future rulemaking.

We added a legal description of the expanded area open to airplane use in the Chickaloon Flats to this final rule.

*Motorboats—50 CFR 36.39(i)(2)*

*(2) Comment:* Some commenters expressed support for changes to Refuge regulations establishing boat and motor restrictions for sections of the Kenai River and Skilak Lake within the Refuge. Some commenters requested that the Service reconsider the proposed 10 horsepower motor restriction for boat motors in selected Refuge lakes; one commenter supported this change.

*Our Response:* We proposed regulations establishing boat and motor restrictions for sections of the Kenai River and Skilak Lake within the Refuge to protect refuge resources and to enhance consistency with existing State regulations for the Kenai River Special Management Area. We re-evaluated the need for a restriction in the proposed rule limiting boat motors to 10 horsepower or less in selected lakes. We will continue to rely on the existing ''no wake'' requirement in these lakes to minimize disturbance to wildlife and impacts to non-motorized boaters. We do not include the maximum horsepower requirement for the identified lakes in this final rule.

*Off-road Vehicles—50 CFR 36.39(i)(3)*

*(3) Comment:* One commenter requested that the Service consider allowing the use of off-road vehicles for ice fishing access during periods of adequate snow/ice cover. One commenter expressed support for clarifying where use of 4-wheel-drive vehicles is allowed on the Refuge. One commenter expressed opposition to the addition of jet skis and other personal watercraft to the list of prohibited watercraft; one commenter supported this change.

*Our Response:* Under the regulations, off-road vehicle use is prohibited on the Refuge. This prohibition is in place to prevent disturbance to wildlife and habitat degradation. The Service does not consider an exception to this prohibition for ice fishing to be warranted, as adequate motorized access, through use of highway vehicles and snowmobiles on identified lakes, is already provided for ice fishing under the regulations. The regulations prohibit operation of motorized watercraft with the exception of motorboats; specifying that jet skis and other personal watercraft are among prohibited watercraft adds clarity for the public. We did not make any changes to the rule in response to these comments.

*Snowmobiles—50 CFR 36.39(i)(4)*

*(4) Comment:* One commenter expressed support for increasing the allowable width of snowmobiles from 46 to 48 inches, and questioned why Watson Lake was not included in the list of lakes that allow use of snowmobiles for ice fishing when such use is allowed on other lakes where highway vehicles are allowed for the same purpose. A commenter requested clarification on the need for a Refuge-specific prohibition on use of snowmobiles to pursue, chase, or herd wildlife, stating that this change was redundant with existing Federal regulations. Some commenters supported the snowmobile regulations as proposed.

*Our Response:* Under the regulations, use of snowmobiles for ice fishing is allowed on the same lakes within the Skilak WRA that are open to highway vehicle use for ice fishing. Identifying specific lakes as open to snowmobile use for ice fishing is necessary within the Skilak WRA because this is an area of the Refuge that is otherwise closed to snowmobile use. Watson Lake lies within an area of the Refuge that is open to general snowmobile use when the Refuge has been opened to such use (based on a determination that adequate snow cover exists between the dates of December 1 and April 30), which in most years negates the need to include it in the list of lakes open to snowmobile use to provide access for ice fishing. On the rare occasions that the Refuge remains closed to snowmobiles because of inadequate snow cover but vehicular use of Watson Lake for ice fishing is possible, the Service can consider implementing a temporary opening to allow use of snowmobiles on Watson Lake for ice fishing.

In this final rule, we specify that snowmobile operation is prohibited to ''herd, harass, haze, pursue, or drive wildlife'' in order to clarify to the Refuge-specific regulations, which, before the effective date of this final rule (see **DATES**), simply prohibit ''harassment of wildlife'' using snowmobiles (50 CFR 36.39(i)(4)(viii)). The Service believes adding specificity and clarity to these regulations benefits the public and will lead to more effective resource protection on the Refuge, and that this change in regulatory language is warranted.

We did not make any changes to the rule in response to these comments.

*Hunting and Trapping—50 CFR 36.39(i)(5) and 36.39(i)(6)*

*(5) Comment:* Some commenters stated that the Service's amendment of the Refuge public use regulations governing hunting and trapping, specifically those related to firearms discharge and hunting brown bears over bait, were not adequately vetted through a public process and were not adequately justified in the proposed rule, and therefore did not meet requirements under ANILCA for implementing Federal regulations for establishing closures and/or the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). Some commenters stated that the public could not meaningfully comment because of the lack of justification in the proposed rule. One commenter stated that the Service's proposed amendments to the Refuge public use regulations governing hunting and trapping are outdated and that the Service has not adequately complied with NEPA for its rulemaking by failing to analyze the direct, indirect and cumulative impacts of hunting and trapping carnivores on the Refuge.

*Our Response:* Federal regulations implementing ANILCA at 50 CFR 36.42(b) provide that in making a determination to close an area or restrict an activity, the Refuge Manager will be guided by several factors, including public health and safety, resource protection, and other management considerations necessary to ensure an activity or area is being managed in a manner compatible with the purposes for which the Refuge was established. As we stated in the May 21, 2015, proposed rule (80 FR 29277), we proposed changes to the Refuge public use regulations (including amending regulations specific to hunting and trapping) to ensure management of public use in a manner such that these activities remain compatible with Kenai NWR's establishment purposes and the Refuge System mission; to ensure consistency with Service policy, directives, and approved management plans; to minimize conflicts between authorized users of the Refuge; and to protect public safety.

Federal regulations at 50 CFR 36.42(e) require that permanent closures or restrictions on national wildlife refuges in Alaska shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the

**Federal Register**. The Service complied with this requirement. We published our proposed rule to amend the Refuge's public use regulations, including amending Refuge regulations for hunting and trapping, in the **Federal Register** on May 21, 2015. We provided a 60-day public comment period, ending July 20, 2015, on the proposed rule, and we held public hearings in Soldotna (June 17, 2015) and Anchorage (June 18, 2015), Alaska, on the proposed rule.

The Service analyzed its proposed rule amending the Refuge's public use regulations, including proposed changes to hunting and trapping regulations, in accordance with the criteria of NEPA and Department of the Interior policy in part 516 of the Departmental Manual (516 DM). We determined that the rule is considered a categorical exclusion under 516 DM 8.5(C)(3), which categorically excludes the ''issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental impacts.'' This rulemaking will result in small incremental changes in public use of the Refuge, both increasing and decreasing use, but overall will maintain permitted levels of use and will not continue a level of use that has resulted in adverse environmental impacts.

This rulemaking supports implementing the Service's management direction identified through approved Refuge management plans, including the 2010 Kenai NWR revised CCP and the 2007 Kenai NWR Skilak WRA revised final management plan. Specific to hunting and trapping on the Refuge, the Service completed compatibility determinations in 2007, for hunting, hunting of black bears using bait, and trapping concurrent with development of the Refuge's 2010 revised CCP, which was accompanied by an environmental impact statement. These activities were determined to be compatible, subject to stipulations required to ensure compatibility that includes adherence to pertinent State and Federal regulations. The Service addressed hunting and trapping in the Skilak WRA in its 2007 Skilak WRA final revised management plan and its accompanying environmental assessment.

The Service is adopting the proposed regulations, as amended in this final rule (see Table: Summary of Changes From Proposed Rule, below), for the Refuge, specific to hunting and trapping, to meet its legal mandates; to ensure consistency with policy, directives, and approved management plans; and to ensure public safety. We did not make any changes to the rule in response to these comments.

*(6) Comment:* Some commenters stated that the changes to Refuge regulations governing hunting and trapping in the proposed rule, specifically those related to firearms discharge along the Russian and Kenai Rivers, use of bait for hunting brown bears, and/or hunting and trapping in the Skilak WRA, are not necessary to meet the Service's legal mandates for the Refuge, are counterproductive to meeting the Refuge's original establishment purpose as the Kenai National Moose Range, conflict with provisions of the ANILCA and the National Wildlife Refuge Administration Act, are an unjustified and unnecessary preemption of State of Alaska management of wildlife, and/or are inconsistent with provisions of the 1982 Master Memorandum of Understanding (MMOU) between the Service and the Alaska Department of Fish and Game.

*Our Response:* The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd–668ee) recognizes six wildlife-dependent recreational uses as priority public uses of the Refuge System: hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These uses are legitimate and appropriate public uses where compatible with the Refuge System mission and individual refuge purposes, and are to receive enhanced consideration over other uses in planning and management. All six of the priority public uses have been determined compatible and are authorized on the Refuge.

The Service considers our regulations governing hunting and trapping on the Refuge necessary to meeting our mandates under ANILCA to conserve healthy populations of wildlife in their natural diversity on the Refuge, to meet its Wilderness purposes, and to meet its purpose for providing compatible wildlife-oriented recreational opportunities, which include both consumptive and non-consumptive activities.

By law (National Wildlife Refuge System Administration Act of 1966, as amended; Alaska National Interest Lands Conservation Act of 1980), regulations (43 CFR part 24), and policy (the Service Manual at 605 FW 1 and 605 FW 2), the Service must, to the extent practicable, ensure that refuge regulations permitting hunting and fishing are consistent with State laws, regulations, and management plans. In recognition of the above, non-conflicting State general hunting and trapping regulations are usually adopted on refuges. Hunting and trapping, however, remain subject to legal mandates, regulations, and management policies pertinent to the administration and management of refuges.

Under the 1982 MMOU between the Service and the Alaska Department of Fish and Game, it is recognized that taking of fish and wildlife by hunting, trapping, or fishing on Service lands in Alaska is authorized under applicable State and Federal law unless State regulations are found to be incompatible with documented refuge goals, objectives, or management plans. The MMOU commits the Service to utilize the State's regulatory process to the maximum extent allowed by Federal law in developing new or modifying existing Federal regulations or proposing changes in existing State regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska. The MMOU also recognizes that the Service's responsibility for regulating human use on the Refuge.

The Service coordinated with the Alaska Department of Fish and Game in development of the Refuge's 2010 CCP and 2007 Skilak WRA final revised management plan, and during the development of the proposed and this final rule. The Service continues to actively participate in the State's regulatory process with the Alaska Board of Game on issues related to hunting and trapping on the Refuge, including recent coordination on hunting brown bears over bait and hunting in the Skilak WRA, both of which are subjects of this rulemaking. The Service remains committed to working with the State of Alaska and using State regulatory processes, consistent with the MMOU. We did not make any changes to the rule in response to these comments.

*Hunting and Trapping, Discharge of Firearms—50 CFR 36.39(i)(5)(i)*

*(7) Comment:* Some commenters expressed opposition to the proposed firearms discharge restriction within ¼ mile of the shorelines of the Kenai River and Russian River within the Refuge, citing one or more of the following:

- Discharge of firearms does not create public safety issues because very little hunting occurs in the area or because public use levels for fishing drastically fall as freeze-up approaches in late September; and
- There is no biological basis for, or data or scientific need justifying, the closure. Some commenters expressed support for the Service's proposed firearms discharge prohibition along the

Kenai and Russian rivers, citing its benefits to protection of public safety.

*Our Response:* Federal regulations at 50 CFR 36.42(b) provide that in making a determination to close an area or restrict an activity, the Refuge Manager shall be guided by several factors, including public health and safety. Specifically to address public safety issues, the regulations currently prohibit firearms discharge on the Refuge as follows: Firearms may not be discharged within ¼ mile of designated public campgrounds, trailheads, waysides, buildings or the Sterling Highway from the east Refuge boundary to east junction of the Skilak Loop Road (50 CFR 36.39(i)(5)(i)).

As stated in the May 21, 2015, proposed rule, we proposed the firearms discharge prohibition on lands within ¼ mile of the Kenai River shoreline upstream and downstream of Skilak Lake and the Russian River shoreline from its confluence with the Kenai River upstream to the Russian River Falls, with exceptions for the use of shotguns for waterfowl and small game hunting and firearms used while lawfully trapping, specifically to enhance public safety along these intensively used river corridors.

Field observations by Refuge staff and interactions with users and permitted fishing guides and outfitters have documented steadily increasing levels of public use, primarily for fishing but also for river floating (Kenai River only), and associated activities such as hiking and wildlife viewing, on and along the upper Kenai and Russian rivers within the Refuge, and that the timing of relatively heavy use for these activities now includes fall and spring months during ice-free periods. Highest periods of use in fall and spring for fishing occur from September through mid-October and late March through April, respectively. River floating on the upper Kenai River begins in May and extends through October, with highest use levels occurring from June through September. Similarly, high levels of public use occur in the middle Kenai River below Skilak Lake within the Refuge during fall and spring, primarily for fishing. Much of the increased use of both the Kenai and Russian rivers during fall and spring months can be attributed to the increasing popularity of their rainbow trout fisheries.

Publicly available study reports corroborate these observations. For example, a recent recreation study of the Kenai River completed in 2010, by Drs. Douglas Whittaker and Bo Shelby for the Alaska Department of Natural Resources, Division of State Parks and Recreation (Kenai River Recreation Study, Major Findings and Implications, 2010), reported that perceived crowding on the Upper Kenai River (between Sportsman's Landing and Jim's Landing) in September (when the primary fish targeted are rainbow trout, Dolly Varden, and silver salmon) is as high as for some salmon fisheries occurring during the summer months.

Recent takes of brown bears along the Russian and Kenai rivers during the falls of 2013 and 2014 posed threats to public safety, as bears were shot in close proximity to other users fishing from shore, wading, or boating, and firearms and ammunition with substantial lethal distances were used in areas where sight distances are extremely limited due to vegetation and river meanders. These takes occurred on, along, or immediately adjacent to river shorelines and within the ¼-mile buffer distance established by this rule. In addition, discharge of firearms to ''warn'' or deter bears presents a growing threat to public safety along the Russian and Kenai rivers.

Recently enacted changes to State hunting regulations for brown bears on the Kenai Peninsula have increased the potential for firearms discharge to result in threats to public safety in these areas. Current brown bear hunting season dates of September 1 to May 31 substantially overlap with periods of high public use along the Russian and Kenai rivers during fall and spring (in the 7 years prior to 2008, brown bear hunting season dates were October 15 to October 30).

The Service considers adoption of this rule necessary to reduce threats to public safety posed by discharge of firearms along the Russian and Kenai rivers during periods of high visitation for activities including fishing, river floating, hiking, and wildlife observation. We did not make any changes to the rule in response to these comments.

*(8) Comment:* Some commenters stated that the closure affects the taking of wildlife on Service lands, and consistent with the MMOU between the Service and the Alaska Department of Fish and Game, should be first submitted by the Service to the Alaska Board of Game under the State regulatory process for consideration. Some commenters stated that the area affected by the proposed firearms discharge prohibition is a traditional moose and bear hunting area and the rule will negatively impact these users.

*Our Response:* The Service proposed the amendments to the regulations to enhance public safety along the Kenai and Russian rivers during periods of intensive public use. The rule is not intended to affect taking of wildlife on the Refuge, and will have negligible impacts on hunting opportunity and harvest levels for the reasons noted below.

This rule allows for continued use of shotguns for waterfowl and small game hunting, and use of firearms while lawfully trapping, along the Kenai and Russian rivers. Waterfowl hunting along the Kenai River currently accounts for the vast majority of hunting activity in the affected area, as it has historically. This rule will have negligible impacts on overall hunting opportunity and harvest levels of black bears, brown bears, and moose on the Refuge, as most hunting activity for these species occurs outside of these river corridors. This rule expands the restriction on discharge of firearms on the Refuge by just under 4,000 acres, or approximately 0.2 per cent of lands in the Refuge currently open to hunting of moose, black bear, and brown bear (totaling over 1.9 million acres). In addition, reasonable opportunities to hunt these species with firearms in the vicinity of the Russian and Kenai rivers for those wishing to do so will continue to be available outside of the ¼-mile river corridors established by this rule.

The MMOU recognizes that the Service has responsibility for regulating human use on refuges in Alaska. Protection of public safety is a critically important responsibility of the Service in managing public use on refuge lands, and the Service deems this rule necessary to enhance public safety on and along these intensively used rivers. The Service remains committed to the terms of the MMOU and will continue to coordinate with the Alaska Board of Game and Alaska Department of Fish and Game on proposals whose intent is to affect the take of fish and wildlife on Service lands. We did not make any changes to the rule in response to these comments.

*(9) Comment:* Some commenters stated that the Service proposed firearms discharge prohibition is not consistent, or does not enhance consistency, with State regulations on firearms discharge with the Kenai River Special Management Area (KRSMA) because it extends beyond KRSMA boundaries, is not date specific, and/or because the State's KRSMA regulations are contingent on the location of developed facilities or dwellings and do not apply to the entire length of the Kenai and Russian rivers. Some commenters requested that the Service consider less restrictive regulations for the discharge of firearms around buildings such as public use cabins in remote areas that are only accessible via

boat, snowmobile, or float plane because firearm discharge closer to the cabin does not pose a safety concern.

*Our Response:* While applying to lands and waters within the Refuge and outside of the KRSMA, this rule (including the clarification that the prohibition around buildings includes Refuge public use cabins) is consistent with, and complements, State firearms regulations for the KRSMA. State regulations (11 Alaska Administrative Code (AAC) 20.850) allow the use and discharge of a weapon for the purpose of lawful hunting or trapping in the KRSMA only on Skilak Lake and Kenai Lake, except that shotguns may be discharged below Skilak Lake for purpose of lawful hunting or trapping, from September 1 to April 30 annually. In addition, the discharge of any firearm within the KRSMA is prohibited within ½ mile of a developed facility or dwelling, except that discharge of a shotgun using steel shot no larger than size T is allowed at a distance of no less than ¼ mile from a developed facility or dwelling.

Consistent with State regulations, the Service's proposed firearms discharge prohibition along the Kenai and Russian rivers does not apply to firearms discharge on or along Skilak Lake. With very few, if any, exceptions, shotguns are used within the KRSMA to hunt waterfowl. Similarly, our regulations allow the use of shotguns for waterfowl hunting (and small game hunting), and allow use of any firearm while lawfully trapping, within the area of the Refuge to which the regulations apply. Allowances for these activities under our proposed rule, and in this final rule, span the season dates (September 1 to April 30) specified in the State regulations, negating a need to specify season dates.

The Service's firearms discharge prohibition along the Russian River is also consistent with and complements U.S. Forest Service regulations restricting use of weapons in the vicinity of recreational facilities, and which apply to an adjoining area of similar size, in the Chugach National Forest from the Russian River's confluence with the Kenai River upstream to the Russian River Falls (36 CFR 261.10(d)). In 2015, the U.S. Forest Service expanded the weapons discharge prohibition in this area to address public safety concerns associated with use of weapons for bear hunting along the Russian River during periods of high public use (36 CFR 261.53(e)).

The prohibition on discharge of firearms within ¼ mile of buildings in the current regulations (50 CFR 36.39(i)(5)(i)) is meant to ensure public safety around buildings used by the public or administratively by Service personnel, and is unrelated to the building's location or the means of transportation used by the public to travel to the building.

Similar to the basis for the Service's regulations, enhancing public safety was the basis for promulgation of State and Federal regulations restricting use of weapons on and/or along the Kenai and Russian rivers adjacent to the Refuge. We did not make any changes to the rule in response to these comments.

*(10) Comment:* Some commenters stated that the Service's proposed rule is contradictory or does not adequately explain why discharging firearms for waterfowl and small game hunting or use of archery equipment does not pose a safety hazard when the use of firearms to take big game does, and that by omission, it appears the Service may be using public safety as justification to preclude a particular form of hunting.

*Our Response:* While restricting the use of firearms, this rule allows for continued use of shotguns for waterfowl and small game hunting and use of firearms to dispatch animals while lawfully trapping. Waterfowl hunting is currently and has historically been the primary hunting activity conducted in the affected area, and it occurs primarily along the Kenai River below Skilak Lake. The use of shotguns in the areas traditionally used for waterfowl (and small game hunting) along the Kenai River poses minimal public safety concerns because of the locations and manner in which these activities are conducted and due to the more limited travel distances of shotgun ammunition used for waterfowl and small game hunting. Trapping seasons do not overlap with periods of high visitation, as the river corridors receive substantially less public use during winter. The Service therefore does not consider prohibitions on firearms discharge for these activities to be warranted. The Service also believes that use of archery equipment poses negligible risks to public safety in the affected area. We did not make any changes to the rule in response to these comments.

*(11) Comment:* Some commenters expressed concern that the firearms discharge prohibition along the Kenai and Russian rivers would preclude use of firearms for personal protection, and suggested modification to allow for such use.

*Our Response:* Neither the Service's current regulations nor this rule prohibiting firearms discharge in certain areas of the Refuge preclude the possession and/or use of firearms to take game in defense of life and property as defined under State law (5 AAC 92.410). We have amended this final rule to specifically state that the firearms discharge prohibition does not preclude the use of firearms to take game in defense of life and property as defined under State law.

*Hunting and Trapping Over Bait—50 CFR 36.39(i)(5)(ii)*

*(12) Comment:* Some commenters stated that the Service has not provided adequate information or justification nor completed required administrative processes necessary to preempt a recently adopted State regulation that allows for take of brown bears at black bear bait stations; the Service also has not explained adequately how it used the State's regulatory process in a manner consistent with the Master Memorandum of Understanding between the Service and the Alaska Department of Fish and Game. A commenter noted this prohibition in the proposed rule is an unnecessary replication of an existing Refuge special use permit stipulation.

*Our Response:* Federal regulations at 50 CFR 36.42(b) provide that in making a determination to close an area or restrict an activity, the Refuge Manager shall be guided by several factors, including public health and safety, resource protection, and other management considerations necessary to ensure an activity or area is being managed in a manner compatible with the purposes for which the Refuge was established.

As stated in the May 21, 2015, proposed rule (80 FR 29277), current Refuge regulations (50 CFR 36.39(i)(5)(ii)) specify that hunting black bears over bait on the Refuge requires a special use permit (FWS Form 3–1383–G). This requirement was promulgated in the 1980s (51 FR 32297) in recognition of issues associated with use of bait for hunting black bears on the Refuge, and the need to further regulate this method of take to ensure compatibility of this activity. The intent of this requirement has always been, and continues to be, to authorize the use of bait for the take of black bears only. This restriction is explicitly stated in the terms and conditions of the current Refuge special use permit issued for black bear baiting: ''Hunting over bait is prohibited on the Kenai National Wildlife Refuge, with the exception of hunting black bears as authorized under the terms and conditions of this Special Use Permit.''

The Service considers the clarification concerning hunting over bait that we are

making in this final rule at 50 CFR 36.39(i)(5)(ii) necessary to meeting our mandates under ANILCA to conserve healthy populations of wildlife in their natural diversity on the Refuge, to meet the Refuge's Wilderness purposes, and to meet the Refuge's purpose for providing compatible wildlife-oriented recreational opportunities (both consumptive and non-consumptive). Specific to use of bait to take brown bears, the Service considers allowance of this method to be inconsistent with these mandates due to its potential to result in overharvest of this species, with accompanying population-level impacts, due to its high degree of effectiveness as a harvest method and the species' low reproductive potential. The Service also believes that baiting of brown bears has potential to modify bear behavior and increase human-bear conflicts, and that allowance of this method to take brown bears on the Refuge would result in increased baiting activity and pose an increased risk to public safety. These issues are further discussed in our response to Comment (13), below.

In 2013, the Service formally communicated its regulatory requirement limiting hunting over bait to the take of black bears, and our intent to maintain this requirement, to the State of Alaska in advance of the Alaska Board of Game's adoption of a State regulation that allows take of brown bears at black bear bait stations on the Kenai Peninsula. In addition, the Service requested that Refuge lands be excluded should this State regulation be adopted.

Codifying the Service's special use permit stipulation that prohibits hunting over bait with one exception for hunting of black bears provides additional notice to the public of this restriction, clarifies our longstanding intent to authorize only the take of black bears at permitted bait stations on the Refuge, and is consistent with meeting Refuge purposes under ANILCA. The Service deems this additional notice and clarification necessary in light of the Alaska Board of Game's 2013 adoption of a regulation allowing the take of brown bears at registered black bear baiting stations on the Kenai Peninsula. We did not make any changes to the rule in response to these comments.

*(13) Comment:* Some commenters expressed opposition to prohibiting harvest of brown bears over bait, stating that it is not biologically justified because the Refuge brown bear population is higher than the Service believes it is, that baiting allows for selective harvest of bears, and that studies have shown that baiting does not result in food-conditioning of bears. Some commenters stated that baiting for bears (brown and black) can be conducted under recognized principles of sustained yield management; that adequate protections exist under State management, including reporting requirements and limiting harvest of female bears, to minimize the potential for overharvest; and that the sex composition of the recent brown bear harvest at bait stations on the Kenai Peninsula, which was predominantly male bears, further supported that hunting brown bears over bait was consistent with sustained yield management.

*Our Response:* Allowance of take of brown bears at black bear baiting stations was one of several changes that substantially liberalized State regulations for sport hunting of brown bears on the Kenai Peninsula beginning in 2012. Harvest levels, and overall human-caused mortalities, of brown bears increased substantially following the changes in State hunting regulations enacted in 2012 and 2013, with resulting impacts on the Kenai Peninsula's brown bear population. On average, 21 brown bear human-caused mortalities (hunting and nonhunting) occurred annually on the Kenai Peninsula from 1995 through 2011. From 2012 to 2014, the annual average nearly tripled to 61 bears. Human-caused mortalities during this period totaled 184 brown bears, 148 of which were taken by hunters. Human-caused mortalities in 2013 (71) and 2014 (69) were over 6 times the 50-year annual average of 11 brown bears killed from 1961 through 2011.

The Kenai brown bear population was estimated in 2010 through a joint field study conducted by the Refuge and U.S. Forest Service. This DNA-based mark-recapture study generated a Kenai Peninsula-wide brown bear population estimate of 582 bears (95 percent lognormal confidence interval of 479 to 719 bears). This study and its results were peer-reviewed and recently published in the Journal of Wildlife Management (Morton *et al.* 2016). The Service considers this to be the best available scientific estimate of this population.

Population modeling by the Service (using the model Vortex 9.9) suggested that known human-caused mortality of Kenai Peninsula brown bears from 2012 to 2014, following changes in State brown bear hunting regulations, reversed the previous increasing trajectory of the brown bear population and resulted in a decline of approximately 18 percent (a modeled decline from the 2010 population estimate of 582 bears to 478 bears).

In 1998, due to concerns about population status, habitat loss and increasing levels of human-caused mortality, the Alaska Department of Fish and Game classified the Kenai brown bear population as a ''population of special concern.'' Using the 2010 population estimate and brown bear demographic data obtained from ongoing telemetry studies, modeling (Vortex 9.9) also suggested that similar levels of human-caused mortality of brown bears documented from 2012–2014 (primarily resulting from sport hunting) would continue to reduce the brown bear population to levels similar to those which in the recent past posed conservation concerns. The Service deemed this rapid reduction of the Kenai Peninsula brown bear population, along with the potential for continued decline, to be inconsistent with meeting its legal mandates to conserve healthy wildlife populations (including brown bears) in their natural diversity on the Refuge, to provide for wildlife-oriented recreational opportunities that include both consumptive and non-consumptive activities, and to meet the Refuge's Wilderness purposes; therefore, the Service implemented closures to brown bear sport hunting on the Refuge in 2013 and 2014. Additional information regarding the Service's recent management of sport hunting of brown bears on the Refuge, which also provides greater detail on Kenai brown bear management history, population status and dynamics, and modeling results, is available as part of the rulemaking administrative record, available at Kenai National Wildlife Refuge.

Annual harvests of brown bears in 2013 and 2014 in Game Management Unit (GMU) 7 on the Kenai Peninsula demonstrate the increased effectiveness of hunting this species over bait. According to Alaska Department of Fish and Game harvest statistics, the 2013 harvest of brown bears in GMU 7 prior to baiting being legalized was 12 bears during a 198-day season. In 2014, harvest during a 189-day season was 38 brown bears, of which 28 (77 percent) were harvested over bait. Since becoming legal for the first time in spring 2014, harvest of brown bears at bait stations has accounted for the majority of brown bear harvest on the Kenai Peninsula. In 2014, 62 percent (40 of 65) of bears harvested were taken over bait. As of January 2016, preliminary 2015 harvest statistics available from the Alaska Department of Fish and Game indicate that 89 percent (16 of 18) of bears taken in spring and

59 percent (16 of 27) of bears legally taken by sport hunters overall have been harvested over bait.

Adherence to harvest caps for adult female bears and overall human-caused mortality can help ensure sustainability of harvests. However, based on our modeling (using Vortex 9.9), human-caused mortality of brown bears at current harvest caps (maximums of 12 adult female bears and 60 bears overall), provided in formal direction to the Alaska Department of Fish and Game by the Alaska Board of Game in 2015, would result in a continued reduction of the Kenai brown bear population. Based on best available scientific information and population modeling using the Vortex 9.9 model, the Service believes that allowance of take of brown bears over bait on the Refuge would increase human-caused mortality of Kenai brown bears to levels which would continue to reduce the population, with potential to result in conservation concerns for this population. We also note that the sex and age composition of the brown bears harvested over bait on the Kenai Peninsula in 2014 and 2015 represents a small and short term sample, and may not be representative of harvest composition over a longer period of time.

The Service believes that a cautious approach to management of Kenai Peninsula brown bears is scientifically warranted due to several factors. The Service must consider these factors in ensuring that hunting is administered on the Refuge in a manner that ensures that the Service's legal mandates are met, and they underlie our decision to maintain existing regulations that restrict harvest over bait to take of black bears only. Black bears occur in much higher densities than brown bears on the Kenai Peninsula, have higher reproductive potential than brown bears, and as such can support higher harvest levels and are less susceptible to overharvest. Conversely, brown bears have one of the lowest reproductive potentials of any North American mammal, and at current densities, the Kenai brown bear population remains a relatively small population (Morton *et al.* 2016) that is highly sensitive to adult female and overall human-caused mortality levels. Genetics studies have determined that Kenai brown bears comprise an insular population (reported in the Canadian Journal of Zoology in 2008 by Jackson *et al.*), which means that immigration from mainland Alaska will not assist in sustaining the population, and that Kenai brown bears have very low haplotypic genetic diversity (Jackson *et al.* 2008), which has unknown but potentially important conservation implications. The Kenai brown bear population will continue to be strongly influenced by habitat loss and fragmentation and multiple potential sources of human-caused mortality as the human population continues to grow on the Kenai Peninsula and recreational use of public lands increases. Finally, timely and accurate monitoring of the status of the Kenai Peninsula brown bear population is extremely difficult at best, costs associated with monitoring are high, and funding for monitoring is usually limited and never guaranteed. This is important given that the increased effectiveness of harvesting brown bears over bait would likely mask the effects of reduced bear densities on harvest success, thereby increasing potential for overharvest in the absence of adequately rigorous population monitoring.

Maintaining our existing limits on hunting over bait is also intended to minimize the potential for public safety issues associated with conditioning brown bears to human foods commonly used at bait stations. While baiting for black bears is currently allowed on the Refuge and has potential to create food-conditioned bears, we would expect increased baiting activity and increased potential for human-bear conflicts if take of brown bears over bait were allowed. The number of permitted black bear baiting stations on the Kenai Peninsula increased from roughly 300 in years prior to, to just over 400 bait stations each year following (2014 and 2015), adoption of State regulations allowing harvest of brown bears over bait. It is well documented that food-conditioning of bears results in increased potential for negative human-bear encounters and increased risk to public safety (as reported by Herrero in 1985 in the book *Bear attacks: their causes and avoidance,* and by Herrero and Fleck in 1990 in Bears: Their Biology and Management, Volume 8, A Selection of Papers from the Eighth International Conference on Bear Research and Management). There is also an increased likelihood that food-conditioned bears would be killed by agency personnel or in defense of life or property. Consistent with Service policy on managing recreational uses in a manner that helps ensure public safety, the Service actively promotes food storage and other practices aimed specifically at reducing the potential for human-bear conflicts.

We did not make any changes to the rule in response to these comments.

(*14) Comment:* Some commenters expressed support for prohibiting take of brown bears at bait stations, citing one or more of the following:

- Legalization of this practice by the State in support of predator control is not appropriate on refuges;
- The practice is unethical and conflicts with principles of ''fair chase'' hunting; and
- The practice poses a threat to public safety.

Most of these commenters also noted that the Service should also prohibit baiting of black bears on the Refuge for the same reasons.

*Our Response:* Codifying this prohibition as part of the Refuge's public use regulations provides additional notice to and clarification for the public of the Service's longstanding intent to authorize only the take of black bears at permitted bait stations on the Refuge. The Service last evaluated black bear baiting through a 2007 compatibility determination, and found the activity to be compatible. We did not make any changes to the rule in response to these comments.

*Hunting and Trapping in Skilak Wildlife Recreation Area—50 CFR 36.39(i)(6)*

*(15) Comment:* Some commenters expressed opposition to the Service's proposed hunting and trapping regulations for the Skilak WRA, citing one or more of the following:

- State-managed hunting and trapping in the Skilak WRA is compatible with Service public use objectives to provide opportunities for wildlife viewing in the area;
- The Service has not provided biological data demonstrating the need for the closures to meet these objectives;
- The closures are inconsistent with ANILCA and/or Service policy governing management of wildlife-dependent recreational uses because they inappropriately favor one compatible use (wildlife viewing) over another (hunting);
- The closures set a precedent that the Refuge would be the only National Wildlife Refuge in Alaska that has an area set aside for one user group;
- The closures violate ANILCA by creating a conservation area within an existing conservation unit;
- Limitations on wildlife viewing in the Skilak WRA were more dependent upon terrain, weather, season, time of day, and other factors than sustainable harvests of wildlife; and
- Hunting of predators is needed to balance wildlife populations, prevent the area's moose population from being overrun, and provide visitors with opportunities to enjoy a wider variety of wildlife.

Some commenters expressed support for the Service's proposed hunting and trapping regulations for the Skilak WRA, citing one or more of the following:

- Managed as it currently is, the Skilak WRA is an extremely valuable public asset;
- The Skilak WRA is an outstanding opportunity for the Refuge to fulfill its wildlife viewing, photography, and environmental education and interpretation mandates on the Refuge, but only if harvest is restricted. Additional hunting in the Skilak WRA would degrade, undermine, and conflict with public opportunities for other recreation and education that have been provided for 30 years; and
- The proposed regulations are necessary to meet goals and objectives of approved refuge management plans and legal mandates to maintain healthy populations of wildlife on refuges.

*Our Response:* The Skilak WRA is a 44,000-acre area of the Refuge that has, since 1985, been managed with a primary emphasis on providing the public enhanced opportunities for wildlife viewing, and environmental education and interpretation. The Service has worked extensively with the Alaska Department of Fish and Game and the Alaska Board of Game over the years in planning and implementing management direction, including management of hunting and trapping, in the Skilak WRA.

In 1985, the Service released a record of decision for the Refuge's first comprehensive management plan. A directive of this plan was the establishment of a special area, the ''Skilak Loop Special Management Area,'' that would be managed to increase opportunities for wildlife viewing, and environmental education and interpretation. In December 1986, the Service, working closely with the Alaska Department of Fish and Game, identified specific goals for providing wildlife viewing and interpretation opportunities, and hunting and trapping opportunities were restricted so that wildlife would become more abundant, less wary, and more easily observed. Regulatory proposals that prohibited trapping, allowed taking small game by archery only, and provided a moose hunt by special permit were developed and approved by the Alaska Board of Game in 1987. Hunting of all other species was prohibited. These State of Alaska regulations remained in effect until 2013, with modifications to allow for a youth-only firearm small game hunt in a portion of the area in 2007, and for the use of falconry to take small game in 2012.

In 2005, the Alaska Board of Game adopted a proposal to allow firearms hunting of small game and fur animals (as practical matter in the area, fur animals would include lynx, coyote, beaver, red fox and squirrel), but subsequently put that State regulation on hold pending the Service's development of an updated management plan for the area. The Service initiated a public planning process with a series of public workshops in November 2005, and evaluated management alternatives through an environmental assessment, which was made available for public review and comment in November 2006.

The Service released a finding of no significant impact, and the Kenai NWR Skilak WRA revised final management plan was released in June 2007. This plan reaffirmed the overall management direction for the Skilak WRA as a special area to be managed primarily for enhanced opportunities for wildlife viewing and environmental education and interpretation, while allowing other non-conflicting wildlife-dependent recreational activities. The plan maintained longstanding restrictions on hunting (including hunting of fur animals) and a trapping closure, with the exception of adding a ''youth-only'' small game firearms hunt in the western portion of the area. In 2007, the Alaska Board of Game adopted State regulations maintaining the closures and restrictions, and opening the ''youth-only'' small game firearm hunt.

Consistent with its 2007 Skilak WRA final revised management plan, the Service enacted a permanent closure restricting hunting and closing trapping in the Skilak WRA in November 2013 (see 78 FR 66061, November 4, 2013), which mimicked State of Alaska hunting and trapping regulations for the area in effect prior to 2013. The Service implemented this current closure in response to action taken by the Alaska Board of Game in March 2013, which opened the Skilak WRA to taking of lynx, coyote, and wolf within the area under State hunting regulations. Under this new State regulation, which became effective July 1, 2013, taking of these species is allowed during open hunting seasons from November 10 to March 31. In advance of this action, the Service requested that the Alaska Board of Game not adopt the proposal establishing these regulations because it would be inconsistent with Refuge management objectives for the area, and advised that doing so would require the Service to maintain restrictions on the hunting of these species under its own authorities.

A primary basis for the Service's decision to issue this permanent closure was first recognized in the original 1986 management goals and specific management objectives for furbearers, which led to the closure of hunting and trapping of these species in the Skilak WRA. Furbearers such as wolves, coyote, and lynx occur in relatively low densities, and are not as easily observed as more abundant and/or less wary wildlife species. Annual removal of individual wolves, coyote, or lynx from the Skilak WRA, and/or a change in their behavior, due to hunting (or trapping) would reduce opportunities for the public to view or photograph or otherwise experience these species. While we concur that factors such as terrain, vegetation, and time of day affect wildlife viewing, visitors to the Skilak WRA experience and learn about these species in a variety of ways, such as observing tracks, hearing vocalizations, or observing other signs of the species. Similarly, Refuge environmental education and interpretation programs that benefit from enhanced opportunities provided in the area to view or otherwise experience these species would be negatively impacted. Even in the absence of area-specific scientific studies and data, it is a reasonable conclusion that annual harvest would maintain reduced densities, and/or affect behavior, of these species in the Skilak WRA and degrade opportunities for wildlife observation, photography, and environmental education and interpretation, given the area's small size, its accessibility by road, proximity to population centers, and likely hunting (or trapping) pressure.

Minimizing conflicts between non-consumptive and consumptive users of the Skilak WRA and ensuring public safety also continue to be important considerations for how hunting and trapping is managed in the area. While highest levels of public use in the Skilak WRA occur in the summer months, observations by Refuge staff and records of use of Refuge public use cabins indicate that fall and winter recreational use of the area for many activities, including hiking, general nature observation and photography, night sky observation, cross country skiing, and winter camping, is substantial and increasing. Given this increased public use during winter, the Service believes that allowing hunting (or trapping) of wolves, coyotes, and lynx during winter months in the Skilak WRA would increase the potential for conflicts between users and safety issues.

Providing environmental education and interpretation for the public, and for ''wildlife-oriented'' recreational uses, which includes non-consumptive

activities such as wildlife viewing as well as hunting and fishing, are legally mandated Refuge purposes under ANILCA. These two purposes are in fact unique purposes to this Refuge among all refuges in Alaska. Meeting Refuge public use objectives in the Skilak WRA is consistent with and directly supports meeting these Refuge purposes. Regulating non-conflicting hunting activities and the use of firearms in the Skilak WRA in a manner that supports meeting all Refuge purposes, minimizes conflicts among user groups, and enhances public safety is necessary to ensure the compatibility of hunting as an authorized use on the Kenai NWR.

Management that provides for emphasis on non-consumptive uses in the Skilak WRA, while allowing for non-conflicting hunting activities and enhancing public safety, is also consistent with Service policy at 605 FW 1 for managing wildlife-dependent recreational uses on National Wildlife Refuges. Hunting and trapping of lynx, coyote, and wolves under State of Alaska regulations remains authorized on over 97 percent of the Refuge (over 1.9 million acres).

The final rule codifies the Service's November 2013 permanent hunting restrictions and trapping closure, established in accordance with 50 CFR 36.42, in the Skilak WRA (78 FR 66061, November 4, 2013). This rule supports implementation of the Service's 2007 final revised management plan for the Skilak WRA, which reaffirmed management objectives for the area established under the Refuge's 1985 Comprehensive Management Plan. We did not make any changes to the rule in response to these comments.

*(16) Comment:* Some commenters stated that the Service's hunting and trapping closures would not improve wildlife viewing opportunities in the Skilak WRA because the Service has failed to fully implement its facilities and habitat plans for the area, or that additional infrastructure would benefit wildlife viewing opportunities.

*Our Response:* To further development of wildlife viewing, and environmental education and interpretation opportunities, in 1988, the Service prepared a step-down plan for public use facility management and development, and renamed the area the Skilak WRA. Over $5 million in improvements to existing, and development of new, visitor facilities occurred in ensuing years as funding permitted, and included new and improved roads, scenic turn-outs, campgrounds, hiking trails, interpretive panels and information kiosks, viewing platforms, and boat launches. While not all planned developments have been completed, the Refuge currently maintains 8 facility access roads, 8 public campgrounds, 3 public use cabins, 10 hiking trails (totaling just over 20 miles), 3 scenic overlooks, 11 boat launches, 12 informational kiosks and numerous interpretive panels, and 13 developed parking areas within the Skilak WRA in support of meeting its public use management objectives for the area. The Service has also implemented small-scale habitat management projects within the Skilak WRA. The Service will continue to develop recreational infrastructure and habitat projects in the area, consistent with approved management plans, as allowed by available funding and staffing. We did not make any changes to the rule in response to these comments.

*Fishing—50 CFR 36.39(i)(7)*

*(17) Comment:* A commenter requested that dates of a fishing closure for an area 100 feet upstream and downstream of the Russian River Ferry dock on the south shore of the Kenai River be changed from June 1 to August 15 to June 11 to August 20 to provide consistency with State sport fishing regulations. One commenter opposed the closure stating it was unnecessary.

*Our Response:* In this final rule, we eliminate those fishing closure dates and specify that the closure is in effect during hours of operation of the Russian River Ferry. Ferry operations open concurrent with the opening day of recreational fishing for salmon and resident fish species in the area in June, and operations typically continue through Labor Day. We believe this change simplifies the rule while continuing to meet the intent of the existing regulations to enhance public safety in the vicinity of the Ferry dock and landing area.

*Public Use Cabin and Camping Area Management—50 CFR 36.39(i)(8)*

*(18) Comment:* Several commenters expressed opposition to the Service's proposal to prohibit dispersed camping in an area within 100 yards of the banks of the Kenai River along two sections of the River within the Refuge (upper Kenai River and Middle Kenai River), citing loss of traditional camping opportunity, impacts to visitor safety and increased risks to personal property, and expansion of habitat impacts from new trail and campsite development and use; some commenters supported this prohibition, citing the benefits of riverbank habitat protection. Some commenters stated the need for this prohibition was not adequately justified. Some commenters noted that while the prohibition was addressed for the upper Kenai River in the Refuge 2010 CCP, a similar prohibition for the Middle Kenai River had not been previously considered by the Service through a public process and additional evaluation, and public input was needed.

*Our Response:* The prohibition on dispersed camping within 100 yards of the banks of the upper Kenai River in this rule implements decisions from the Refuge's 2010 CCP and the record of decision for its accompanying environmental impact statement. River bank closures along the Kenai River are commonly used by resource agencies to protect sensitive riparian vegetation, which is subject to trampling, resulting in degradation of salmon rearing habitat. In the May 21, 2015, proposed rule, the Service proposed to implement this decision with a modification to allow for some dispersed camping along the upper Kenai River at designated sites. We chose this approach to enhance natural resource protection by reducing camping impacts along the upper Kenai River while allowing for some historical along-river camping use to continue. We have completed an evaluation of existing camping sites along the upper Kenai River and have identified 10 sites that will be designated for dispersed camping. These sites are identified on a map available on *http://www.regulations.gov* under Docket No. FWS–R7–NWRS–2014–0003 as a supporting document for this rulemaking. This map will also be available to the public electronically on the Refuge Web site (*http://www.fws.gov/refuge/kenai/*) and at the Refuge Headquarters.

The May 21, 2015, proposed rule included the same camping restrictions for the Middle Kenai River within the Refuge. We have decided not to address dispersed camping along the Middle Kenai River within the Refuge in this rulemaking. The Service will continue coordination with the State on management issues affecting the Middle Kenai River, and will monitor and evaluate camping along the upper Kenai River and use the results of monitoring to inform a future public planning process. This final rule reflects this decision.

*Other Uses and Activities—50 CFR 36.39(i)(9)*

*(19) Comment:* A commenter stated that the proposed restriction on group size to 15 people in the Swanson River and Swan Lake Canoe routes was a substantive change to current management and is not adequately

justified in the proposed rule. Some commenters stated that the rule should be modified to reflect that larger group sizes may be permitted at the discretion of the Refuge Manager, consistent with a decision in the 2010 Refuge CCP.

*Our Response:* Group size in the Swanson River and Swan Lakes Canoe Routes is limited to 15 people under current Refuge regulations (see 50 CFR 36.39(i)(7)(vii)). In this final rule, we amend the regulations to state that larger group sizes may be allowed at the discretion of the Refuge Manager through issuance of a special use permit.

*(20) Comment:* A commenter requested that the Service consider allowing use of bicycles and wheeled game carts on Refuge trails open to horses or snowmobiles; another commenter stated that industrial roads should be opened to bicycle use. A commenter was opposed to the allowance of wheeled game carts on industrial roads.

*Our Response:* Use of non-motorized wheeled vehicles, which includes bicycles, are allowed only on roads open to public vehicular access under current Refuge regulations (see 50 CFR 36.39(i)(7)(v)). Use of bicycles on industrial roads within the Refuge is prohibited to protect public safety given the year-round use of these roads by large trucks and heavy equipment. In the proposed rule, the Service proposed to allow the use of wheeled game carts on industrial roads by hunters using these roads on foot for hunting access. We consider this a minor and reasonable change with little potential to impact habitats and/or public safety. Bicycle and/or game cart use of hiking trails and backcountry areas pose more substantive issues because of their potential to impact habitats, create conflicts between trail users, and pose public safety issues. In 2007, the Service evaluated compatibility of several Refuge activities involving general public access, recreation, and transport methods that are non-motorized, including bicycling. In that evaluation, we determined that, subject to Refuge regulations that restrict it to maintained roads open to public vehicular access, which are in place to prevent harm to refuge resources, bicycling was a compatible activity. We did not make any changes to the rule in response to these comments.

*(21) Comment:* One commenter stated that additional Refuge trails, including trails in the Skilak Lake area, should be closed to horseback riding and packstock use.

*Our Response:* We proposed, and in this rule make final, a prohibition that horses or other packstock are not allowed on the Fuller Lakes Trail and on all trails within the Skilak WRA and the Refuge Headquarters area. We did not make any changes to the rule in response to this comment.

*(22) Comment:* Some commenters stated that amending Refuge regulations to allow for noncommercial collection of natural resources (berries, edible plants, shed antlers) is not necessary, as commercial harvest is already prohibited on Alaska refuges and recreational activities are authorized as long as they are compatible with Refuge purposes. The commenters recommended that these uses be addressed through a compatibility determination, as has been the done on other Alaska refuges. A commenter stated that daily and annual limits on the number of shed antlers that could be collected were unnecessary and overly restrictive.

*Our Response:* Recreational activities, including but not limited to hunting, fishing, nature observation, photography, boating, camping, hiking, picnicking, and other related activities are generally authorized, if compatible (50 CFR 36.31(a)) on refuges in Alaska. This is a regulatory interpretation to implement apparent Congressional intent of ANILCA and often is referred to ''Alaska Refuges are open unless closed.''

However, 50 CFR part 36, the Alaska National Wildlife Refuge regulations, are supplemental to other National Wildlife Refuge System (NWRS) regulations. All other NWRS regulations also apply to Alaska refuges unless they are specifically modified or superseded by ANILCA (50 CFR 36.1(a)). ANILCA does not specifically address collection of natural resources. It does address sport hunting, trapping, fishing, commercial fishing, subsistence activities, and traditional means of access. The regulations at 50 CFR 27.51 prohibit the collecting of any plant or animal on any national wildlife refuge without a permit (the definition for animals, specifically fish and wildlife, includes any part of the animal (50 CFR 25.12(a))). 50 CFR 27.61 prohibits the unauthorized removal of natural objects from any national wildlife refuge.

Legal sport hunting, fishing and trapping are not at issue in that they are authorized through licenses, permits, and established regulatory processes. Subsistence take of fish and wildlife is likewise authorized by statute and implementing regulations. Subsistence use of timber and plant material is generally authorized, subject to certain restrictions, at 50 CFR 36.15. 50 CFR 36.15(b) specifically allows for ''the noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood'' without a permit. While many refuges in Alaska have determined personal gathering of berries and other natural resources to be compatible, recreational users are not afforded the same authorization under regulations for similar activities on refuges in Alaska (with the exception of firewood gathering by campers at Kenai NWR (50 CFR 36.39(i)(7)(i)(E)). The personal collection, without permit, of animal parts such as bones, skulls, horns, and antlers is also currently not authorized for any member of the public.

Personal, noncommercial use of berries and other edible plant materials, and collection of naturally shed moose and caribou antlers, on some Alaska refuges are desired activities by many visitors. The Service has chosen to authorize this activity, subject to reasonable limitations for the collection of shed antlers, on the Kenai NWR under this rulemaking in recognition of the extent of recreational visitation and scope of this use on this Refuge. The Service may consider authorization of this use on other refuges in Alaska in the future. We did not make any changes to the rule in response to these comments.

*Russian River Special Management Area—50 CFR 36.39(i)(11)*

*(23) Comment:* One commenter opposed the proposed food storage requirements, which include required use of bear proof containers, citing high cost of such containers. Some commenters supported the proposed requirements as a means of reducing human-bear conflicts and due to the need for consistency between U.S. Forest Service and Refuge regulations in the Russian River area.

*Our Response:* Food and retained fish storage regulations have been an integral component of interagency efforts to enhance public safety and wildlife resource conservation by managing wildlife attractants in order to reduce the potential for negative human-bear interactions in the Russian River Special Management Area. This rule codifies and makes permanent food and retained fish storage regulations issued by the Service as temporary restrictions in recent years, and provides consistency with U.S. Forest Service food storage regulations applying to adjacent Chugach National Forest lands (36 CFR 261.58). We did not make any changes to the rule in response to these comments.

*General Comments*

(24) *Comment:* One commenter stated that failure by the Service to announce the dates and locations of public meetings and hearings to be held, or of the Service's intention to hold the meetings and hearings, in the **Federal Register** may have unduly limited public engagement. The commenter further stated that the proposed rule does not meet the intent of ANILCA's implementing regulations and the Administrative Procedure Act (APA; 5 U.S.C. subchapter II), which specifically recognizes the importance of public meetings associated with rulemaking and of announcing those meetings in the **Federal Register**.

*Our Response:* To meet regulatory requirements (50 CFR 36.42) for providing notice and public hearings for this rulemaking, the Service held two public hearings during the open public comment period. Hearings were held on June 17, 2016, in Soldotna, Alaska, and on June 18, 2016, in Anchorage, Alaska. The Service published announcements of the dates, locations, and times of scheduled public hearings to be held in Alaska on the proposed rule following the proposal's publication in the **Federal Register** on May 21, 2015 (80 FR 29277). Written notice of the dates, locations, and times of the public hearings were posted on the Refuge Web site immediately following publication of the proposed rule in the **Federal Register**, along with associated information on the proposed rule and its availability for public comment. The public meetings and hearings were also subsequently announced through news releases sent to local (Kenai Peninsula) and Statewide (Anchorage) media outlets including newspaper, radio, and television outlets, and through publication of Legal Notices, which published in local (Peninsula Clarion) and Statewide (Alaska Dispatch News) newspapers.

TABLE—SUMMARY OF CHANGES FROM PROPOSED RULE

| What we proposed in the May 21, 2015, proposed rule (80 FR 29277) | What we are making final in this final rule |
|---|---|
| **Aircraft** | |
| We did not include a legal description of expanded Chickaloon Flats area. | We are adding a legal description of expanded Chickaloon Flats area. |
| **Boating** | |
| We proposed that operation of motors with a total propshaft horsepower rating of greater than 10 horsepower would be prohibited on selected lakes. | We are not including that prohibition. |
| **Firearms Discharge** | |
| We did not include language on discharge of firearms in defense of life and property. | We are adding language that the firearms discharge regulations do not preclude use of firearms for taking game in defense of life and property as defined under State law. |
| **Fishing** | |
| We proposed that fishing would be prohibited from June 1 through August 15 during hours of operation of the Russian River Ferry along the south bank of the Kenai River from a point 100 feet upstream to a point 100 feet downstream of the ferry dock. | We are removing the dates from the statement. |
| **Camping** | |
| We proposed that camping within 100 yards of the Upper Kenai River and the Middle Kenai River downstream of Skilak Lake (river mile 50 to river mile 45) would be restricted to designated sites. | We are retaining this restriction for the Upper Kenai River, but we are not including it for the Middle Kenai River. We have added information on the availability of a map denoting designated sites. |
| **Maximum Group Size on Canoe Routes** | |
| We proposed to retain a requirement that the maximum group size on the canoe routes is 15 people. | Under this final rule, the Refuge Manager may authorize larger groups under the terms and conditions of a special use permit (FWS Form 3–1383–G). |
| **Leash Length in Campgrounds** | |
| We proposed that pets in developed campgrounds and parking lots must be on a leash that is no longer than 6 feet in length. | We are adopting the current maximum leash length which requires that pets in developed campgrounds and parking lots be on a leash that is no longer than 9 feet in length. |

**Plain Language Mandate**

In this rule, we made some of the revisions to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (*i.e.,* ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

**Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

As described above and in the May 21, 2015, proposed rule (80 FR 29277), the changes in this rule will impact visitor use for wildlife-dependent recreation on the Refuge. Modifying the visitor use regulations will have small incremental changes on total visitor use days associated with particular activities. For example, visitor use associated with aircraft motorboats and collection of natural resources may increase slightly. However, visitor use associated with camping may decline slightly. We estimate that the overall change in recreation use-days will represent less than 1 percent of the average recreation use-days on the Refuge (1 million visitors annually).

Small businesses within the retail trade industry (such as hotels, gas stations, etc.) (NAIC 44) and accommodation and food service establishments (NAIC 72) may be impacted by spending generated by Refuge visitation. Seventy-six percent of establishments in the Kenai Peninsula Borough qualify as small businesses. This statistic is similar for retail trade establishments (72 percent) and accommodation and food service establishments (65 percent). Due to the negligible change in average recreation days, this final rule will have a minimal effect on these small businesses.

With the negligible change in overall visitation anticipated from this final rule, it is unlikely that a substantial number of small entities will have more than a small economic effect. Therefore, we certify that this final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

**Small Business Regulatory Enforcement Fairness Act**

This final rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; federal, State, or local government agencies; or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act**

As this rule applies to public use on a federally owned and managed Refuge, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (E.O. 12630)**

In accordance with E.O. 12630, this rule will not have significant takings implications. This rule affects only visitors at Kenai NWR and describes what they can do while on the Refuge.

**Federalism (E.O. 13132)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections, above, this rule will not have sufficient federalism summary impact statement implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this rule, we worked with State governments.

**Civil Justice Reform (Executive Order 12988)**

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meet criteria of section 3(b) (2) requiring that all regulations be written in clear language and contain clear legal standards.

**Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**Government-to-Government Relationship with Tribes**

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951 (May 4, 1994)), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249 (November 9, 2000)), and the Department of the Interior Manual, 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We also complied with 512 DM 4 under Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations, August 10, 2012. We did seek Tribes' and Corporations' input in evaluating the proposed rule. In

December 2014, we invited formal consultation in writing to seven Tribes and seven Native Corporations and asked for their input during development of the proposed rule. Concurrently, we provided information on the proposed rule and offered to meet informally to provide additional information. We also sent written correspondence via email to the Tribes and Native Corporations prior to publication of the proposed rule in May 2015, to again offer opportunity for formal consultation and/or informal information exchange, to request input, and to provide notice of the proposal's upcoming publication and the public comment period. We did not receive any requests for government-to-government consultation. We informally discussed the proposed rule as part of meetings with representatives of the Ninilchik Traditional Council and Ninilchik Native Association held primarily to discuss subsistence hunting and fishing on the Refuge, and corresponded via telephone and email with representatives of the Tyonek Native Corporation who had specific questions on the proposed rule.

**Paperwork Reduction Act**

This rule does not contain any information collection requirements other than those already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Numbers 1018–0102 (expires June 30, 2017), 1018–0140 (expires May 31, 2018), and 1018–0153 (expires December 31, 2018). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Endangered Species Act Section 7 Consultation**

We complied with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when we developed the Kenai NWR comprehensive conservation plan.

**National Environmental Policy Act**

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of this final rule and ensuing regulations because they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). We have determined that this final rule is considered a categorical exclusion under 516 DM 8.5(C)(3), which categorically excludes the ''issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental impacts.''

This final rule supports the Service's management direction identified through approved Refuge management plans, including the 2010 Kenai NWR revised CCP and the 2007 Kenai NWR Skilak WRA revised final management plan.

For the CCP, we prepared a draft revised CCP and a draft environmental impact statement (DEIS) under NEPA, and made them available for comment for public comment on May 8, 2008 (73 FR 26140). The public comment period on those draft documents began on May 8, 2008, and ended on September 1, 2008. We then prepared our final revised CCP and final EIS, and made them available for public comment for 30 days, beginning August 27, 2009 (74 FR 43718). We announced the availability of the record of decision for the final revised CCP and final EIS on January 11, 2010 (75 FR 1404).

We completed a draft management plan and draft environmental assessment (EA) under NEPA for the Skilak WRA management plan in October 2006. We distributed approximately 2,500 copies to individuals, businesses, agencies, and organizations that had expressed an interest in receiving Kenai NWR planning-related documents. We also announced the availability of these documents through radio stations, television stations, and newspapers on the Kenai Peninsula and in the city of Anchorage. An electronic version of the plan was made available on the Kenai NWR planning Web site, and a Skilak email address was created to facilitate public comment on the draft plan. Presentations were made to the Alaska Board of Game and the Friends of Alaska National Wildlife Refuges. The draft plan and draft environmental assessment (EA) were made available for public review and comment during a 30-day period ending November 17, 2006. We signed a finding of no significant impact (FONSI) for the final revised management plan first on December 6, 2006, and then later (as corrected) on May 11, 2007.

You can obtain copies of the CCP/EIS and the revised final management plan for the Skilak WRA either on the Federal eRulemaking Portal, *http://www.regulations.gov,* under Docket No. FWS–R7–NWRS–2014–0003, or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Primary Author**

Andy Loranger, Refuge Manager, Kenai NWR, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 36**

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

**Regulation Promulgation**

For the reasons set forth in the preamble, we amend 50 CFR part 36 as follows:

## PART 36—ALASKA NATIONAL WILDLIFE REFUGES

■ 1. The authority citation for part 36 continues to read as follows:

**Authority:** 16 U.S.C. 460(k) *et seq.,* 668dd–668ee, 3101 *et seq.*

■ 2. Amend § 36.2 by adding, in alphabetical order, definitions for ''Operate'' and ''Structure'' to read as follows:

**§ 36.2 What do these terms mean?**

* * * * *

*Operate* means to manipulate the controls of any conveyance, such as, but not limited to, an aircraft, snowmobile, motorboat, off-road vehicle, or any other motorized or non-motorized form of vehicular transport as to direct its travel, motion, or purpose.

* * * * *

*Structure* means something temporarily or permanently constructed, built, or placed; and constructed of natural or manufactured parts including, but not limited to, a building, shed, cabin, porch, bridge, walkway, stair steps, sign, landing, platform, dock, rack, fence, telecommunication device, antennae, fish cleaning table, satellite dish/mount, or well head.

* * * * *

■ 3. Amend § 36.39 by revising paragraph (i) to read as follows:

**§ 36.39 Public use.**

* * * * *

(i) *Kenai National Wildlife Refuge.* Maps of designated areas open to specific public use activities on the refuge are available from Refuge Headquarters at the following address: 1 Ski Hill Road, Soldotna, AK.

(1) *Aircraft.* Except in an emergency, the operation of aircraft on the Kenai

National Wildlife Refuge is authorized only in designated areas, as described in this paragraph (i)(1).

(i) We allow the operation of airplanes within the Kenai Wilderness on the following designated lakes, and under the restrictions noted:

(A) *Dave Spencer (Canoe Lakes) Unit.*

(*1*) Bedlam Lake.
(*2*) Bird Lake.
(*3*) Cook Lake.
(*4*) Grouse Lake.
(*5*) King Lake.
(*6*) Mull Lake.
(*7*) Nekutak Lake.
(*8*) Norak Lake.
(*9*) Sandpiper Lake.
(*10*) Scenic Lake.
(*11*) Shoepac Lake.
(*12*) Snowshoe Lake.
(*13*) Taiga Lake.
(*14*) Tangerra Lake.
(*15*) Vogel Lake.
(*16*) Wilderness Lake.
(*17*) Pepper, Gene, and Swanson lakes are open to operation of airplanes only to provide access for ice fishing.

(B) *Andrew Simons Unit.*

(*1*) Emerald Lake.
(*2*) Green Lake.
(*3*) Harvey Lake.
(*4*) High Lake.
(*5*) Iceberg Lake.
(*6*) Kolomin Lakes.
(*7*) Lower Russian Lake.
(*8*) Martin Lake.
(*9*) Pothole Lake.
(*10*) Twin Lakes.
(*11*) Upper Russian Lake.
(*12*) Windy Lake.
(*13*) Dinglestadt Glacier terminus lake.
(*14*) Wosnesenski Glacier terminus lake.
(*15*) Tustumena Lake and all lakes within the Kenai Wilderness within 1 mile of the shoreline of Tustumena Lake.
(*16*) All unnamed lakes in sections 1 and 2, T. 1 S., R. 10 W., and sections 4, 5, 8, and 9, T. 1 S., R. 9 W., Seward Meridian.
(*17*) An unnamed lake in sections 28 and 29, T. 2 N., R. 4 W., Seward Meridian: The Refuge Manager may issue a special use permit (FWS Form 3–1383–G) for the operation of airplanes on this lake to successful applicants for certain State of Alaska, limited-entry, drawing permit hunts. Successful applicants should contact the Refuge Manager to request information.

(C) *Mystery Creek Unit.* An unnamed lake in section 11, T. 6 N., R. 5 W., Seward Meridian.

(ii) We allow the operation of airplanes on all lakes outside of the Kenai Wilderness, except that we prohibit aircraft operation on:

(A) The following lakes with recreational developments, including, but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides, north of the Sterling Highway:

(*1*) Afonasi Lake.
(*2*) Anertz Lake.
(*3*) Breeze Lake.
(*4*) Cashka Lake.
(*5*) Dabbler Lake.
(*6*) Dolly Varden Lake.
(*7*) Forest Lake.
(*8*) Imeri Lake.
(*9*) Lili Lake.
(*10*) Mosquito Lake.
(*11*) Nest Lake.
(*12*) Rainbow Lake.
(*13*) Silver Lake.
(*14*) Upper Jean Lake.
(*15*) Watson Lake.
(*16*) Weed Lake.

(B) All lakes within the Skilak Wildlife Recreation Area (south of Sterling Highway and north of Skilak Lake), except for Bottenintnin Lake (open to airplanes year-round) and Hidden Lake (open to airplanes only to provide access for ice fishing).

(C) Headquarters Lake (south of Soldotna), except for administrative purposes. You must request permission from the Refuge Manager.

(iii) Notwithstanding any other provisions of this part, we prohibit the operation of aircraft from May 1 through September 10 on any lake where nesting trumpeter swans or their broods or both are present.

(iv) We prohibit the operation of wheeled airplanes, with the following exceptions:

(A) We allow the operation of wheeled airplanes, at the pilot's risk, on the unmaintained Big Indian Creek Airstrip; on gravel areas within ½ mile of Wosnesenski Glacier terminus lake; and within the SE¼, section 16 and SW¼, section 15, T. 4 S., R. 8 W., Seward Meridian.

(B) We allow the operation of wheeled airplanes, at the pilot's risk, within designated areas of the Chickaloon River Flats, including all of sections 5 and 6 and parts of sections 2, 3, 4, 7, 8, 9, 11, and 16, T. 9 N., R. 4 W.; all of section 1 and parts of sections 2, 3, 4, 5, 11, and 12, T. 9 N., R. 5 W.; all of sections 33 and 34 and parts of sections 24, 25, 26, 27, 28, 29, 31, 32, and 35, T. 10 N., R. 4 W.; all of section 33 and parts of sections 19, 27, 28 29, 30 32, 34, 35, and 36, T. 10 N., R. 5 W, Seward Meridian.

(v) We allow the operation of airplanes on the Kasilof River, on the Chickaloon River (from the outlet to mile 6.5), and on the Kenai River below Skilak Lake (from June 15 through March 14). We prohibit aircraft operation on all other rivers on the refuge.

(vi) We prohibit the operation of unlicensed aircraft anywhere on the refuge except as authorized under terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(vii) We prohibit air dropping any items within the Kenai Wilderness except as authorized under terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(2) *Motorboats.* (i) We allow motorboat operation on all waters of the refuge, except that:

(A) We prohibit motorboat operation within the Dave Spencer (Canoe Lakes) Unit of the Kenai Wilderness, including those portions of the Moose and Swanson rivers within this Unit, except that we allow motorboat operation on those lakes designated for airplane operations as provided in paragraph (i)(1) of this section and shown on a map available from Refuge Headquarters.

(B) We prohibit motorboat operation on the Kenai River from the eastern refuge boundary near Sportsmans Landing and the confluence of the Russian River downstream to Skilak Lake. You may have a motor attached to your boat and drift or row through this section, provided the motor is not operating.

(C) We prohibit motorboat operation on the Kenai River from the outlet of Skilak Lake (river mile 50) downstream for approximately 3 miles (river mile 47) between March 15 and June 14, inclusive. You may have a motor attached to your boat and drift or row through this section, provided the motor is not operating.

(D) We prohibit the operation of motors with a total propshaft horsepower rating greater than 10 horsepower on the Moose, Swanson, Funny, Chickaloon (upstream of river mile 7.5), Killey, and Fox rivers.

(E) On the Kenai River downstream of Skilak Lake (river mile 50) to the refuge boundary (river mile 45.5), we restrict motorboat operation to only those motorboats with 4-stroke or direct fuel injection motors with a total propshaft horsepower rating of 50 horsepower or less, and that are up to 21 feet in length and up to 106 inches in width. On Skilak Lake, we restrict motorboat operation to only those motorboats with 4-stroke or direct fuel injection motors.

(F) A ''no wake'' restriction applies to the entire water body of Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden, and Rainbow lakes.

(ii) Notwithstanding any other provisions of these regulations, we prohibit the operation of motorboats from May 1 through September 10 on any lake where nesting trumpeter swans or their broods or both are present.

(3) *Off-road vehicles.* (i) We prohibit the operation of all off-road vehicles, as defined at § 36.2, except that four-wheel drive, licensed, and registered motor vehicles designed and legal for highway use may operate on designated roads, rights-of-way, and parking areas open to public vehicular access. This prohibition applies to off-road vehicle operation on lake and river ice. At the operator's risk, we allow licensed and registered motor vehicles designed and legal for highway use on Hidden, Engineer, Kelly, Petersen, and Watson lakes only to provide access for ice fishing. You must enter and exit the lakes via existing boat ramps.

(ii) We prohibit the operation of air cushion watercraft, air-thrust boats, jet skis and other personal watercraft, and all other motorized watercraft except motorboats.

(iii) The Refuge Manager may issue a special use permit (FWS Form 3–1383–G) for the operation of specialized off-road vehicles and watercraft for certain administrative activities (to include fish and wildlife-related monitoring, vegetation management, and infrastructure maintenance in permitted rights-of-way).

(4) *Snowmobiles.* We allow the operation of snowmobiles only in designated areas and only under the following conditions:

(i) We allow the operation of snowmobiles from December 1 through April 30 only when the Refuge Manager determines that there is adequate snow cover to protect underlying vegetation and soils. During this time, the Refuge Manager will authorize, through public notice (a combination of any or all of the following: Internet, newspaper, radio, and/or signs), the use of snowmobiles less than 48 inches in width and less than 1,000 pounds (450 kg) in weight.

(ii) We prohibit snowmobile operation:

(A) In all areas above timberline, except the Caribou Hills.

(B) In an area within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., Seward Meridian, east of the Sterling Highway right-of-way, including the Refuge Headquarters complex, the environmental education/cross-country ski trails, Headquarters and Nordic lakes, and the area north of the east fork of Slikok Creek and northwest of a prominent seismic trail to Funny River Road.

(C) In an area including the Swanson River Canoe Route and portages, beginning at the Paddle Lake parking area, then west and north along the Canoe Lakes wilderness boundary to the Swanson River, continuing northeast along the river to Wild Lake Creek, then east to the west shore of Shoepac Lake, south to the east shore of Antler Lake, and west to the beginning point near Paddle Lake.

(D) In an area including the Swan Lake Canoe Route and several road-connected public recreational lakes, bounded on the west by the Swanson River Road, on the north by the Swan Lake Road, on the east by a line from the east end of Swan Lake Road south to the west bank of the Moose River, and on the south by the refuge boundary.

(E) In the Skilak Wildlife Recreation Area, except on Hidden, Kelly, Petersen, and Engineer lakes only to provide access for ice fishing. You must enter and exit these lakes via the existing boat ramps and operate exclusively on the lakes. Within the Skilak Wildlife Recreation Area, only Upper and Lower Skilak Lake campground boat launches may be used as access points for snowmobile use on Skilak Lake.

(F) On maintained roads within the refuge. Snowmobiles may cross a maintained road after stopping.

(G) For racing, or to herd, harass, haze, pursue, or drive wildlife.

(5) *Hunting and trapping.* We allow hunting and trapping on the refuge in accordance with State and Federal laws and consistent with the following provisions:

(i) You may not discharge a firearm within ¼ mile of designated public campgrounds, trailheads, waysides, buildings including public use cabins, or the Sterling Highway from the east Refuge boundary to the east junction of the Skilak Loop Road. You may not discharge a firearm within ¼ mile of the west shoreline of the Russian River from the upstream extent of the Russian River Falls downstream to its confluence with the Kenai River, and from the shorelines of the Kenai River from the east refuge boundary downstream to Skilak Lake and from the outlet of Skilak Lake downstream to the refuge boundary, except that firearms may be used in these areas to dispatch animals while lawfully trapping and shotguns may be used for waterfowl and small game hunting along the Kenai River. These firearms discharge regulations do not preclude use of firearms for taking game in defense of life and property as defined under State law.

(ii) We prohibit hunting over bait, with the exception of hunting for black bear, and then only as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(iii) We prohibit hunting big game with the aid or use of a dog, with the exception of hunting for black bear, and then only as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(iv) We prohibit hunting and trapping within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., Seward Meridian, encompassing the Kenai Refuge Headquarters, Environmental Education Center, Visitor Center Complex, and associated public use trails. A map of closure areas is available at Refuge Headquarters.

(v) The additional provisions for hunting and trapping within the Skilak Wildlife Recreation Area are set forth in paragraph (i)(6) of this section.

(6) *Hunting and trapping within the Skilak Wildlife Recreation Area.* (i) The Skilak Wildlife Recreation Area is bound by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop Road (Mile 58), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Campground, then northerly along the Lower Skilak campground road and the Skilak Loop Road to its westernmost junction with the Sterling Highway (Mile 75.1), then easterly along the Sterling Highway to the point of origin.

(ii) The Skilak Wildlife Recreation Area (Skilak Loop Management Area) is closed to hunting and trapping, except as provided in paragraphs (i)(6)(iii) and (iv) of this section.

(iii) You may hunt moose only with a permit issued by the Alaska Department of Fish and Game and in accordance with the provisions set forth in paragraph (i)(5) of this section.

(iv) You may hunt small game in accordance with the provisions set forth in paragraph (i)(5) of this section and:

(A) Using falconry and bow and arrow only from October 1 through March 1; or

(B) If you are a youth hunter 16 years old or younger, who is accompanied by a licensed hunter 18 years old or older who has successfully completed a certified hunter education course (if the youth hunter has not), or by someone born on or before January 1, 1986. Youth hunters must use standard .22 rimfire or shotgun, and may hunt only in that portion of the area west of a line from the access road from the Sterling Highway to Kelly Lake, the Seven Lakes

Trail, and the access road from Engineer Lake to Skilak Lake Road, and north of the Skilak Lake Road. The youth hunt occurs during each weekend from November 1 to December 31, including the Friday following Thanksgiving. State of Alaska bag limit regulations apply.

(7) *Fishing.* We allow fishing on the refuge in accordance with State and Federal laws, and consistent with the following provisions:

(i) We prohibit fishing during hours of operation of the Russian River Ferry along the south bank of the Kenai River from a point 100 feet upstream to a point 100 feet downstream of the ferry dock.

(ii) Designated areas along the Kenai River at the two Moose Range Meadows public fishing facilities along Keystone Drive are closed to public access and use. At these facilities, we allow fishing only from the fishing platforms and by wading in the Kenai River. To access the river, you must enter and exit from the stairways attached to the fishing platforms. We prohibit fishing from, walking or placing belongings on, or otherwise occupying designated areas along the river in these areas.

(8) *Public use cabin and camping area management.* We allow camping and use of public use cabins on the refuge in accordance with the following conditions:

(i) Unless otherwise further restricted, camping may not exceed 14 days in any 30-day period anywhere on the refuge.

(ii) Campers may not spend more than 7 consecutive days at Hidden Lake Campground or in public use cabins.

(iii) The Refuge Manager may establish a fee and registration permit system for overnight camping at designated campgrounds and public use cabins. At all of the refuge's fee-based campgrounds and public use cabins, you must pay the fee in full prior to occupancy. No person may attempt to reserve a refuge campsite by placing a placard, sign, or any item of personal property on a campsite. Reservations and a cabin permit are required for public use cabins, with the exception of the Emma Lake and Trapper Joe cabins, which are available on a first-come, first-served basis. Information on the refuge's public use cabin program is available from Refuge Headquarters and online at *http://www.recreation.gov.*

(iv) Campers in developed campgrounds and public use cabins must follow all posted campground and cabin occupancy rules.

(v) You must observe quiet hours from 11:00 p.m. until 7:00 a.m. in all developed campgrounds, parking areas, and public use cabins.

(vi) Within developed campgrounds, we allow camping only in designated sites.

(vii) *Campfires.* (A) Within developed campgrounds, we allow open fires only in portable, self-contained, metal fire grills, or in the permanent fire grates provided. We prohibit moving a permanent fire grill or grate to a new location.

(B) Campers and occupants of public use cabins may cut only dead and down vegetation for campfire use.

(C) You must completely extinguish (put out cold) all campfires before permanently leaving a campsite.

(viii) While occupying designated campgrounds, parking areas, or public use cabins, all food (including lawfully retained fish, wildlife, or their parts), beverages, personal hygiene items, odiferous refuse, or any other item that may attract bears or other wildlife, and all equipment used to transport, store, or cook these items (such as coolers, backpacks, camp stoves, and grills) must be:

(A) Locked in a hard-sided vehicle, camper, or camp trailer; in a cabin; or in a commercially produced and certified bear-resistant container; or

(B) Immediately accessible to at least one person who is outside and attending to the items.

(ix) We prohibit deposition of solid human waste within 100 feet of annual mean high water level of any wetland, lake, pond, spring, river, stream, campsite, or trail. In the Swan Lake and Swanson River Canoe Systems, you must bury solid human waste to a depth of 6 to 8 inches.

(x) We prohibit tent camping within 600 feet of each public use cabin, except by members and guests of the party registered to that cabin.

(xi) Within 100 yards of the Kenai River banks along the Upper Kenai River from river mile 73 to its confluence with Skilak Lake (river mile 65), we allow camping only at designated primitive campsites. Campers can spend no more than 3 consecutive nights at the designated primitive campsites.

(xii) We prohibit camping in the following areas of the refuge:

(A) Within ¼ mile of the Sterling Highway, Ski Hill, or Skilak Loop roads, except in designated campgrounds.

(B) On the two islands in the lower Kenai River between mile 25.1 and mile 28.1 adjacent to the Moose Range Meadows Subdivision.

(C) At the two refuge public fishing facilities and the boat launching facility along Keystone Drive within the Moose Range Meadows Subdivision, including within parking areas, and on trails, fishing platforms, and associated refuge lands.

(9) *Other uses and activities*—(i) *Must I register to canoe on the refuge?* Canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points using the registration forms provided. The maximum group size on the Canoe Routes is 15 people. The Refuge Manager may authorize larger groups under the terms and conditions of a special use permit (FWS Form 3–1383–G).

(ii) *May I use motorized equipment within designated Wilderness areas on the refuge?* Within the Kenai Wilderness, except as provided in this paragraph (i), we prohibit the use of motorized equipment, including, but not limited to, chainsaws; generators; power tools; powered ice augers; and electric, gas, or diesel power units. We allow the use of motorized wheelchairs, when used by those whose disabilities require wheelchairs for locomotion. We allow the use of snowmobiles, airplanes, and motorboats in designated areas in accordance with the regulations in this paragraph (i).

(iii) *May I use non-motorized wheeled vehicles on the refuge?* Yes, you may use bicycles and other non-motorized wheeled vehicles, but only on refuge roads and rights-of-way designated for public vehicular access. In addition, you may use non-motorized, hand-operated, wheeled game carts, specifically manufactured for such purpose, to transport meat of legally harvested big game on designated industrial roads closed to public vehicular access. Information on these designated roads is available from Refuge Headquarters. Further, you may use a wheelchair if you have a disability that requires its use for locomotion.

(iv) *May I ride or use horses, mules, or other domestic animals as packstock on the refuge?* Yes, as authorized under State law, except on the Fuller Lakes Trail and on all trails within the Skilak Wildlife Recreation Area and the Refuge Headquarters area. All animals used as packstock must remain in the immediate control of the owner, or his/her designee. All hay and feed used on the refuge for domestic stock and sled dogs must be certified under the State of Alaska's Weed Free Forage certification program.

(v) *Are pets allowed on the refuge?* Yes, pets are allowed, but you must be in control of your pet(s) at all times. Pets in developed campgrounds and parking lots must be on a leash that is no longer than 9 feet in length. Pets are not allowed on hiking and ski trails in the Refuge Headquarters area.

(vi) *May I cut firewood on the refuge?* The Refuge Manager may open designated areas of the refuge for firewood cutting. You may cut and/or remove firewood only for personal, noncommercial use, and only as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(vii) *May I cut Christmas trees on the refuge?* You may cut one spruce tree per household per year no larger than 20 feet in height from Thanksgiving through Christmas Day. Trees may be taken anywhere on the refuge, except that we prohibit taking trees from within the 2-square-mile Refuge Headquarters area on Ski Hill Road. Trees must be harvested with hand tools, and must be at least 150 feet from roads, trails, campgrounds, picnic areas, and waterways (lakes, rivers, streams, or ponds). Stumps from harvested trees must be trimmed to less than 6 inches in height.

(viii) *May I pick berries and other edible plants on the refuge?* You may pick and possess unlimited quantities of berries, mushrooms, and other edible plants for personal, noncommercial use.

(ix) *May I collect shed antlers on the refuge?* You may collect and keep up to eight (8) naturally shed moose and/or caribou antlers annually for personal, noncommercial use. You may collect no more than two (2) shed antlers per day.

(x) *May I leave personal property on the refuge?* You may not leave personal property unattended longer than 72 hours unless in a designated area or as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager. However, refuge visitors involved in approved, extended overnight activities, including hunting, fishing, and camping, may leave personal property unattended during their continuous stay, but in no case longer than 14 days.

(xi) *If I find research marking devices, what do I do?* You must return any radio transmitter collars, neck and leg bands, ear tags, or other fish and wildlife marking devices found or recovered from fish and wildlife on the refuge within 5 days of leaving the refuge to the Refuge Manager or the Alaska Department of Fish and Game.

(xii) *Are there special regulations for alcoholic beverages?* In addition to the provisions of 50 CFR 27.81, anyone under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages on the refuge in violation of State of Alaska law or regulations.

(xiii) *Are there special regulations for public gatherings on the refuge?* In addition to the provisions of 50 CFR 26.36, a special use permit (FWS Form 3–1383–G) is required for any outdoor public gathering of more than 20 persons.

(10) *Areas of the refuge closed to public use.* (i) From March 15 through September 30, you may not approach within 100 yards of, or walk on or otherwise occupy, the rock outcrop islands in Skilak Lake traditionally used by nesting cormorants and gulls. A map depicting the closure is available from the Refuge Headquarters.

(ii) Headquarters Lake, adjacent to the Kenai Refuge Headquarters area, is closed to boating.

(11) *Area-specific regulations for the Russian River Special Management Area.* The Russian River Special Management Area includes all refuge lands and waters within ¼ mile of the eastern refuge boundary along the Russian River from the upstream end of the fish ladder at Russian River Falls downstream to the confluence with the Kenai River, and within ¼ mile of the Kenai River from the eastern refuge boundary downstream to the upstream side of the powerline crossing at river mile 73, and areas managed by the refuge under memorandum of understanding or lease agreement at the Sportsman Landing facility. In the Russian River Special Management Area:

(i) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all attractants, and all equipment used to transport attractants (such as backpacks and coolers) at all times. Attractants are any substance, natural or manmade, including but not limited to, items of food, beverage, personal hygiene, or odiferous refuse that may draw, entice, or otherwise cause a bear or other wildlife to approach. Closely attend means to retain on the person or within the person's immediate control and in no case more than 3 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(ii) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all lawfully retained fish at all times. Closely attend means to keep within view of the person and be near enough for the person to quickly retrieve, and in no case more than 12 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(iii) We prohibit overnight camping except in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas. Campers may not spend more than 2 consecutive days at these designated camping facilities.

(iv) You may start or maintain a fire only in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas, and then only in portable, self-contained, metal fire grills, or in the permanent fire grates provided. We prohibit moving a permanent fire grill or grate to a new location. You must completely extinguish (put out cold) all campfires before permanently leaving your campsite.

(12) *Area-specific regulations for the Moose Range Meadows Subdivision non-development and public use easements.* (i) Where the refuge administers two variable width, non-development easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, you may not erect any building or structure of any kind; remove or disturb gravel, topsoil, peat, or organic material; remove or disturb any tree, shrub, or plant material of any kind; start a fire; or use a motorized vehicle of any kind (except a wheelchair occupied by a person with a disability), unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(ii) Where the refuge administers two 25-foot-wide public use easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, we allow public entry subject to applicable Federal regulations and the following provisions:

(A) You may walk upon or along, fish from, or launch or beach a boat upon an area 25 feet upland of ordinary high water, provided that no vehicles (except wheelchairs) are used. We prohibit non-emergency camping, structure construction, and brush or tree cutting within the easements.

(B) From July 1 to August 15, you may not use or access any portion of the 25-foot-wide public easements or the three designated public easement trails located parallel to the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the public use easements. Maps depicting the seasonal closure are available from Refuge Headquarters.

(13) *Area-specific regulations for Alaska Native Claims Settlement Act*

*Section 17(b) easements.* Where the refuge administers Alaska Native Claims Settlement Act Section 17(b) easements to provide access to refuge lands, no person may block, alter, or destroy any section of the road, trail, or undeveloped easement, unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager. No person may interfere with lawful use of the easement or create a public safety hazard on the easement. Section 17(b) easements are depicted on a map available from Refuge Headquarters.

* * * * *

Dated: April 12, 2016.

**Michael Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016–10288 Filed 5–4–16; 8:45 am]

**BILLING CODE 4333–15–P**

# Proposed Rules

Federal Register
Vol. 81, No. 87
Thursday, May 5, 2016

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.

## OFFICE OF SPECIAL COUNSEL

### 5 CFR Part 1820

### Revision of Regulations Governing Freedom of Information Act Requests and Appeals, and Revision of Touhy Regulations Governing Release of Information in Response to Legal Proceedings

**AGENCY:** U.S. Office of Special Counsel.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Office of Special Counsel (OSC) seeks public comment on a proposed rule that would update and clarify the procedures for submitting Freedom of Information Act (FOIA) requests and appeals, and would modify the manner in which FOIA requests qualify for expedited processing at OSC. The proposed rule would describe additional methods for submitting FOIA requests and appeals. It would also promote efficiency in FOIA administration by enhancing OSC's ability to respond to certain requests on an expedited basis. The proposed rule makes minor technical revisions to the name of an OSC unit and to OSC's Internet and physical address information.

OSC also seeks public comment on a proposed rule that would establish procedures that requesters must follow when making demands on or requests to an OSC employee to produce official records or provide testimony relating to official information in connection with a legal proceeding in which the OSC is not a party. The proposed rule would also establish procedures to respond to such demands and requests in an orderly and consistent manner. The proposed rule will promote uniformity in decisions, protect confidential information, provide guidance to requesters, and reduce the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

**DATES:** Written or electronic comments must be received on or before July 5, 2016.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: abeckett@osc.gov.* Include ''FOIA/Touhy Regulation'' in the subject line of the message.
- *Fax:* (202) 254–3711.
- *Mail:* U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036.
- *Hand Delivery/Courier:* U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Amy Beckett, Senior Litigation Counsel, U.S. Office of Special Counsel, by telephone at (202) 254–3600, by facsimile at (202) 254–3711, or by email at *abeckett@osc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

*FOIA Regulations.* The U.S. Office of Special Counsel (OSC) proposes to revise its FOIA regulations to account for the additional electronic methods by which requesters may submit FOIA requests and appeals, and to modify the manner by which requests qualify for expedited processing. OSC also proposes to make minor technical revisions to the name of an OSC unit and to OSC's Internet and physical address information.

The existing language of 5 CFR 1820.2 and 1820.6 describes regular mail and fax as the methods by which to submit FOIA requests and appeals. The proposed rule would add email or other electronic submission methods.

The existing language of 5 CFR 1820.1 refers to the main OSC Internet and FOIA page addresses. The proposed rule would describe Internet access to OSC FOIA resources through the main OSC Internet address. The existing language of 5 CFR 1820.2 and 1820.6 regarding OSC's physical address would be modified in a minor, technical manner. The existing language of 5 CFR 1820.6 refers to an OSC unit as the ''Legal Counsel and Policy Division.'' The name of that unit would be updated in the proposed rule to the ''Office of General Counsel.''

The existing language of 5 CFR 1820.4(c)(1)(iii) discusses one of the three criteria under which a FOIA request can be processed out of order of receipt and addressed on an expedited basis. That language provides, in part, expedited treatment of a FOIA request when the requested records relate to ''an appeal that is pending before, or that the requester faces an imminent deadline for filing with'' another administrative or judicial tribunal, ''seeking personal relief pursuant to a complaint filed by the requester with OSC, or referred to OSC pursuant to title 38 of the U.S. Code.''

The proposed rule would clarify that the criteria discussed at 5 CFR 1820.4(c)(1)(iii) applies only when the requested records relate to an appeal for which the requester faces an imminent deadline for filing with another administrative or judicial tribunal. In addition, the proposed rule would specify that a grant of expedited treatment would apply only to the following requested records: Letters sent to a complainant by OSC; and the official complaint form submitted to OSC by the complainant or the original referred complaint if referred to OSC pursuant to title 38 of the U.S. Code. All other requested records would be processed according to the order in which OSC received the request.

By narrowing the focus of expedited status to certain records that are of interest to complainant-requesters, and are typically readily available for disclosure to the complainant-requesters, OSC will be able to more efficiently process and respond to expedited requests. Any other requested records would generally be processed in the order OSC received the request.

*Touhy Regulations.* OSC also proposes to revise its regulations relating to the release of information in response to requests made in connection with legal proceedings, such as summonses, complaints, subpoenas, and other litigation-related requests or demands for OSC's records or official information. These regulations are often referred to as *Touhy* regulations.

Federal agencies often receive demands consisting of informal requests for production of records, information, or testimony in judicial, legislative, or administrative proceedings in which the agency is not a named party. OSC has identified a need to revise its regulation to improve its evaluation and processing of such requests.

The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), holding that provisions in the federal ''housekeeping'' statute authorize agencies to promulgate rules governing record production and employee testimony. *See* 5 U.S.C. 301.

The existing language of 5 CFR 1820.10 refers to the ''[p]roduction of official records or testimony in legal proceedings.'' This revision provides the agency with more clearly delineated standards for releasing information or witness testimony. Generally, this revision re-establishes that no OSC employee or former employee shall release official information or records without the prior approval of the Special Counsel or the Special Counsel's duly authorized designee.

Under this proposed rule, OSC establishes procedural requirements for the form and content of requests for official OSC information made through a litigation request or demand, as well as establishing procedures for responding to the requests. This proposed rule also states the factors that OSC will consider in determining whether to authorize a release of official information in response to a request.

*Procedural Determinations*

*Administrative Procedure Act (APA):* This action is taken under the Special Counsel's authority at 5 U.S.C. 1212(e) to publish regulations in the **Federal Register**.

*Executive Order 12866 (Regulatory Planning and Review):* OSC does not anticipate that this proposed rule will have significant economic impact, raise novel issues, and/or have any other significant impacts. Thus this proposed rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of the Order.

*Congressional Review Act (CRA):* OSC has determined that this proposed rule is not a major rule under the Congressional Review Act, as it is unlikely to result in an annual effect on the economy of $100 million or more; is unlikely to result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; and is unlikely to have a significant adverse effect on competition, employment, investment, productivity, or innovation, or on the ability of U.S.-based enterprises to compete in domestic and export markets.

*Regulatory Flexibility Act (RFA):* The Regulatory Flexibility Act does not apply, even though this proposed rule is being offered for notice and comment procedures under the APA. This proposed rule will not directly regulate small entities. OSC therefore need not perform a regulatory flexibility analysis of small entity impacts.

*Unfunded Mandates Reform Act (UMRA):* This proposed revision does not impose any federal mandates on state, local, or tribal governments, or on the private sector within the meaning of the UMRA.

*National Environmental Policy Act (NEPA):* This proposed rule will have no physical impact upon the environment and therefore will not require any further review under NEPA.

*Paperwork Reduction Act (PRA):* This proposed rule does not impose any new recordkeeping, reporting, or other information collection requirements on the public. The proposed rule sets forth procedures by which litigants may serve summonses, complaints, subpoenas, and other legal process, demands, and requests upon the OSC. The proposed rule imposes special procedural requirements for those who seek to serve third-party subpoenas upon the OSC in accordance with *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). These requirements may increase the time and burden associated with obtaining records of the OSC in response to such third-party subpoenas.

*Executive Order 13132 (Federalism):* This proposed revision does not have new federalism implications under Executive Order 13132.

*Executive Order 12988 (Civil Justice Reform):* This proposed rule meets applicable standards of 3(a) and 3(b)(2) of Executive Order 12988.

**List of Subjects in 5 CFR Part 1820**

Administrative practice and procedure, Freedom of information, Government employees, Touhy regulations.

For the reasons stated in the preamble, OSC proposes to revise 5 CFR part 1820 as follows:

## PART 1820—FREEDOM OF INFORMATION ACT REQUESTS; PRODUCTION OF RECORDS OR TESTIMONY

■ 1. The authority citation for 5 CFR part 1820 is revised to read as follows:

**Authority:** 5 U.S.C. 552 and 1212(e); Executive Order No. 12600, 52 FR 23781.

■ 2. Revise §§ 1820.1 and 1820.2 to read as follows:

### § 1820.1 General provisions.

This part contains rules and procedures followed by the U.S. Office of Special Counsel (OSC) in processing requests for records under the Freedom of Information Act (FOIA), as amended, at 5 U.S.C. 552. These rules and procedures should be read together with the FOIA, which provides additional information about access to agency records. Further information about the FOIA and access to OSC records is available on the FOIA page of OSC's Web site (*https://www.osc.gov*). Information routinely provided to the public as part of a regular OSC activity—for example, forms, press releases issued by the public affairs officer, records published on the agency's Web site, or public lists maintained at OSC headquarter offices pursuant to 5 U.S.C. 1219—may be requested and provided to the public without following this part. This part also addresses responses to demands by a court or other authority to an employee for production of official records or testimony in legal proceedings.

### § 1820.2 Requirements for making FOIA requests.

(a) *Submission of requests.* (1) A request for OSC records under the FOIA must be made in writing. The request must be sent by:

(i) Regular mail addressed to: FOIA Officer, U.S. Office of Special Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036–4505; or

(ii) By fax sent to the FOIA Officer at the number provided on the FOIA page of OSC's Web site (*https://www.osc.gov*); or

(iii) By email or other electronic means as described on the FOIA page of OSC's Web site.

(2) For the quickest handling, both the request letter and envelope or any fax cover sheet or email subject line should be clearly marked ''FOIA Request.'' Whether sent by mail, fax, email, or other prescribed electronic method, a FOIA request will not be considered to have been received by OSC until it reaches the FOIA office.

(b) *Description of records sought.* Requesters must describe the records sought in enough detail for them to be located with a reasonable amount of effort. When requesting records about an OSC case file, the case file number, name, and type (for example, prohibited personnel practice, Hatch Act, USERRA or other complaint; Hatch Act advisory opinion; or whistleblower disclosure) should be provided, if known. Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter.

(c) *Agreement to pay fees.* Making a FOIA request shall be considered an agreement by the requester to pay all applicable fees chargeable under § 1820.7, up to and including the amount of $25.00, unless the requester asks for a waiver of fees. When making a request, a requester may specify a willingness to pay a greater or lesser amount.

■ 3. Revise § 1820.4 to read as follows:

**§ 1820.4 Timing of responses to requests.**

(a) *In general.* OSC ordinarily will respond to FOIA requests according to their order of receipt. In determining which records are responsive to a request, OSC ordinarily will include only records in its possession as of the date on which it begins its search for them. If any other date is used, OSC will inform the requester of that date.

(b) *Multitrack processing.* (1) OSC may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request.

(2) When using multitrack processing, OSC may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the faster track(s).

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever OSC has established to its satisfaction that:

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

(ii) With respect to a request made by a person primarily engaged in disseminating information, an urgency exists to inform the public about an actual or alleged federal government activity; or

(iii) The requested records relate to an appeal for which the requester faces an imminent deadline for filing with the Merit Systems Protection Board or other administrative tribunal or a court of law, seeking personal relief pursuant to a complaint filed by the requester with OSC, or referred to OSC pursuant to title 38 of the U.S. Code. Expedited status granted under this provision will apply only to the following requested records: Letters sent to the complainant by OSC; and the official complaint form submitted to OSC by the complainant or the original referred complaint if referred to OSC pursuant to title 38 of the U.S. Code. All other requested records will be processed according to the order in which OSC received the request.

(2) A request for expedited processing must be made in writing and sent to OSC's FOIA Officer. Such a request will not be considered to have been received until it reaches the FOIA Officer.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (c)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. The formality of certification may be waived as a matter of OSC's administrative discretion.

(4) OSC shall decide whether to grant a request for expedited processing and notify the requester of its decision within 10 calendar days of the FOIA Officer's receipt of the request. If the request for expedited processing is granted, the request for records shall be processed as soon as practicable. If a request for expedited processing is denied, any administrative appeal of that decision shall be acted on expeditiously.

(d) *Aggregated requests.* OSC may aggregate multiple requests by the same requester, or by a group of requesters acting in concert, if it reasonably believes that such requests constitute a single request involving unusual circumstances, as defined by the FOIA, supporting an extension of time to respond, and the requests involve clearly related matters.

■ 4. Revise § 1820.6 to read as follows:

**§ 1820.6 Appeals.**

(a) *Appeals of adverse determinations.* A requester may appeal an adverse determination denying a FOIA request in any respect to the Office of General Counsel, U.S. Office of Special Counsel, 1730 M Street NW., Suite 218, Washington, DC 20036–4505. The appeal must be in writing, and must be submitted either by:

(1) Regular mail sent to the address listed in this subsection, above; or

(2) By fax sent to the FOIA Officer at the number provided on the FOIA page of OSC's Web site (*https://www.osc.gov*); or

(3) By other electronic means as described on the FOIA page of OSC's Web site.

(b) *Submission and content.* The appeal must be received by the Office of General Counsel within 45 days of the date of the letter denying the request. For the quickest possible handling, the appeal letter and envelope or any fax cover sheet should be clearly marked ''FOIA Appeal.'' The appeal letter must clearly identify the OSC determination (including the assigned FOIA request number, if known) being appealed. An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(c) *Responses to appeals.* The agency decision on an appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall inform the requester of the provisions for judicial review of that decision. If the adverse determination is reversed or modified on appeal, in whole or in part, the requester will be notified in a written decision and the request will be reprocessed in accordance with that appeal decision.

■ 5. Revise § 1820.10, add §§ 1820.11 and 1820.12, and designate them under subpart A to read as follows:

## Subpart A—Touhy Regulations General Provisions

Sec.



**§ 1820.10 Scope and purpose.**

(a) This part establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records by current and former OSC employees, and contractors; and

(2) The testimony of current and former OSC employees, advisors, and consultants relating to official information, official duties, or the OSC's records, in connection with federal or state litigation or administrative proceedings in which the OSC is not a party.

(b) The OSC intends this part to:

(1) Conserve the time of OSC employees for conducting official business;

(2) Minimize the involvement of OSC employees in issues unrelated to OSC's mission;

(3) Maintain the impartiality of OSC employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the OSC.

(c) In providing for these requirements, the OSC does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of OSC. It does

not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

**§ 1820.11 Applicability.**

This part applies to demands and requests to current and former employees, and contractors, for factual or expert testimony relating to official information or official duties or for production of official records or information, in legal proceedings in which the OSC is not a named party. This part does not apply to:

(a) Demands upon or requests for current or former OSC employees or contractors to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the OSC;

(b) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; or

(c) Congressional demands and requests for testimony, records or information.

**§ 1820.12 Definitions.**

The following definitions apply to this part.

(a) *Demand* means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records or for the appearance and testimony of an OSC employee in a legal proceeding.

(b) *General Counsel* means the General Counsel of the OSC or a person to whom the General Counsel has delegated authority under this part.

(c) *Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

(d) *OSC* means the U.S. Office of Special Counsel.

(e) *OSC employee* or *employee* means:

(1)(i) Any current or former employee of the OSC; and

(ii) Any other individual hired through contractual agreement by or on behalf of the OSC or who has performed or is performing services under such an agreement for the OSC.

(2) This definition does not include persons who are no longer employed by the OSC and who agree to testify about matters available to the public.

(f) *Records* or *official records and information* means all information in the custody and control of the OSC, relating to information in the custody and control of the OSC, or acquired by an OSC employee in the performance of his or her official duties or because of his or her official status, while the individual was employee by or on behalf of the OSC.

(g) *Request* means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court of other competent authority.

(h) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

■ 6. Add subpart B to read as follows:

## Subpart B—Demands or Requests for Testimony and Production of Documents

Sec.



## Subpart B—Demands or Requests for Testimony and Production of Documents

**§ 1820.13 General prohibition.**

No employee of OSC may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior written approval of the General Counsel.

**§ 1820.14 Factors the OSC will consider.**

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) Allowing such testimony or production of records would assist or hinder the OSC in performing its statutory duties;

(d) Allowing such testimony or production of records would be in the best interest of the OSC or the United States;

(e) The records or testimony can be obtained from other sources;

(f) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rule of procedure governing the case or matter in which the demand or request arose;

(g) Disclosure would violate a statute, Executive Order or regulation;

(h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the OSC appearing to favor one litigant over another;

(k) A substantial government interest is implicated;

(l) The demand or request is within the authority of the party making it; and

(m) The demand or request is sufficiently specific to be answered.

**§ 1820.15 Filing requirements for litigants seeking documents or testimony.**

A litigant must comply with the following requirements when filing a request for official records and information or testimony under this part. A request should be filed before a demand is issued.

(a) The request must be in writing and must be submitted to the General Counsel.

(b) The written request must contain the following information:

(1) The caption of the legal or administrative proceeding, docket number, and name and address of the court or other administrative or regulatory authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal or administrative proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs any need to

maintain the confidentiality of the information and outweighs the burden on the OSC to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OSC employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require of each OSC employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The OSC reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the OSC employee's statement free of charge and that the requester will permit the OSC to have a representative present during the employee's testimony.

**§ 1820.16 Service of requests or demands.**

Requests or demands for official records or information or testimony under this subpart must be served by mail or hand delivery to the Office of General Counsel, U.S. Office of Special Counsel, 1730 M. St, NW., Suite 213, Washington, DC 20036; or sent by fax to 202–254–3711.

**§ 1820.17 Processing requests or demands.**

(a) After receiving service of a request or demand for testimony, the General Counsel will review the request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the OSC will issue a determination within 30 days from the date the request is received.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of the OSC or the United States, or for other good cause.

(d) *Certification (authentication) of copies of records.* The OSC may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the OSC at least 30 days before the date they will be needed.

**§ 1820.18 Final determination.**

The General Counsel makes the final determination regarding requests to employees for production of official records and information or testimony in litigation in which the OSC is not a party. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an OSC employee. The General Counsel's decision exhausts administrative remedies for purposes of disclosure of the information.

**§ 1820.19 Restrictions that apply to testimony.**

(a) The General Counsel may impose conditions or restrictions on the testimony of OSC employees including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The OSC may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not;

(1) Disclose confidential or privileged information; or

(2) For a current OSC employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the OSC unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the OSC's approval.

**§ 1820.20 Restrictions that apply to released records.**

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the OSC may condition the release of official records and information on an amendment to the existing protective order (subject to court approval) or confidentiality agreement.

(b) If the General Counsel so determines, original OSC records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official OSC records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

**§ 1820.21 Procedure when a decision is not made prior to the time a response is required.**

If a response to a demand or request is required before the General Counsel can make the determination referred to in § 1820.28, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

**§ 1820.22 Procedure in the event of an adverse ruling.**

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General

Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

■ 7. Add subpart C, consisting of § 1820.23, to read as follows:

## Subpart C—Schedule of Fees

### § 1820.23 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to the OSC.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowances, and benefits). Fees for duplication will be the same as those charged by the OSC in its Freedom of Information Act regulations at § 1820.7.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the federal district closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) *Payment of fees.* A requester must pay witness fees for current OSC employees and any record certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the United States Department of Treasury. In the case of testimony of former OSC employees, the requester must pay applicable fees directly to the former OSC employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

■ 8. Add subpart D, consisting of § 1820.24, to read as follows:

## Subpart D—Penalties

### § 1820.24 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the OSC, or as ordered by a federal court after the OSC has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former OSC employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OSC employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action.

■ 9. Add subpart E, consisting of § 1820.25, to read as follows:

## Subpart E—Conformity with Other Laws

### § 1820.25 Conformity with other laws.

This regulation is not intended to conflict with 5 U.S.C. 2302(b)(13).

Dated: April 21, 2016.

**Lisa V. Terry,**

*General Counsel.*

[FR Doc. 2016–09799 Filed 5–4–16; 8:45 am]

**BILLING CODE 7405–01–P**

## DEPARTMENT OF ENERGY

## 10 CFR Parts 430 and 431

**[Docket Number EERE–2016–BT–PET–0016]**

## Notice of Opportunity To Submit a Petition To Amend the Rule Establishing Procedures for Requests for Correction of Errors in Rules

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

**ACTION:** Opportunity to petition.

**SUMMARY:** Elsewhere in this issue of the **Federal Register**, the U.S. Department of Energy (''DOE'' or the ''Department'') publishes a final rule establishing a new procedure through which an interested party can, within a 30-day period after DOE posts a rule establishing or amending an energy conservation standard, identify a possible error in such a rule and request that DOE correct the error before the rule is published (''error correction rule''). By this notice, DOE provides an opportunity for the public to file petitions to amend the error correction rule.

**DATES:** DOE will use its best efforts to issue a public document by August 10, 2016, that responds to any petitions to amend the error correction rule that are submitted by June 6, 2016. DOE will consider comments on any petitions to amend the error correction rule submitted by June 6, 2016 if those comments are submitted by June 20, 2016.

**ADDRESSES:** To submit a petition to amend or a comment on a petition to amend in response to this notice, please email *CorrectionPetition2016PET0016@ee.doe.gov.* Petitions and comments will be entered into docket number EERE–2016–BT–PET–0016, which is available for review at *http://www.regulations.gov.* For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692 or *John.Cymbalsky@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** The Department publishes a final rule, elsewhere in this issue of the **Federal Register**, establishing a new procedure through which an interested party can, within a 30-day period after DOE posts a rule establishing or amending an energy conservation standard, identify a possible error in such a rule and request that DOE correct the error before the rule is published in the **Federal Register**.

The error correction rule will become effective 30 days after its publication in the **Federal Register**. DOE hereby provides notice to the public that the Department will accept petitions to amend the error correction rule and will use its best efforts to issue a public document by August 10, 2016, responding to any such petitions that are submitted by June 6, 2016.

Issued in Washington, DC, on April 29, 2016.

**Kathleen B. Hogan,**

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

[FR Doc. 2016–10463 Filed 5–4–16; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2015–3821; Directorate Identifier 2014–SW–025–AD**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron

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

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

**SUMMARY:** We propose to supersede airworthiness directive (AD) 75–26–05 for Bell Helicopter Textron (Bell) Model 204B, 205A–1 and 212 helicopters. AD 75–26–05 currently requires removing and visually inspecting each main rotor (M/R) blade and, depending on the inspection's outcome, repairing or replacing the M/R blades. This proposed AD would require more frequent inspections of certain M/R blades and would also apply to Model 205A helicopters. This proposed AD would have no requirement that helicopter blades be removed to conduct the initial visual inspections. These proposed actions are intended to detect a crack and prevent failure of an M/R blade and subsequent loss of helicopter control.

**DATES:** We must receive comments on this proposed AD by July 5, 2016.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 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–2015–3821; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic 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 service information identified in this proposed rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Charles Harrison, Project Manager, Fort Worth Aircraft Certification Office, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5140; email *charles.c.harrison@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. 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.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

On December 3, 1975, we issued AD 75–26–05, Amendment 39–2457 (40 FR 57783, December 12, 1975) for Bell Model 204B, 205A–1, and 212 helicopters. AD 75–26–05 requires, at intervals not to exceed 12 months installed time, visually inspecting the grip pad, grip plates, doublers, drag plates, and adjacent surfaces for voids, edge voids, corrosion, cracks, and adhesive squeeze-out along bond lines. AD 75–26–05 prohibits returning to service any blade with a crack or an adhesive void exceeding certain limits. For damage within certain limits, the M/R blade can be repaired, refinished, and reinstalled.

AD 75–26–05 was prompted by an evaluation of a cracked M/R blade that concludes that initial cracking resulted from corrosion. These actions were intended to detect a crack and corrosion and prevent further corrosion in the M/R blade inboard portion.

### Actions Since AD 75–26–05 Was Issued

Since we issued AD 75–26–05, Bell has evaluated an M/R blade installed on a Model UH–1H helicopter with multiple fatigue cracks around the blade retention bolt hole. The cracks resulted from a void between the lower grip plate and the grip pad. A ''substantial'' void also was found at the outboard doubler tip on the lower blade surface. Different part-numbered M/R blades of the same type may also be installed on Model 204B, 205A, and 205A–1 helicopters. We have determined that more frequent inspections than those required by AD 75–26–05 are necessary to detect cracking or certain damage. While AD 75–26–05 requires removing the blades from the M/R hub, the inspections in this proposed AD would not. AD 75–26–05 applies to the Model 212 helicopter, and this proposed AD would not because similar inspections on Model 212 blades addressing the unsafe condition are required by AD 2011–23–02 (76 FR 68301, November 4, 2011). We are including specific part-numbered blades in the applicability so that the proposed AD would no longer be required if a new blade is designed that is not subject to the unsafe condition.

### 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.

### Related Service Information

Bell issued Alert Service Bulletin (ASB) No. UH–1H–13–09, dated January 14, 2013, for the Model UH–1H helicopter (ASB UH–1H–13–09). ASB UH–1H–13–09 specifies a one-time visual inspection, within 10 hours time-in-service (TIS), of the lower grip pad and upper and lower grip plates for cracks, edge voids, and loose or damaged adhesive squeeze-out. ASB UH–1H–13–09 also specifies a repetitive visual inspection, daily and at every 150

hours TIS, of the lower grip pad, upper and lower grip plates, and all upper and the lower doublers for cracks, corrosion, edge voids, and loose or damaged adhesive squeeze-out. Similar inspections are contained in Bell ASB No. 204–75–1 (ASB 204–75–1) and No. 205–75–5 (ASB 205–75–5), both Revision C and both dated April 25, 1979, for Bell Model 204B and 205A–1 helicopters, respectively. ASB 204–75–1 and ASB 205–75–5 call for daily inspections and for inspections, rework, and refinishing every 1,000 hours TIS or 12 months, whichever occurs first.

**Proposed AD Requirements**

This proposed AD would require within 25 hours TIS or 2 weeks, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS or 2 weeks, whichever occurs first, cleaning the upper and lower surfaces of each M/R blade from an area starting at the butt end of the blade to three inches outboard of the doublers. The proposed AD also would require visually inspecting various M/R parts for a crack or corrosion using a 3X or higher power magnifying glass and a light.

If there is a crack, corrosion, an edge void, loose or damaged adhesive squeeze-out, or an edge delamination before further flight, this proposed AD would require repairing the M/R blade or replacing it with an airworthy M/R blade, depending on the condition's severity.

**Differences Between This Proposed AD and the Service Information**

The proposed AD would require all inspections every 25 hours TIS or 2 weeks, whichever occurs first. ASB UH–1H–13–09 specifies a one-time inspection within 10 hours TIS, and then a second repetitive inspection daily and at every 150 hours TIS, while ASB 204–75–1 and ASB 205–75–5 call for daily visual inspections, and inspections, rework, and refinishing every 1,000 hours TIS or 12 months, whichever occurs first. This proposed AD contains more detailed inspection requirements and a more specific inspection area than the instructions in ASB UH–1H–13–09. The service information applies to M/R blade, part number (P/N) 204–011–250, and was issued for Model 204B and 205A–1 helicopters. The proposed AD also applies to P/N 204–011–200, because this blade is of the same type and susceptible to the unsafe condition. The proposed AD also applies to certain M/R blades installed on the Model 205A helicopters. While none of these models are registered in the U.S., they were included because of blade P/N eligibility.

**Costs of Compliance**

We estimate that this proposed AD would affect 52 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

Cleaning and performing all inspections of a set of M/R blades (2 per helicopter) would require a half work-hour. No parts would be needed. At an estimated 24 inspections a year, the cost would be $1,032 per helicopter and $53,664 for the U.S. fleet.

Replacing an M/R blade would require 12 work hours and parts would cost $90,656 for a total cost of $91,676 per blade.

**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.

**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, 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 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**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) No. 75–26–05, Amendment 39–2457 (40 FR 57783, December 12, 1975), and adding the following new AD:

**Bell Helicopter Textron:** Docket No. FAA–2015–3821; Directorate Identifier 2014–SW–025–AD.

**(a) Applicability**

This AD applies to Model 204B, 205A, and 205A–1 helicopters with a main rotor (M/R) blade, part number (P/N) 204–011–200–001 or P/N 204–011–250–(all dash numbers), installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a crack in an M/R blade, which could result in failure of an M/R blade and subsequent loss of helicopter control.

**(c) Affected ADs**

This AD supersedes AD 75–26–05, Amendment 39–2457 (40 FR 57783, December 12, 1975).

**(d) Comments Due Date**

We must receive comments by July 5, 2016.

**(e) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(f) Required Actions**

(1) Within 25 hours time-in-service (TIS) or 2 weeks, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS or 2 weeks, whichever occurs first, clean the upper and lower exposed surfaces of each M/R blade from an area starting at the butt end of the blade to three inches outboard of the doublers. Using a 3X or higher power magnifying glass and a light, inspect as follows:

(i) Visually inspect the exposed areas of the lower grip pad and upper and lower grip plates of each M/R blade for a crack and any corrosion.

(ii) On the upper and lower exposed surfaces of each M/R blade from blade stations 24.5 to 35 for the chord width, visually inspect each layered doubler and blade skin for a crack and any corrosion. Pay particular attention for any cracking in a doubler or skin near or at the same blade station as the blade retention bolt hole (blade station 28).

(iii) Visually inspect the exposed areas of each bond line at the edges of the lower grip pad, upper and lower grip plates, and each layered doubler (bond lines) on the upper and lower surfaces of each M/R blade for the entire length and chord width for an edge void, any corrosion, loose or damaged adhesive squeeze-out, and an edge delamination. Pay particular attention to any crack in the paint finish that follows the outline of a grip pad, grip plate, or doubler, and to any loose or damaged adhesive squeeze-out, as these may be the indication of an edge void.

(2) If there is a crack, any corrosion, an edge void, loose or damaged adhesive squeeze-out, or an edge delamination during any inspection in paragraph (f)(1) of this AD, before further flight, do the following:

(i) If there is a crack in a grip pad or any grip plate or doubler, replace the M/R blade with an airworthy M/R blade.

(ii) If there is a crack in the M/R blade skin that is within maximum repair damage limits, repair the M/R blade. If the crack exceeds maximum repair damage limits, replace the M/R blade with an airworthy M/R blade.

(iii) If there is any corrosion within maximum repair damage limits, repair the M/R blade. If the corrosion exceeds maximum repair damage limits, replace the M/R blade with an airworthy M/R blade.

(iv) If there is an edge void in the grip pad or in a grip plate or doubler, determine the length and depth using a feeler gauge. Repair the M/R blade if the edge void is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(v) If there is an edge void in a grip plate or doubler near the outboard tip, tap inspect the affected area to determine the size and shape of the void. Repair the M/R blade if the edge void is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(vi) If there is any loose or damaged adhesive squeeze-out along any of the bond lines, trim or scrape away the adhesive without damaging the adjacent surfaces or parent material of the M/R blade. Determine if there is an edge void or any corrosion by lightly sanding the trimmed area smooth using 280 or finer grit paper. If there is no edge void or corrosion, refinish the sanded area.

(vii) If there is an edge delamination along any of the bond lines or a crack in the paint finish, determine if there is an edge void or a crack in the grip pad, grip plate, doubler, or skin by removing paint from the affected area by lightly sanding in a span-wise direction using 180–220 grit paper. If there are no edge voids and no cracks, refinish the sanded area.

(viii) If any parent material is removed during any sanding or trimming in paragraphs (f)(2)(vi) or (f)(2)(vii) of this AD, repair the M/R blade if the damage is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

**(g) Special Flight Permit**

Special flight permits are prohibited.

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

(1) The Manager, Fort Worth Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Charles Harrison, Project Manager, Fort Worth Aircraft Certification Office, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5140; email *7-AVS-ASW-170@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(i) Additional Information**

Bell Helicopter Alert Service Bulletin (ASB) No. UH–1H–13–09, dated January 14, 2013, and ASB No. 204–75–1 and ASB No. 205–75–5, both Revision C and both dated April 25, 1979, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

**(j) Subject**

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blades.

Issued in Fort Worth, Texas, on April 15, 2016.

**Scott A. Horn,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2016–10523 Filed 5–4–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–3941; Directorate Identifier 2015–SW–052–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters. This proposed AD would require removing adhesive seals from the exterior and interior door jettisoning system on the left and right sliding doors. This proposed AD is prompted by reports that the adhesive seal prevented the doors from jettisoning properly. The proposed actions are intended to remove the adhesive seal to allow the doors to jettison properly so occupants can exit the helicopter during an emergency.

**DATES:** We must receive comments on this proposed AD by July 5, 2016.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*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–2015–3941; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic 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 service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. 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.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

## Discussion

EASA, which is the aviation authority for the Member States of the European Union, has issued EASA AD No. 2015–0163, dated August 6, 2015, to correct an unsafe condition for Airbus Helicopters Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters. EASA advises that difficulties were reported regarding the jettisoning of doors. The malfunction was caused by the adhesive seal, which hampered the free movement of the inner handle. According to EASA, a subsequent investigation showed that the adhesive seal has mechanical and physical properties that do not meet relevant certification requirements. EASA states that this condition, if not detected and corrected, could lead to a malfunction of the door's jettisoning mechanism, reducing or preventing the evacuation of the helicopter during an emergency, possibly resulting in injury to occupants. To address this condition, the EASA AD requires inspecting the exterior and interior door jettisoning system on the left and right sliding doors for adhesive seal part number (P/N) 117–800201.01 and removing any adhesive seals that are installed.

## FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

## Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin MBB–BK117–20A–114, Revision 1, dated July 30, 2015 (ASB) for Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters. The ASB reports that the proper functioning of the sliding door jettison system is hampered by an adhesive seal. The seal was not manufactured correctly, and therefore did not perform as the test seal did during door jettisoning tests. The ASB calls for removing any adhesive seals on the exterior and interior door jettison system and discarding any adhesive seals that have not yet been installed.

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.

## Proposed AD Requirements

This proposed AD would require, within 25 hours time-in-service, removing the adhesive seal from the interior and exterior of each door. This proposed AD would also prohibit installing adhesive seal P/N 117–800201.01 on any helicopter sliding door.

## Differences Between This Proposed AD and the EASA AD

The EASA AD requires removing adhesive seal, P/N 117–800201.01, within 30 days. The proposed AD would require removing the adhesive seal within 25 hours TIS.

## Costs of Compliance

We estimate that this proposed AD would affect 69 helicopters of U.S. Registry and that labor costs would average $85 per work-hour. Based on these estimates, we expect that removing the adhesive seals would require a half work-hour for a labor cost of about $43 per helicopter. No parts would be needed, so the cost for the U.S. fleet would total $2,967.

## 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.

## 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, 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 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**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):

**Airbus Helicopters Deutschland GmbH:** Docket No. FAA–2015–3941; Directorate Identifier 2015–SW–052–AD.

**(a) Applicability**

This AD applies to Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117A–3, MBB–BK 117A–4, MBB–BK 117B–1, MBB–BK 117B–2, and MBB–BK 117C–1 helicopters with an adhesive seal part number (P/N) 117–800201.01 installed on an exterior or interior sliding door, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition the presence of sealant on a sliding door (door). This condition could result in the door failing to jettison, preventing helicopter occupants from exiting the helicopter during an emergency.

**(c) Comments Due Date**

We must receive comments by July 5, 2016.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

(1) Within 25 hours time-in-service, remove adhesive seal P/N 117–800201.01 from the interior and exterior of each door. The areas where the seal is installed are shown in Figure 1 and Figure 2 of Airbus Helicopters Alert Service Bulletin MBB–BK117–20A–114, Revision 1, dated July 30, 2015.

(2) After the effective date of this AD, do not install adhesive seal P/N 117–800201.01 on any helicopter sliding door.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0163, dated August 6, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in the AD Docket.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 5220, Emergency Exits.

Issued in Fort Worth, Texas, on April 19, 2016.

**Scott A. Horn,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2016–10285 Filed 5–4–16; 8:45 am]

**BILLING CODE 4910–13–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 421

**[Docket No. SSA–2016–0011]**

**RIN 0960–AH95**

## Implementation of the NICS Improvement Amendments Act of 2007

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to implement provisions of the NICS Improvement Amendments Act of 2007 (NIAA) that require Federal agencies to provide relevant records to the Attorney General for inclusion in the National Instant Criminal Background Check System (NICS). Under the proposed rule, we would identify, on a prospective basis, individuals who receive Disability Insurance benefits under title II of the Social Security Act (Act) or Supplemental Security Income (SSI) payments under title XVI of the Act and also meet certain other criteria, including an award of benefits based on a finding that the individual's mental impairment meets or medically equals the requirements of section 12.00 of the Listing of Impairments (Listings) and receipt of benefits through a representative payee. We propose to provide pertinent information about these individuals to the Attorney General on not less than a quarterly basis. As required by the NIAA, at the commencement of the adjudication process we would also notify individuals, both orally and in writing, of their possible Federal prohibition on possessing or receiving firearms, the consequences of such inclusion, the criminal penalties for violating the Gun Control Act, and the availability of relief from the prohibitions imposed by Federal law. Finally, we also propose to establish a program that permits individuals to request relief from the Federal firearms prohibitions based on our adjudication. The proposed rule would allow us to fulfill responsibilities that we have under the NIAA.

**DATES:** To ensure that your comments are considered, we must receive them no later than July 5, 2016.

**ADDRESSES:** You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comment multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2016–0011 so that we may associate your comments with the correct regulation.

*Caution:* You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the ''Search'' function to find docket number SSA–2016–0011. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week or more for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to NICS Comments, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact identified below.

**FOR FURTHER INFORMATION CONTACT:** Social Security Administration, 410–965–3735 or *Regulations@ssa.gov.* We will not accept public comments at this telephone number or email address; to comment, please follow the instructions above. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Section 103 of the Brady Handgun Violence Prevention Act (Brady Act) required the Attorney General to establish the NICS, which allows a Federal Firearms Licensee (FFL) to determine whether the law prohibits a potential buyer from possessing or receiving a firearm.[1] The Brady Act and its implementing regulations are designed to prevent the transfer of firearms by FFLs to individuals who are not allowed to possess or receive them because of restrictions contained in the Gun Control Act of 1968, as amended,[2] or State law. Federal law makes it unlawful for certain persons to ship, transport, receive, or possess any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.[3] As relevant to our programs, the Federal prohibition on the possession or receipt of firearms or ammunition applies to a person who, in the language of the statute, ''has been adjudicated as a mental defective.''[4]

In 2007, Congress found that many background checks were delayed if the Federal Bureau of Investigation (FBI) did not have automated access to complete information concerning persons prohibited from possessing or receiving a firearm under Federal or State law. Congress noted that the primary cause of delay in the NICS background checks included a lack of automated access to information concerning persons prohibited from possessing or receiving a firearm because of mental illness, restraining orders, or misdemeanor convictions for domestic violence.[5] Congress also found that computerizing information relating to criminal history, criminal dispositions, mental illness, restraining orders, and misdemeanor convictions for domestic violence, or making this information available to the NICS in a usable format, could improve automated access to it.[6]

To address these concerns, Congress enacted the NIAA,[7] which strengthened the NICS by increasing the quantity and quality of relevant records from Federal, State, and tribal authorities accessible by the system. Among other things, the NIAA requires that, if a Federal department or agency has any record demonstrating that a person falls within one of the categories in 18 U.S.C. 922(g) or (n), the head of that department or agency must provide the pertinent information contained in the record to the Attorney General, not less frequently than quarterly, for inclusion in the NICS.[8]

On January 16, 2013, the President issued a Memorandum to Federal departments and agencies aimed at further strengthening the accuracy and efficiency of the Federal background check system for firearms purchases.[9] The President directed the Department of Justice (DOJ) to provide guidance to agencies regarding the identification and sharing of relevant Federal records and their submission to the NICS; DOJ provided its guidance to agencies in March 2013.[10]

The relevant section of the DOJ Guidance discusses the Federal mental health prohibitor and the relevant agency records with respect to that prohibitor as follows:

> Pursuant to 18 U.S.C. 922(g)(4), any person 'who has been adjudicated as a mental defective or who has been committed to a mental institution' is prohibited from shipping, transporting, possessing or receiving firearms under federal firearms laws. ATF has clarified through regulations that this prohibitor covers the following circumstances and categories of individuals:
>
> (1) A determination by a court, board, commission or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:
>
> ○ Is a danger to himself, herself or others; or
>
> ○ Lacks the mental capacity to contract or manage his or her own affairs.
>
> This includes (1) a person found to be insane by a court in a criminal case, and (2) a person found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 76b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.
>
> (2) A formal commitment of a person to a mental institution by a court, board, commission or other lawful authority. This includes commitment to a mental institution involuntarily, commitment for mental defectiveness or mental illness or commitment for other reasons, such as for drug use. It does not include a person in a mental institution for observation or a voluntary admission to a mental institution.
>
> **Please note the following four important things about this prohibitor:**
>
> • First, 'mental institution' includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.
>
> • Second, 'mental defective' does not include a person who has been granted relief from the disability through a qualifying federal or state relief from disability program as authorized by the NIAA.
>
> • Third, 'mental defective' also does not include a person whose adjudication or commitment was imposed by a federal department or agency, and:
>
> ○ The adjudication or commitment has been set aside or expunged, or the person has otherwise been fully released or discharged from all mandatory treatment, supervision or monitoring;
>
> ○ The person has been found by a court, board, commission or other lawful authority to no longer suffer from the mental health condition that was the basis of the adjudication or commitment, or has otherwise been found to be rehabilitated through any procedure available under law; or
>
> ○ The adjudication or commitment is based solely on a medical finding of disability, without an opportunity for a hearing by a court, board, commission or other lawful authority, and the person has not been adjudicated as a mental defective consistent with 18 U.S.C. 922(g)(4), except that nothing in this section or any other provision of law shall prevent a federal department or agency from providing to the Attorney General any record demonstrating that a person was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.
>
> • Fourth, agencies that conduct mental health adjudications must provide both oral and written notice to the individual at the commencement of the adjudication process. Such notice must include:

[1] Public Law 103–159, 107 Stat. 1536, 1541 (codified at 18 U.S.C. 922 note).

[2] Codified at 18 U.S.C. Chapter 44.

[3] 18 U.S.C. 922(g) and (n).

[4] 18 U.S.C. 922(g)(4). In these rules, we will refer to this prohibition as the ''Federal mental health prohibitor'' although we also use the statutory language in section 922(g)(4) in our proposed regulatory language below.

[5] NICS Improvement Amendments Act of 2007 (NIAA), Public Law 110–180, sec. 2, 121 Stat. 2559, 2559–2560.

[6] Id.

[7] Public Law 110–180, 121 Stat. 2559 (codified at 18 U.S.C. 922 note).

[8] NIAA, sec. 101(a)(4), 121 Stat. at 2161.

[9] Memorandum for the Heads of Executive Departments and Agencies, *Improving Availability of Relevant Executive Branch Records to the National Instant Criminal Background Check System,* 78 FR 4297 (2013).

[10] Department of Justice, *Guidance to Agencies Regarding Submission of Relevant Federal Records to the NICS* (March 2013) (''DOJ Guidance'').

○ Notification that adjudication of the person as a mental defective or commitment to a mental institution, when final, will prohibit the individual from purchasing, possessing, receiving, shipping or transporting a firearm or ammunition under 18 U.S.C. 922(d)(4) or 922(g)(4);

○ Information about the penalties imposed for unlawful possession, receipt, shipment or transportation of a firearm under 18 U.S.C. 924(a)(2); and

○ Information about the availability of relief from the disabilities imposed by federal laws with respect to the acquisition, receipt, transfer, shipment, transportation or possession of firearms.

*Relevant Records.* Records that are relevant to this prohibitor include judgment and commitment orders, sentencing orders and court or agency records of adjudications of an individual's inability to manage his or her own affairs if such adjudication is based on marked subnormal intelligence or mental illness, incompetency, condition or disease. This last category includes certain agency designations of representative or alternate payees for program beneficiaries.[11]

Therefore, DOJ has determined that to comply with the NIAA, we must report to the Attorney General information about some of our title II and title XVI beneficiaries.[12]

The FBI collects and maintains, in the NICS Index, certain identifying information about individuals who are subject to one or more Federal prohibitors and thus are ineligible to possess or receive firearms.[13] The minimum information required in a NICS Index record consists of the name of the ineligible individual, the individual's date of birth, sex, codes indicating the applicable prohibitor, and the submitting entity. We also propose to include the individual's Social Security number to ensure accurate identification. For individuals subject to the Federal mental health prohibitor, we would submit to the NICS only the fact that the individual is subject to that prohibitor; we would not provide underlying diagnoses, treatment records, or other identifiable health information, nor does the NICS maintain that information.

A NICS background check queries the NICS Index and certain other national databases to determine whether a prospective buyer's identifying information matches any prohibiting records contained in the databases.[14] The NICS Index can be accessed only for the limited purposes authorized by regulation.[15] The potential transfer of a firearm from an FFL to a prospective buyer proceeds as follows: (1) The prospective buyer is required to provide personal information on a Firearms Transaction Record (ATF Form 4473); (2) unless the prospective buyer has documentation that he or she qualifies for an exception to the NICS background check requirement,[16] the FFL contacts the NICS—electronically, by telephone, or through a State level point of contact—and provides certain identifying information about the prospective buyer from ATF Form 4473; [17] (3) the FFL receives a response that the prospective firearm transfer may proceed, is denied, or is delayed. If the prospective buyer's information matches a record contained in one of the databases reviewed, but there is insufficient information in the record to immediately determine whether the firearm transfer should proceed or be denied, the transfer is delayed.

If there is a match, a NICS examiner reviews the record to determine whether the information it contains is, in fact, prohibiting and then either: (1) Advises the FFL to proceed with the transaction if the record does not contain prohibiting information, (2) denies the transaction (due to ineligibility) if the record does contain prohibiting information, or (3) delays the transaction pending further research if it is unclear based solely on the existing information in the record whether it is prohibiting.[18] The NICS examiner does not disclose the reason for the determination to the FFL. As a result, the FFL does not learn that the individual is ineligible due to the Federal mental health prohibitor. If the NICS examiner does not provide a final status to the FFL within 3 business days of the initial background check request, the FFL may proceed with the transaction, if he or she chooses to do so.[19]

## The Proposed Rule

The regulatory changes in this proposed rule fall into three general categories: (1) Identifying relevant records and reporting pertinent information to the NICS, (2) oral and written notification to our title II and title XVI beneficiaries who meet the requisite criteria, and (3) establishing a program that permits our beneficiaries who meet the requisite criteria to apply for relief from the firearms prohibition imposed by 18 U.S.C. 922(d)(4) or (g)(4) by virtue of our adjudication.[20]

### *Identifying Relevant Records and Reporting Pertinent Information to the NICS*

To comply with the requirements of the NIAA, we propose to identify, on a prospective basis, any title II or title XVI beneficiary whom we are required to

[11] The ATF regulations discussed in the DOJ Guidance are found at 27 CFR 478.11.

[12] As part of our responsibilities under the NIAA, we will also provide the Attorney General with copies of court orders that we receive regarding adult title II and title XVI disability beneficiaries who have been declared legally incompetent by a State or Federal court. Our procedures regarding these types of orders are found in POMS GN 00502.005 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502005*) and GN 00502.300 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502300*). The FBI would determine whether these court orders meet the requirements of the Federal mental health prohibitor.

[13] See *National Instant Criminal Background Check System (NICS) Operations, 2014,* at page 1 (available at: *http://www.fbi.gov/about-us/cjis/nics//2014-operations-report*) (The NICS Index, ''a database created specifically for the NICS, contains information contributed by local, state, tribal, and federal agencies pertaining to persons prohibited from receiving or possessing a firearm pursuant to state and/or federal law. Typically, the records maintained in the NICS Index are not available via the III [Interstate Identification Index] or the NCIC [National Crime Information Center].'').

[14] *See National Instant Criminal Background Check System, Fact Sheet* (available at: *http://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet.*) The other databases include the III, which contains criminal history record information; and the NCIC, which includes, *e.g.,* information on persons subject to civil protection orders and arrest warrants.

[15] 28 CFR 25.6(j). Under this regulation, access to the NICS Index for purposes unrelated to NICS background checks is limited to uses for the purposes of: (1) Providing information to Federal, state, tribal, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives; (2) responding to an inquiry from ATF in connection with a civil or criminal law enforcement activity relating to the Gun Control Act or the National Firearms Act; or (3) disposing of firearms in the possession of a Federal, state, tribal, or local criminal justice agency.

[16] These exceptions are outlined in 27 CFR 478.102(d). For example, a NICS check would not be required where the potential recipient of a firearm has presented a valid State permit or license, provided conditions at 27 CFR 478.102(d)(1) are met.

[17] The form collects the prospective buyer's name; demographic information such as address, place and date of birth, sex, citizenship, race and ethnicity; and ''yes'' or ''no'' answers to questions about the person's criminal history and other potential prohibitors. The form is available at *http://www.atf.gov/forms/download/atf-f-4473-1.pdf.*

[18] For example, a ''delay'' response may mean that further research is required because potentially prohibitive criteria exist, but the matched records are incomplete. See *Federal Bureau of Investigation (FBI) Fact Sheet,* available at: *www.fbi.gov/about-us/cjis/nice/general-information/fact-sheet.*

[19] Some States have waiting periods that also must be complied with before a firearm may be transferred, regardless of whether a proceed response from the NICS is received by the FFL within 3 business days.

[20] Section 101(c)(2)(A)(iii) of the NIAA specifies that relief and judicial review with respect to the ''relief from disabilities'' program shall be available according to the standards prescribed in 18 U.S.C. 925(c). In these rules, we will refer to this program as the ''relief from firearm prohibitions'' program in order to avoid any possible confusion with our disability programs.

report for inclusion in the NICS because that person is subject to the Federal mental health prohibitor as a result of our adjudication. Under the governing regulations, the Federal mental health prohibitor applies when there has been a ''determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or to others; or (2) Lacks the mental capacity to contract or manage his own affairs.'' [21] This regulation therefore contains three operative components. First, there must be a determination by a ''lawful authority.'' Second, the adjudication must concern (as relevant to our programs) an individual's inability to manage his or her own affairs. Third, the adjudication regarding the inability to manage an individual's affairs must be based on ''marked subnormal intelligence or mental illness, incompetency, condition or disease.''

There are several relevant observations regarding the application of these three factors to our adjudication process. First, our determination regarding an individual's claim for benefits, specifically our determination regarding the appointment of a representative payee, which we make in accordance with the authority granted to the Commissioner under the Act, constitutes a determination by a ''lawful authority.'' [22] Second, the regulation's focus on an individual's lack of ''mental capacity to contract or manage his or her own affairs'' makes our appointment of a representative payee the determination that makes a person subject to the Federal mental health prohibitor.[23] The DOJ Guidance discussed above makes that point clear, specifying that relevant records for the Federal mental health prohibitor include ''certain agency designations of representative or alternate payees for program beneficiaries.'' As we discuss in more detail below, once we have determined that an individual is disabled, we may need to decide whether he or she is capable of managing his or her benefits, or whether his or her interest would be served by the appointment of a representative payee.[24] Finally, the regulation requires that the individual lack the mental capacity to manage his or her own affairs ''as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease.'' Consequently, the basis for the individual's inability to manage his or her own affairs must therefore be the ''result of'' his or her mental impairment. As a result, individuals whom we are required to report to NICS will be a subset of the universe of individuals for whom we have appointed a representative payee.

We recognize that there is no perfect fit between: (1) Our adjudication regarding a claimant's entitlement to benefits and determination of whether to designate a representative payee; and (2) the regulatory definition of an individual who is subject to the Federal mental health prohibitor. Considering the relevant regulatory factors, discussed above, however, we believe that there is a reasonable and appropriate fit between the criteria we use to decide whether some of our beneficiaries are disabled and require a representative payee and the Federal mental health prohibitor. Accordingly, we propose that, during the title II or title XVI claim development and adjudication process, or when we take certain post-entitlement or post-eligibility actions, we will identify individuals who: (1) Filed a claim based on disability; (2) we have determined to be disabled based on a finding at step three of our sequential evaluation process that the individual's impairment(s) meets or medically equals the requirements of one of the Mental Disorders Listing of Impairments (Listings) (12.00 *et seq.*); [25] (3) have a primary diagnosis code in our records that is based on a mental impairment; [26] (4) have attained age 18, but have not yet attained full retirement age; and (5) require their benefit payments to be made through a representative payee because we have found that they are incapable of managing benefit payments.

We propose to include the first four factors in order to help us identify individuals for whom our determination is the ''result of'' his or her mental impairment, and not because of another factor, such as the individual's age or physical impairment. The final factor, our appointment of a representative payee, focuses on the second factor under the applicable regulations, the individual's inability to manage his or her affairs.[27]

We propose to include the existence of a Listing-level mental impairment as one of the criteria for our reporting to the NICS because the existence of such an impairment best identifies those beneficiaries who are unable to manage their affairs as a result of their mental impairment, and are therefore subject to the Federal mental health prohibitor. We use a five-step sequential evaluation process to decide if an individual who has filed a claim for benefits is disabled.[28] At the third step of that process, we decide whether the individual has an impairment, or combination of impairments, that meets or medically equals the requirements of an impairment in the Listings.[29] The Listings describe, for each of the major body systems, impairments that we consider severe enough to prevent an individual from doing any gainful activity, regardless of his or her age, education, or work experience.

Most body system sections in the Listings contain two parts: An introduction and the specific listings. The introduction to each body system contains information relevant to the use

[21] 27 CFR 478.11.

[22] See 42 U.S.C. 405(b)(1), 1383(c)(1)(A) (directing the Commissioner to ''make findings of fact, and decisions as to the rights of any individual applying for a payment'' under titles II and XVI of the Act), 902(a)(4) (providing that the Commissioner ''shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.'').

[23] See 42 U.S.C. 405(j)(1)(A), 1383(a)(2)(A)(ii); 20 CFR 404.2010(a), 416.610(a).

[24] *Id.*

[25] *See* 20 CFR 404.1520(a)(4)(iii), 404.1520(d), 404.1525, 404.1526, 416.920(a)(4)(iii), 416.920(d), 416.925, 416.926. The Listings are found in 20 CFR part 404, subpart P, appendix 1.

[26] The relevant diagnosis codes are: Listing 12.02: 2940 (Organic Mental Disorders); Listing 12.03: 2950 (Schizophrenic, Paranoid and Other Psychotic Disorders); Listing 12.04: 2960 (Affective Disorders); Listing 12.05: 3180 (Intellectual Disability); Listing 12.06: 3000 (Anxiety-Related Disorders); Listing 12.07: 3060 (Somatoform Disorders); Listing 12:08: 3010 (Personality Disorders); and Listing 12.10: 2990 (Autistic Disorders and Other Pervasive Developmental Disorders). *See* Program Operations Manual System (POMS) DI 26510.015G (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0426510015*); DI 28084.035A (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0428084035*). If we find a claimant's borderline intellectual functioning to be of listing-level severity, we will use the code 3195 and base the appropriate listing category for our finding of medical equivalence on a consideration of all the cognitive and behavioral manifestations in the particular claim. POMS DI 26510.015G.

[27] Our choice of an age criterion—individuals who have attained age 18, but have not yet attained full retirement age—also reflects the fact that when we appoint a representative payee for individuals at full retirement age or older, we do not obtain the type of medical evidence that would allow us to determine whether the inability to manage their benefit payments is as a result of a mental impairment or for some other reason.

[28] 20 CFR 404.1520(a), 416.920(a). When we perform a continuing disability review, we use a separate sequential evaluation process to decide if a beneficiary continues to be disabled. 20 CFR 404.1594(f), 416.994(b)(5).

[29] In the sequential evaluation process we use to determine an individual's continuing eligibility, we consider whether the individual's medically determinable impairment(s) meets or medically equals the requirements of the Listings at the second step of the process in title II claims, and at the first step of the process in title XVI claims. 20 CFR 404.1594(f)(2), 416.994(b)(5)(i).

of the listings in that body system; for example, examples of common impairments in the body system and definitions used in the listings for that body system. The introductory section also may include specific criteria for establishing a diagnosis, confirming the existence of an impairment, or establishing that an impairment(s) satisfies the criteria of a particular listing in the body system. The specific listings follow the introduction in each body system. Within each listing, we specify the objective medical evidence and other findings needed to satisfy the criteria of that Listing.[30]

The Listings help us ensure that determinations or decisions of disability have a sound medical basis, that claimants receive equal treatment throughout the country, and that we can readily identify the majority of persons who are disabled. The level of severity described in the Listings—the inability to perform any gainful activity—is such that an individual who is not engaging in substantial gainful activity and who has an impairment that meets or medically equals the requirements of the Listings is generally considered unable to work by reason of the medical impairment alone.[31] Thus, individuals who have a Listing-level impairment are the most severely disabled beneficiaries we serve. In our view, given the medical severity of a Listing-level impairment, using our award of benefits based on the mental disorders listings, combined with the appointment of a representative payee, as part of the criteria we use to identify individuals for reporting to the NICS most appropriately identifies beneficiaries who are subject to the Federal mental health prohibitor in a manner consistent with the congressional purpose expressed in the NIAA.

We acknowledge that we are not proposing to identify and report for inclusion in the NICS those individuals for whom we have appointed a representative payee after a finding of disability at step five of our sequential evaluation process. At step five of the sequential evaluation process we decide whether an individual can perform a significant number of jobs that exist in the national economy considering his or her age, education, past work experience, and residual functional capacity.[32] In contrast to a step three finding of disability, which focuses on medical severity as established by objective criteria, a step five finding of disability takes into account vocational factors and depends on an assessment of the number of jobs in the economy that a person can perform. For the reasons discussed above, we believe that including individuals whom we have determined to have a Listing-level mental impairment (and who meet the other criteria that we propose), most closely comports with the requirements of the NIAA, the regulatory definition of the Federal mental health prohibitor, and the DOJ Guidance. However, we recognize that applying the proposal to beneficiaries who are found disabled at step five of our sequential evaluation process may also be a reasonable interpretation of the NIAA, its implementing regulations, and the DOJ Guidance, as applied to our programs. Therefore, during the comment period for this NPRM, we invite comment on the possible benefits and limitations of applying the proposal to beneficiaries who are found disabled based on a finding at step five of our sequential evaluation process. Further, we invite comment on the possible manner in which we could implement the proposal with respect to these beneficiaries in a manner that is least disruptive to our ability to process claims and deliver services to the public. We will consider the comments we receive on this issue, and determine whether to include these beneficiaries in our reporting to the NICS. If we decide to include beneficiaries who are found disabled at step five of our sequential evaluation process in our reporting to the NICS, we will respond to the comments and explain our reasons for doing so in any final rule, and make appropriate modifications to the regulatory language in the final rule.

The information about the individual that we propose to report for inclusion in the NICS would consist of his or her: (1) Name, (2) full date of birth, (3) sex, and (4) Social Security number. We propose to provide the pertinent information about individuals meeting the proposed criteria to the Attorney General for inclusion in the NICS on not less than a quarterly basis. We also propose to provide information regarding these individuals on a prospective basis. That means we would report individuals to the Attorney General for inclusion in the NICS based on representative payee determinations meeting the 18 U.S.C. 922(g)(4) requirements, that we make on or after the effective date of any final rule.

In addition, if we conduct a continuing disability review (including an age-18 disability redetermination) in an individual's case and determine, on or after the effective date of any final rule, that the individual meets the criteria for inclusion in the NICS, we would also report that individual for inclusion in the NICS. That means that we would report an individual for inclusion in the NICS after a continuing disability review if we appoint a representative payee for the person because he or she is incapable of managing benefit payments as a result of a primary mental impairment that meets or medically equals the requirements of one of the Mental Disorders Listings. We would do so even if we originally determined that the individual did not require a representative payee because of his or her mental impairment before the effective date of any final rule.

*Oral and Written Notification to Beneficiaries*

Under our representative payee policy, unless direct payment is prohibited, we presume that an adult beneficiary is capable of managing or directing the management of benefits. However, if we have information that the beneficiary has a mental or physical impairment that prevents him or her from managing or directing the management of benefits, we will develop the issue of capability.[33] If a beneficiary has a mental impairment, we will develop the capability issue if there is an indication that the beneficiary may lack the ability to reason properly, is disoriented, has seriously impaired judgment, or is unable to communicate with others.[34]

It is also important to remember that we can reevaluate a beneficiary's capability even though we may have already determined a beneficiary's capability in the past. We are always alert to changes in circumstances that might indicate the need for a new capability determination. For example, a once incapable beneficiary who requests direct payment may now be capable, or a once capable beneficiary who is admitted to a mental hospital may now be incapable. We consider reviewing capability in a number of situations, including: When we perform a continuing disability review or an SSI redetermination (including an age-18 disability redetermination), when we discover that a beneficiary manages any other benefits that he or she may be

[30] 20 CFR 404.1525(c), 416.925(c).

[31] Social Security Ruling (SSR) 86–8 (available at: *https://ssa.gov/OP_Home/rulings/di/01/SSR86-08-di-01.html*).

[32] *See* 20 CFR 404.1520(a)(4)(v), 404.1520(g), 416.920(a)(4)(v), 416.920(g).

[33] POMS GN 00502.020 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502020*). Under our policy, we prohibit legally incompetent beneficiaries and children under age 15 from receiving benefits directly. In these cases, we will appoint a representative payee. POMS GN 00502.005A (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502005*).

[34] POMS GN 00502.020A.2.

entitled to, when a beneficiary appeals the appointment of a payee, and when any other contact with the beneficiary or payee raises a question about the beneficiary's capability.[35]

We base our determination of whether to pay a beneficiary directly or through a representative payee on evidence provided to us.[36] When we adjudicate an individual's capability, we consider anything that helps us understand the beneficiary's ability to manage funds.[37] Usually, we characterize evidence of capability as one of three types. First, we consider legal evidence; legal evidence is required only where there is an allegation that the beneficiary is legally incompetent.[38] Second, we consider medical evidence; whenever possible, we will obtain medical evidence that indicates the beneficiary cannot manage or direct someone else to manage his or her benefits. Third, we consider lay evidence; in the absence of legal evidence, we will obtain lay evidence in all cases. If legal evidence establishes that the beneficiary is incompetent to manage or direct someone else to manage his or her benefits, the beneficiary must receive benefits through a representative payee, and no other development is necessary. Otherwise, we will make a capability determination based on lay and medical evidence.[39]

The NIAA requires any Federal department or agency that conducts proceedings to adjudicate a person as subject to the Federal mental health prohibitor to provide the person with both oral and written notice of several things at the commencement of the adjudication process.[40] Consistent with the NIAA, the oral and written notice we propose to provide would advise the affected individual of the following: (1) The adjudication, when final, will prohibit him or her from purchasing, shipping, transporting, receiving, or possessing firearms and ammunition, pursuant to 18 U.S.C. 922(d)(4) and (g)(4); (2) any person who knowingly violates these restrictions may be imprisoned for up to 10 years or fined up to $250,000, or both; and (3) relief from the Federal firearms prohibitions imposed by 18 U.S.C. 922(d)(4) and (g)(4) as a result of our adjudication is available to the individual.

For our purposes, we consider the commencement of the adjudication process to mean the beginning of the capability determination process described above.[41] Under these proposed rules, we would provide oral and written notice to the beneficiary after we have determined that he or she meets the medical requirements for disability based on a finding that his or her impairment(s) meets or medically equals the requirements of the Mental Disorders Listings, but before we find that he or she requires a representative payee. We recognize that this means we would provide some beneficiaries with the oral and written notice required by the NIAA, but ultimately not report them to the NICS because we determine that they do not require representative payees. We believe that the NIAA requires this result. Section 101(c)(3)(A) of the NIAA specifically states that an agency must provide oral and written notice that, ''*should* the agency adjudicate the person as a mental defective,'' the adjudication, ''*when final,* will prohibit the individual from purchasing, possessing, receiving, shipping, or transporting a firearm or ammunition.'' (Emphasis added). The statutory language clearly indicates that Congress intended for us to provide the oral and written notice *before* we actually find that an individual needs a representative payee.

*Program for Relief*

Section 101(a)(2)(A) of the NIAA requires a Federal agency that makes any adjudication related to the mental health of a person to establish a program that permits a person to apply for relief from the firearms prohibitions imposed by 18 U.S.C. 922(g)(4). We propose to allow a person who is subject to the Federal mental health prohibitor because he or she meets the criteria in § 421.110(b) to apply for relief from the Federal firearms prohibitions imposed as a result of our adjudication.

We propose to provide these individuals with a process by which they can apply for relief from the Federal firearms prohibitions and a means to submit evidence for us to consider. As required by the NIAA, this request for relief process would focus on whether the circumstances regarding the disability, and the applicant's record and reputation, are such that we find the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.[42] To make these required findings, we propose to require the individual who requests relief to provide us with certain evidence, including evidence from his or her primary mental health provider regarding his or her current mental health status and mental health status for the past 5 years. We also propose to require an applicant for relief to submit written statements and any other evidence regarding the applicant's reputation. As part of the relief process, we would also obtain a criminal history report on the applicant.

After the applicant submits the evidence required under the rules, a decision maker who was not involved in finding that the applicant's benefit payments must be made through a representative payee would review the evidence and act on the request for relief. We would notify the applicant in writing of our action regarding the request for relief.

Section 101(c)(2)(A)(iii) of the NIAA specifies[43] that relief and judicial review with respect to the relief program shall be available according to the standards prescribed in 18 U.S.C. 925(c). Section 925(c), in turn, provides that any person whose application for relief is denied may file a petition for a judicial review of the denial with the United States district court for the district in which he or she resides. The court may, in its discretion, admit additional evidence where failure to do

[35] POMS GN 00502.020A.6.

[36] See 20 CFR 404.2015, 416.625.

[37] POMS GN 00502.020B.

[38] POMS GN 00502.005A.2 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502005*). Under our policy, there must be a court order in place for a finding that an individual is incompetent. The appointment of a legal guardian alone does not necessarily mean the beneficiary is legally incompetent. The court order must specifically address the beneficiary's competency or must contain a statement regarding the individual's ability to handle his or her financial affairs. If the court order does not specify incompetency, we may use the Digest of State Guardianship Laws found in POMS GN 00502.300 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502300*) to help determine if the court order represents a finding of legal incompetence, or we may call the court for clarification. Id.

[39] POMS GN 00502.020B. We explain how we consider legal evidence of capability in POMS GN 00502.005 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502005*). We explain how we consider medical evidence of capability in POMS GN 00502.025 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502025*). We explain how we consider lay evidence of capability in POMS GN 00502.030 (available at: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0200502030*).

[40] Section 101(c)(3) of the NIAA, 121 Stat. at 2564.

[41] We recognize that, for purposes of reporting an individual to NICS, the ''commencement of the adjudication process'' differs from the meaning that we would attribute to that phrase in the context of our disability determination process. As we discuss here, for the purpose of these proposed rules, the commencement of the adjudication process refers to the commencement of the process we use to determine whether an individual requires a representative payee, after we have determined the individual to be disabled based on a finding at step three of our sequential evaluation process that the individual's impairment(s) meets or medically equals the requirements of one of the Mental Disorders Listing of Impairments.

[42] Section 101(c)(2)(A)(iii) of the NIAA, 121 Stat. at 2563; *see* 18 U.S.C. 925(c).

[43] 121 Stat. at 2563.

so would result in a miscarriage of justice. Consistent with the standards contained in 18 U.S.C. 925(c), we propose to include in the regulation a provision that the individual may seek judicial review when we deny his or her request for relief through the filing of a petition for relief in the United States district court for the district in which the individual resides.

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866 and were subject to OMB review.

*Regulatory Flexibility Act*

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Paperwork Reduction Act*

These proposed rules pose new public reporting burdens in § 421.150(b), 421.151(b)(1) and (2) and (c)(1) through (3), 421.152(b), and 421.165(b). Since we will create new forms for these requirements, we will solicit public comment for them in a separate future notice in the **Federal Register** as part of the Paperwork Reduction Act process.

(Catalog of Federal Domestic Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance, and 96.006, Supplemental Security Income)

**List of Subjects**

Administrative practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

■ For the reasons set out in the preamble, we propose to add part 421 to chapter III of title 20 of the Code of Federal Regulations to read as follows:

## PART 421—NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

Sec.



**Authority:** Section 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)); sec. 101, Public Law 110–180, 121 Stat. 2559, 2561 (18 U.S.C. 922 note).

### § 421.100 What is this part about?

The rules in this part relate to the Brady Handgun Violence Prevention Act (Brady Act), as amended by the NICS Improvement Amendments Act of 2007 (NIAA) (Pub. L. 110–180). The Brady Act required the Attorney General to establish the National Instant Criminal Background Check System (NICS), which allows a Federal firearms licensee to determine whether the law prohibits a potential buyer from possessing or receiving a firearm. Among other things, the NIAA requires a Federal agency that has any records demonstrating that a person falls within one of the categories in 18 U.S.C. 922(g) or (n) to report the pertinent information contained in the record to the Attorney General for inclusion in the NICS. The rules in this part define key terms and explain which records we will report to the NICS. They also explain how we will provide oral and written notification to our title II and title XVI beneficiaries who meet the requisite criteria. Finally, the rules in this part explain how beneficiaries who meet the requisite criteria may apply for relief from the Federal firearms prohibitions, and how we will process a request for relief.

### § 421.105 Definitions of terms used in this part.

For the purposes of this part:

*Adjudicated as a mental defective,* in accordance with 18 U.S.C. 922(g)(4), as amended, means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: Is a danger to himself or others; or lacks the mental capacity to contract or manage his own affairs.

*Affected individual* means an individual:

(1) Who has been found disabled based on a finding that the individual's impairment(s) meets or medically equals the requirements of one of the Mental Disorders Listing of Impairments (sections 12.00 through 12.10 of appendix 1 to subpart P of part 404 of this chapter) under the rules in part 404, subpart P of this chapter, or under the rules in part 416, subpart I of this chapter; and

(2) For whom we need to make a capability finding under the rules in part 404, subpart U of this chapter, or under the rules in part 416, subpart F of this chapter, and that finding is the result of marked subnormal intelligence, or mental illness, incompetency, condition or disease.

*Commencement of the adjudication process* means, with respect to an affected individual, the beginning of the process we use to determine whether, as a result of a mental impairment:

(1) An individual is capable of managing his or her own benefits; or

(2) Whether his or her interests would be better served if we certified benefit payments to another person as a representative payee, under the rules in part 404, subpart U of this chapter, or the rules in part 416, subpart F of this chapter.

*Full retirement age* has the meaning used in § 404.409 of this chapter.

*NICS* means the National Instant Criminal Background Check System established by the Brady Handgun Violence Prevention Act, Public Law 103–159, 107 Stat. 1536 (codified at 18 U.S.C. 922 note), as amended.

*Primary diagnosis code* means the code we use to identify an individual's primary medical diagnosis in our records. The primary diagnosis refers to the basic condition that renders an individual disabled under the rules in part 404, subpart P of this chapter, or under the rules in part 416, subpart I of this chapter.

*Us* or *We* means the Social Security Administration.

### § 421.110 Identifying records relevant to the NICS.

(a) In accordance with the requirements of the NIAA, we will identify the records of individuals whom we have ''adjudicated as a mental defective.'' For purposes of the Social Security programs established under titles II and XVI of the Social Security Act, we have ''adjudicated as a mental defective'' any individual who meets the criteria in paragraphs (b)(1) through (5) of this section.

(b) During our claim development and adjudication process, or when we take certain post-entitlement or post-eligibility actions, we will identify any individual who:

(1) Has filed a claim based on disability;

(2) Has been determined to be disabled based on a finding that the individual's impairment(s) meets or medically equals the requirements of one of the Mental Disorders Listing of Impairments (sections 12.00 through 12.10 of appendix 1 to subpart P of part 404 of this chapter) under the rules in part 404, subpart P of this chapter, or under the rules in part 416, subpart I of this chapter;

(3) Has a primary diagnosis code in our records based on a mental impairment;

(4) Has attained age 18, but has not attained full retirement age; and

(5) Requires that his or her benefit payments be made through a representative payee because we have determined, under the rules in part 404, subpart U of this chapter, or the rules in part 416, subpart F of this chapter, that he or she is incapable of managing benefit payments as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease.

(c) We will apply the provisions of this section to:

(1) Capability findings that we make in connection with initial claims on or after [EFFECTIVE DATE OF THE FINAL RULE] under the rules in part 404, subpart U of this chapter or the rules in part 416, subpart F of this chapter, or

(2) Capability findings that we make in connection with continuing disability reviews (including age-18 disability redeterminations under § 416.987 of this chapter) on or after [EFFECTIVE DATE OF THE FINAL RULE] under the rules in part 404, subpart U of this chapter, or the rules in part 416, subpart F of this chapter. We will apply the provisions of this paragraph only with respect to capability findings in which we appoint a representative payee for an individual in connection with a continuing disability review.

**§ 421.120 NICS reporting requirements.**

On not less than a quarterly calendar basis, we will provide information about any individual who meets the criteria in § 421.110 to the Attorney General, or his or her designate, for inclusion in the NICS. The information we will report includes the name of the individual, his or her full date of birth, his or her sex, and his or her Social Security number. We will also report any other information that the Attorney General determines Federal agencies should report to the NICS.

**§ 421.140 Notice requirements for an affected individual.**

At the commencement of the adjudication process, we will provide both oral and written notice to an affected individual that:

(a) A finding that he or she meets the criteria in § 421.110(b)(1) through (5), when final, will prohibit the individual from purchasing, possessing, receiving, shipping, or transporting firearms and ammunition, pursuant to 18 U.S.C. 922(d)(4) and (g)(4);

(b) Any person who knowingly violates the prohibitions in 18 U.S.C. 922(d)(4) or (g)(4) may be imprisoned for up to 10 years or fined up to $250,000, or both, pursuant to 18 U.S.C. 924(a)(2); and

(c) Relief from the Federal firearms prohibitions imposed by 18 U.S.C. 922(d)(4) and (g)(4) by virtue of our adjudication is available under the NIAA.

**§ 421.150 Requesting relief from the Federal firearms prohibitions.**

(a) If we report an individual to the NICS based on a finding that he or she meets the criteria in § 421.110(b)(1) through (5), the individual may apply for relief from the Federal firearms prohibitions imposed by Federal law as a result of our adjudication. If such an individual requests relief from us, we will apply the rules in §§ 421.150 through 421.165.

(b) An application for relief filed under this section must be in writing and include the information required by § 421.151. It may also include any other supporting data that we or the applicant deems appropriate. When an individual requests relief under this section, we will also obtain a criminal history report on the individual before deciding whether to grant the request for relief.

**§ 421.151 Evidentiary requirements and processing a request for relief.**

(a) When we decide whether to grant an application for relief, we will consider:

(1) The circumstances regarding the firearms prohibitions imposed;

(2) The applicant's record, which must include the applicant's mental health records and a criminal history report; and

(3) The applicant's reputation, developed through witness statements or other evidence.

(b) *Evidence.* The applicant must provide the following evidence to us in support of a request for relief:

(1) A current statement from the applicant's primary mental health provider assessing the applicant's current mental health status and mental health status for the 5 years preceding the date of the request for relief; and

(2) Written statements and any other evidence regarding the applicant's reputation.

(c) *Evidentiary requirements*—(1) *A current statement from the applicant's primary mental health provider submitted under paragraph (b)(1) of this section.* We will consider a statement from the applicant's primary mental health provider to be current if it is based on a complete mental health assessment that was conducted during the 90-day period immediately preceding the date we received the applicant's request for relief under paragraph (b)(1) of this section. The statement must specifically address:

(i) Whether the applicant has ever been a danger to himself or herself or others; and

(ii) Whether the applicant would pose a danger to himself or herself or others if we granted the applicant's request for relief and the applicant purchased and possessed a firearm or ammunition.

(2) *Written statements regarding the applicant's character submitted under paragraph (b)(2) of this section.* The statements must specifically:

(i) Identify the person supplying the information;

(ii) Provide the person's current address and telephone number;

(iii) Describe the person's relationship with and frequency of contact with the applicant;

(iv) Indicate whether the applicant has a reputation for violence in the community; and

(v) Indicate whether the applicant would pose a danger to himself or herself or others if we granted the applicant's request for relief and the applicant purchased and possessed a firearm or ammunition.

(3) The applicant may obtain written statements from anyone who knows the applicant, including but not limited to clergy, law enforcement officials, employers, friends, and family members, as long as the person providing the statement has known the applicant for a sufficient period, has had recent and frequent contact with the beneficiary, and can attest to the beneficiary's good reputation. The individual submitting the written statement must describe his or her relationship with the applicant and provide information concerning the length of time he or she has known the applicant and the frequency of his or her contact with the applicant. The applicant must submit at least one statement from an individual who is not related to the applicant by blood or marriage.

**§ 421.152 Time limits to provide evidence supporting a request for relief.**

(a) An applicant has 30 days after the date on which he or she submits a request for relief under § 421.150 to provide us with the evidence required under § 421.151(b)(1) through (3).

(b) An applicant may ask us for more time to submit evidence under paragraph (a) of this section. The request for an extension of time must be in writing and must give the reasons why the applicant cannot give us the required evidence within the 30-day period. If the applicant shows us that he or she had good cause for missing the deadline, we will extend the 30-day period. To determine whether good cause exists, we use the standards explained in § 404.911 of this chapter.

(c) If the applicant does not submit the evidence required under § 421.151 within the 30-day period provided under paragraph (a) of this section, or within the extended period provided under paragraph (b) of this section, we will dismiss the request for relief.

**§ 421.155 Burden of proof in requests for relief.**

An applicant who requests relief under § 421.150 must prove that he or she is not likely to act in a manner dangerous to public safety and that granting relief from the prohibitions imposed by 18 U.S.C. 922(d)(4) and (g)(4) will not be contrary to the public interest.

**§ 421.160 Granting a request for relief.**

(a) We may grant an applicant's request for relief if the applicant establishes, to our satisfaction, that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(b) We will not grant an applicant's request for relief if the applicant is prohibited from possessing firearms by the law of the State in which the applicant resides.

**§ 421.165 Actions on a request for relief.**

(a) After the applicant submits the evidence required under § 421.151 and any other evidence he or she wants us to consider, we will review the evidence, which will include any evidence from our records that we determine is appropriate. A decision maker who was not involved in making the finding that the applicant's benefit payments be made through a representative payee will review the evidence and act on the request for relief. We will notify the applicant in writing of our action regarding the request for relief.

(b) If we deny an applicant's request for relief, we will send the applicant a written notice that explains the reasons for our action. We will also inform the applicant that if he or she is dissatisfied with our action, he or she has 60 days from the date he or she receives the notice of our action to file a petition seeking judicial review in Federal district court.

(c) If we grant an applicant's request for relief, we will send the applicant a written notice that explains the reasons for our action. We will inform the applicant that we will notify the Attorney General, or his or her delegate, that the individual's record should be removed from the NICS database. We will also notify the applicant that he or she is no longer prohibited under 18 U.S.C. 922(g)(4) from purchasing, possessing, receiving, shipping, or transporting firearms or ammunition based on the prohibition that we granted the applicant relief from. We will notify the Attorney General, or his or her delegate, that the applicant's record should be removed from the NICS database after we grant the applicant's request for relief.

(d) The NIAA requires us to process each application for relief not later than 365 days after the date we receive it. If we fail to resolve an application for relief within that period for any reason, including a lack of appropriated funds, we will be deemed to have denied the relief request without cause. In accordance with the NIAA, judicial review of any petition brought under this paragraph shall be de novo.

**§ 421.170 Judicial review following a denial of a request for relief.**

(a) Judicial review of our action denying an applicant's request for review is available according to the standards contained in 18 U.S.C. 925(c). An individual for whom we have denied an application for relief may file a petition for judicial review with the United States district court for the district in which he or she resides.

(b) If, on judicial review, a Federal court grants an applicant's request for relief, we will notify the Attorney General that the individual's record should be removed from the NICS database.

[FR Doc. 2016–10424 Filed 5–4–16; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 11 and 101

**[Docket No. FDA–2011–F–0172]**

## A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part II (Menu Labeling Requirements in Accordance With the Patient Protection Affordable Care Act of 2010); Guidance for Industry; Availability

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

**ACTION:** Notification of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled ''A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part II (Menu Labeling Requirements in Accordance With FDA's Food Labeling Regulations).'' The guidance will help certain restaurants and similar retail food establishments comply with the menu labeling requirements, including the requirements to provide calorie and other nutrition information for standard menu items, including food on display and self-service food. In addition, we note that enforcement of the Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments final rule will commence 1 year after the date on which this document publishes in the **Federal Register**.

**DATES:** Submit either electronic or written comments on FDA guidances at any time.

**ADDRESSES:** You may submit comments as follows:

**Electronic Submissions**

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note

that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

**Written/Paper Submissions**

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2011–F–0172 for ''A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part II (Menu Labeling Requirements in Accordance with 21 CFR 101.11).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

Submit written requests for single copies of the guidance to Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Ashley Rulffes, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

**SUPPLEMENTARY INFORMATION:**

## I. Background

We are announcing the availability of a guidance for industry, entitled ''A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part II (Menu Labeling Requirements in Accordance with 21 CFR 101.11).'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of September 16, 2015 (80 FR 55564), we announced the availability of a draft guidance for industry entitled ''A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part II (Menu Labeling Requirements in Accordance with 21 CFR 101.11).'' We invited comment on the draft guidance by November 2, 2015.

We received many comments on the draft guidance and have modified the guidance as appropriate by revising several questions and answers and adding new questions and answers. (The new questions and answers are at 5.5, 5.7, 5.11, 5.17, 5.35, 7.11, and 7.12.) Changes to the guidance include additional examples and explanations to clarify how the provisions of the rule would apply to various situations. The guidance announced in this document finalizes the draft guidance dated September 2015.

## II. Enforcement

On December 18, 2015, the President signed the Consolidated Appropriations Act, 2016 (Pub. L. 114–113). Section 747 of the Consolidated Appropriations Act states that none of the funds made available under the Consolidated Appropriations Act may be used to implement, administer, or enforce the final rule entitled ''Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments'' until 1 year after the date we publish a Level 1 guidance with respect to nutrition labeling of standard menu items in restaurants and similar retail food establishments. As a result, enforcement of the final rule published December 1, 2014 (79 FR 71156), will commence May 5, 2017.

## III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in § 101.11(d), (c)(3), and (b)(2) have been approved under OMB control no. 0910–0783.

## IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances** or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: April 29, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–10462 Filed 5–4–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### 49 CFR Part 1250

**[Docket No. EP 724 (Sub-No. 4)]**

### United States Rail Service Issues—Performance Data Reporting

**AGENCY:** Surface Transportation Board (the Board or STB).

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** Through this Supplemental Notice of Proposed Rulemaking (SNPR), the Board is proposing to establish new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics on a weekly basis.

**DATES:** Comments are due by May 31, 2016. Reply comments are due by June 28, 2016.

**ADDRESSES:** Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 724 (Sub-No. 4), 395 E Street SW., Washington, DC 20423–0001.

Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site. Copies will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0238 or 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Allison Davis at (202) 245–0378. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Surface Transportation Board initiated this rulemaking proceeding in response to the service problems that began to emerge in the railroad industry in late 2013. Those service problems affected the transportation of a wide range of commodities, including grain, fertilizer, ethanol, coal, automobiles, chemicals, propane, consumer goods, crude oil, and industrial commodities.

In response to the service challenges, the Board held two public hearings, in April 2014 in Washington, DC, and in September 2014 in Fargo, ND, to allow interested persons to report on service problems, to hear from rail industry executives on plans to address rail service problems, and to explore options to improve service. During and after these hearings, parties expressed concerns about the lack of publicly available information related to rail service and requested access to performance data from the railroads to better understand the scope, magnitude, and impact of the service issues,[1] as well as the underlying causes and the prospects for recovery.

Based on these concerns and to better understand railroad operating conditions, the Board issued an October 8, 2014 order requiring all Class I railroads and the Class I railroad members of the CTCO to file weekly reports containing specific performance data. *See U.S. Rail Serv. Issues—Data Collection* (*Interim Data Order*), EP 724 (Sub-No. 3) (STB served Oct. 8, 2014).[2] Railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination, and loading metrics for grain and coal service, among other information. The data were intended to give both the Board and its stakeholders access to near real-time information about the operations and performance of the Class I railroads and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating potential losses.

On October 22, 2014, the Class I railroads and the Association of American Railroads (AAR) (on behalf of the CTCO) filed the first set of weekly reports in response to the *Interim Data Order.* As requested by the Board, each carrier provided an explanation of its methodology for deriving performance data in response to each request. Generally, the reports corresponded to the elements of the *Interim Data Order;* however, some railroads approached individual requests differently, leading to variations in the reported data. The different approaches were due primarily to the railroads' disparate data-keeping systems, different railroad operating practices, and/or unintended ambiguities in certain requests. Certain railroads also departed from the Board's prescribed reporting in order to maintain consistency with their own weekly data runs and analyses. For the most part, however, railroads made reasonable efforts to respond to each request, substituting analogous data when the precise information requested could not readily be derived.

The weekly filings have allowed the Board and its stakeholders to monitor the industry's performance and have allowed the Board to develop baseline data. Based on the Board's experience with the reporting to date, and as expressly contemplated in the *Interim Data Order,* the Board proposed new regulations for permanent reporting by the members of the Class I railroad industry and the CTCO, through its Class I members. *See U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4) (STB served Dec. 30, 2014) (80 FR 473, January 6, 2015) (*NPR*).

The proposed reporting requirements in the *NPR* include many of the requests contained in the *Interim Data Order.* The *NPR* proposes nine weekly metrics that would apply to Class I railroads: (1) System average train speed; (2) weekly average terminal dwell time; (3) weekly average cars online; (4) weekly average dwell time at origin or interchange; (5) weekly total number of loaded and empty trains held short of destination or scheduled interchange; (6) daily average number of loaded and empty cars operating in normal movement which have not moved in specified periods of time; (7) weekly total number of grain cars loaded and billed, by State; (8) total overdue car orders, average days late, total new orders in the past week, total orders filled in the past week, and number of orders cancelled in the past week; and (9) weekly total coal unit train loadings or carloadings by region. The *NPR* also proposes metrics pertaining to service in Chicago as well as reporting on major rail infrastructure projects. The *NPR* proposes to exempt Kansas City Southern Railway Company from filing state-specific information in response to Requests Nos. 7 and 8, due to the nature of its grain business and its very limited number of customers in a small number of states in its service territory.

Following receipt of comments in response to the *NPR,* the Board issued an order announcing that it would waive its ex parte communications rules in order to allow Board staff to hold

[1] *See generally* National Grain and Feed Association Letter, *U.S. Rail Serv. Issues,* EP 724 (filed May 6, 2014); Western Coal Traffic League Letter, *U.S. Rail Serv. Issues,* EP 724 (filed Apr. 17, 2014); Apr. Hr'g Tr. 154–155, *U.S. Rail Serv. Issues,* EP 724 (Apr. 10, 2014); Western Coal Traffic League Statement 5–6, *U.S. Rail Serv. Issues,* EP 724 (filed Sept. 5, 2014); Sept. Hr'g Tr. 48, 290, *U.S. Rail Serv. Issues,* EP 724 (Sept. 4, 2014).

[2] On motion of Canadian Pacific Railway Company, the Board modified the *Interim Data Order* by decision served on February 23, 2016, to allow it to discontinue reporting data related to the Rapid City, Pierre & Eastern Railroad, Inc.

meetings with interested parties to develop a more complete record with regard to technical issues in this proceeding. *See U.S. Rail Serv. Issues—Performance Data Reporting* (*Waiver Decision*), EP 724 (Sub-No. 4) (STB served Nov. 9, 2015). As a result of the comments and meetings, the Board is issuing this SNPR to revise the proposed rule. A summary of the proposed changes are outlined in Table 1 in Appendix A of this decision.

We will address one preliminary issue before summarizing the comments and explaining our proposed revisions to the *NPR.*

**Preliminary Matter**

On November 30, 2015, practitioners Thomas F. McFarland and Gordon P. MacDougall petitioned the Board to reconsider its *Waiver Decision.* McFarland and MacDougall had not previously participated in this proceeding, but assert an interest in future performance metrics in their roles as counsel before the Board. (Pet. 2.) They assert that the *Waiver Decision* is a departure from long-standing rules and that the Board does not have the authority to waive its prohibition against ex parte communication. (Pet. 3, 9) Alternatively, McFarland and MacDougall argue that the Board did not render findings adequate to waive its rules, citing 49 U.S.C. 10502, the statute dealing with the Board's exemption power. (Pet. 11.)

On December 21, 2015, AAR filed a reply to the petition, arguing that the *Waiver Decision* complies with the Board's rules and all governing law. (AAR Reply 3, Dec. 21, 2015.) AAR states that although the Board's rules do generally prohibit ex parte communications, they also contemplate the Board's authority to waive those rules. AAR also cites the Board's regulations at 49 CFR 1100.3, pursuant to which the Board is to construe its rules liberally ''to secure just, speedy and inexpensive determination of the issues presented.'' (AAR Reply 3, Dec. 21, 2015.)

Under 49 U.S.C. 1322(c) [3] and 49 CFR 1115.3(b), the Board will grant a petition for reconsideration only upon a showing that the prior action: (1) Will be affected materially because of new evidence or changed circumstances; or (2) involves material error. *Allegheny Valley R.R.—Pet. for Declaratory Order,* FD 35239, slip op. at 3 (STB served July 16, 2013). The Board finds that McFarland and MacDougall did not allege new evidence or changed circumstances and failed to demonstrate material error in the *Waiver Decision.*

The Board was well within its powers to hold individual meetings with interested parties in this proceeding. As stated in the *Waiver Decision,* slip op. at 2, the Board may waive its regulation on ex parte communication in appropriate proceedings. The Board is entitled to discretion in administering its own procedural rules as it deems necessary to resolve urgent transportation problems. *See Am. Farm Lines* v. *Black Ball Freight Serv.,* 397 U.S. 532, 539 (1970) (citing the well-established proposition that ''[i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.''). Likewise, there is no basis for the claim that the Board must justify a waiver of its rules by satisfying the exemption standards of 49 U.S.C. 10502, which applies to exemptions from statutory provisions, not Board regulations. Furthermore, the argument that the Board's ex parte prohibition arose from 1962 recommendations by the Administrative Conference of the United States (ACUS) is outdated. In 2014, ACUS reaffirmed a 1977 recommendation against a general prohibition on ex parte communications in informal rulemakings.[4] Its recent recommendation reaffirmed its view that:

> Ex parte communications, which may be oral or written, convey a variety of benefits to both agencies and the public. . . . These meetings can facilitate a more candid and potentially interactive dialogue of key issues and may satisfy the natural desire of interested persons to feel heard. In addition, if an agency engages in rulemaking in an area that implicates sensitive information, ex parte communications may be an indispensable avenue for agencies to obtain the information necessary to develop sound, workable policies.
>
> ''Ex Parte'' Communications in Informal Rulemaking Proceedings, 79 FR 35988, 35994 (June 25, 2014).

The purpose of the Board's *Waiver Decision* is consistent with the reasons suggested by ACUS, in particular, to fashion procedures for informal rulemakings appropriate to the issues involved. The *Waiver Decision* also provided safeguards to ensure fairness and accessibility to parties. The Board put in place measures that permitted any interested party the opportunity to meet with Board staff, to review the substance of comments made in the individual meetings by reading summaries of the meetings posted on the Board's Web site, and to comment in response to the information contained in the meeting summaries. Accordingly, there is no basis for McFarland and MacDougall's claims of material error in the decision.[5] The Petition for Reconsideration will be denied.

**Discussion of Comments and Supplemental Proposed Rules**

The following parties provided comments in this proceeding, either in the form of written submissions or oral comments during the ex parte meetings that were then summarized and posted by the Board, or both:

Alliance for Rail Competition et al. (ARC); American Chemistry Council (ACC); Association of American Railroads (AAR); BASF Corporation (BASF); BNSF Railway Company (BNSF); Canadian Pacific Railway Company (CP); Chicago Metropolitan Agency for Planning (CMAP); CSX Transportation, Inc. (CSXT); Freight Rail Customer Alliance (FRCA); High Road Consulting, Ltd. (HRC); Kansas City Southern Railway Company (KCS); Thomas F. McFarland and Gordon P. MacDougall (McFarland and MacDougall); National Grain and Feed Association (NGFA); National Industrial Transportation League (NITL); Norfolk Southern Railway Company (NSR); South Dakota Corn Growers Association (SDCGA); The Fertilizer Institute (TFI); Texas Trading and Transportation Services, LLC, et al. (TTMS); The Honorable John Thune, Chairman, Senate Committee on Commerce, Science, and Transportation (Senator Thune); Union Pacific Railway Company (UP); U.S. Department of Agriculture (USDA); U.S. Department of Transportation (USDOT); and Western Coal Traffic League, et al. (WCTL).

In response to the *NPR* and the invitation for stakeholder meetings, the Board received a significant volume of comments and proposals from stakeholders. We have carefully

[3] Formerly 49 U.S.C. 721. *See* Public Law 114–110, 3(a)(5), 129 Stat. 2228, 2228.

[4] The 1977 recommendation states:

> A general prohibition applicable to all agencies against the receipt of private oral or written communications is undesirable, because it would deprive agencies of the flexibility needed to fashion rulemaking procedures appropriate to the issues involved, and would introduce a degree of formality that would, at least in most instances, result in procedures that are unduly complicated, slow and expensive, and, at the same time, perhaps not conducive to developing all relevant information.
>
> Ex parte Communications in Informal Rulemaking Proceedings, 42 FR 54251, 54253 (Oct. 5, 1977).

[5] Procedurally, the petition was not timely. The *Waiver Decision* stated that individual meetings would take place between November 16, 2015, and December 7, 2015; the meetings began on November 19, 2015. McFarland and MacDougall did not file their petition until November 30, 2015.

reviewed those comments and meeting summaries in order to identify both general themes regarding service reporting and better technical methods for collecting information. We now propose revised rules that we believe will be more helpful to the agency and the public.

The *NPR*'s proposal covers a broad set of railroad service metrics derived largely from the *Interim Data Order* requests, along with definitions and requirements governing those metrics.[6] Below we generally summarize the comments received on the *NPR,* and we explain the changes now proposed in this SNPR. Although not all comments and recommendations have been adopted in the SNPR, we have worked to carefully consider the many comments, written and oral, that comprise this docket.

**Reporting Week and Timing**

The *NPR* defines the reporting week as Sunday to Saturday with reports due the following Tuesday.

*Railroad Interests.* The railroad interests generally request a Saturday through Friday reporting week. While several railroads support a Friday filing deadline, others would be amenable to maintaining the *Interim Data Order*'s Wednesday deadline. (AAR Comments 18, March 2, 2015; NSR Comments 3–4, March 2, 2015; UP Comments 8–9, March 2, 2015; NSR Mtg. Summary 1; BNSF Mtg. Summary 3; UP Mtg. Summary 6.) CSXT requests that each carrier be permitted to define its own reporting week. (CSXT Comments 4, March 2, 2015.) CSXT also requests that the Board allow 12 months for the railroads to comply with any new data requirements. (*Id.* at 7.)

*Shipper Interests and Other Stakeholders.* No comments provided.

*Revised Proposal.* The Board proposes to modify the reporting week and day, as suggested by the railroad interests. Railroads advise that for internal data reporting and the reports made to AAR on a weekly basis, their reporting week runs from 12:01 a.m. Saturday through 11:59 p.m. Friday. They suggest that modifying the reporting week would require them to establish parallel reporting systems, which would be duplicative and potentially lead to confusion. They also stated that they have adopted processes to facilitate reporting under the *Interim Data Order,* which would be disrupted by the modification proposed in the *NPR.* The railroads also stress that having to submit the weekly reports to the Board on Tuesday would not allow sufficient time to review, process, and quality-check the data. Although several suggest a Friday reporting day, there was no opposition to maintaining the *Interim Data Order*'s Wednesday reporting day. Shippers and other stakeholders voice no objection to the reporting week proposed here, or the Wednesday reporting day, and neither affects the substantive value of the data collected. Therefore, the Board proposes that the reporting day will be Wednesday for the preceding reporting week, measured from 12:01 a.m. Saturday through 11:59 p.m. Friday.

**Definition of Unit Train**

The *NPR* defined unit train as comprising 50 or more railcars of the same or similar type, carrying a single commodity in bulk.

*Railroad Interests.* AAR and several railroads request clarification of the definition of ''unit train'' as used in the *NPR.* (AAR Comments 17, March 2, 2015; BNSF Comments 10, March 2, 2015; CSXT Comments 5–6, March 2, 2015; NSR Comments 4, March 2, 2015; UP Comments 9–10, March 2, 2015; AAR Mtg. Summary 2.) AAR explains that the proposed definition of unit train ''would divorce service reporting from how railroads and their customers think about shipments in a commercial sense'' and suggests that the Board instead rely on each railroad's unit train designations. (AAR Comments 17, March 2, 2015.) Similarly, UP argues that the definition should focus on the nature of the railroad's operation instead of the number of carloads in a train, which, it states, would align with how it does business. (UP Comments 11, March 2, 2015.) In response to the *Interim Data Order,* UP states that it relies on its train-category symbols to identify and classify trains, not the number of cars in a train. (*Id.* at 10–11.) UP also argues that the Board should substitute the term ''trainload'' for unit train. UP asserts that unit train implies a shuttle-type service and that using trainload would better reflect the diversity of movement types for bulk trains in non-manifest service. (*Id.* at 11–12.)

*Shipper Interests and Other Stakeholders.* Shippers and other stakeholders generally agree that the definition of a unit train should be clarified. (NGFA Mtg. Summary 1–2; HRC Comments 4, Dec. 23, 2015.) NGFA states that it may be appropriate for each railroad to provide its own definition at the outset of reporting. (NGFA Mtg. Summary 2.)

*Revised Proposal.* The Board proposes to withdraw the proposed definition of ''unit train.'' Based on written comments and individual meetings with stakeholders, we believe that a static definition of ''unit train'' for the service metric reporting could distort data reporting. Instead, the Board believes that the better course of action for service metric reporting here is to allow railroads to report unit train data based on how train symbols (or codes) are assigned in accordance with each railroad's operating practices.

**Requests No. 1 (Train Speed), No. 2 (Terminal Dwell Time), and No. 3 (Cars Online)**

Request No. 1 seeks system-average train speed, measured for line-haul movements between terminals and calculated by dividing total train-miles by total hours operated for: (a) Intermodal; (b) grain unit; (c) coal unit; (d) automotive unit; (e) crude oil unit; (f) ethanol unit; (g) manifest; and (h) all other. Request No. 2 asks for weekly average terminal dwell time, the average time a car resides at a specified terminal location expressed in hours, excluding cars on run-through trains (*i.e.,* cars that arrive at, and depart from, a terminal on the same through train) for the carrier's system, as well as its 10 largest terminals in terms of railcars processed. Request No. 3 also seeks weekly average cars on line by the following car types for the reporting week: (a) Box; (b) covered hopper; (c) gondola; (d) intermodal; (e) multilevel (automotive); (f) open hopper; (g) tank; (h) other; and (i) total.

*Railroad Interests.* The railroads do not oppose these data requests. Specifically, they note that the data sought in Requests Nos. 1–3 corresponds with data that six Class I railroads already make publicly available on a weekly basis through the AAR. (AAR Comments 8, 12, March 2, 2015; UP Comments 12, March 2, 2015.) They argue that Request Nos. 1–3, with the potential addition of a weekly carloadings metric would be sufficient to monitor overall network fluidity. (CP Comments 2, March 2, 2015; NSR Comments 2, March 2, 2015; UP Comments 4, 12, March 2, 2015.)

Additionally, the railroads provide the Board with weekly carloading traffic reports covering 20 carload commodity categories and the two intermodal service types. (AAR Comments 13, March 2, 2015.) AAR asserts that this and other ''available information and public metrics indicated to the Board early on that service was being disrupted and allowed the Board to focus on the relevant issues it needed to

[6] With regard to Requests Nos. 7 and 8, KCS was not required to report information by State, but instead only system-wide data. *See NPR,* slip op. at 7.

monitor'' during the 2013–14 service disruptions. (*Id.* at 13.) AAR states that the Board should continue to monitor this information. (*Id.*) UP also suggests adding a system-average train speed component to Request No. 1 for all trains. (UP Comments 4, March 2, 2015.)

*Shipper Interests and Other Stakeholders.* For Request No. 1, NGFA would expand the ''grain unit'' train category to include five subcategories. (NGFA Comments 6, March 2, 2015.) For Request No. 2, it would require that dwell times be broken down into four traffic categories. (*Id.*) BASF notes that the weekly average dwell time for each carrier's 10 largest terminals is a critical measurement; it uses the data to alter its production and movement. (BASF Mtg. Summary 1.) For Request No. 3, NGFA requests that the Board require carriers to delineate ''tank cars'' by cars used to haul hazmat and non-hazmat materials. (NGFA Comments 6, March 2, 2015.) NGFA also requests that the metric include a weekly summary of cars that are industry-placed (*i.e.,* cars placed at industry for loading or unloading). (*Id.*)

*Revised Proposal.* For Request No. 1, the Board proposes to cure an omission from both the *Interim Data Order* and the *NPR* by adding an overall ''system'' component to the reporting of average train speeds. This would align the request with railroads' current AAR reporting. Additionally, we propose to add a line item for unit train shipments of fertilizer to this request in order to better monitor service issues with regard to this commodity, which emerged as a critical issue during 2013–14.[7] Since fertilizer moves in both manifest and unit train service, the Board requests that parties comment on whether a sufficient volume of fertilizer moves in unit train service to make this request meaningful for the agency to monitor rail service to fertilizer shippers.[8]

For purposes of incorporating fertilizer shipments into this request, and additional requests, below, the Board seeks input from stakeholders as to the relevant Standard Transportation Commodity Codes (STCCs) for fertilizers moving by rail, including those that typically move in unit train service. Initially, the Board proposes the following STCCs: 14–7XX–XX, 28–125–XX, 28–18X–XX, 28–19X–XX, 28–71X–XX, and 49–18X–XX.

For Requests No. 2 and No. 3, the Board proposes to retain these requests as proposed in the *NPR.* Terminal dwell and cars online are key indicators of railroad fluidity, and the requests mirror data that the Class I railroads report to AAR. Both railroad and shipper interests support the retention of these items. With respect to these and other requests, the Board addresses commenters' arguments for greater or lesser granularity below.

**Request No. 4 (Dwell Time at Origin or Interchange—Unit Train)**

This metric seeks weekly average dwell time at origin or interchange location for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains.

*Railroad Interests.* The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14–15, March 2, 2015.) UP argues that the value of the data provided by the metric would be questionable because it does not account for operational differences between unit train shipments of different commodities on a single railroad or between different railroads. (UP Comments 3, 12–13, March 2, 2015.) UP contends that any comparisons would therefore be misleading because they would more likely reflect these operational differences than performance issues. (*Id.*) UP also opposes the addition of the interchange component. It explains that adding a measure of dwell time at interchange is problematic because of complex interchange arrangements between carriers and differences in how carriers measure elapsed time between two events such as when each carrier considers a train to be released and available, and because it could result in data that do not reflect actual service performance. (UP Comments 3, 14–15, March 2, 2015.)

UP suggests normalizing, or standardizing, the data by presenting it in relation to the size and volume of each railroad rather than absolute values. UP argues that this would prevent misleading comparisons between railroads, avoid creating unjustified concerns, and allow the Board and stakeholders to develop a more meaningful baseline. (*Id.* at 6.)

*Shipper Interests and Other Stakeholders.* WCTL, NGFA, and BASF all request that the Board add detail to this metric. NGFA argues that reporting by additional commodity type should be required. (NGFA Comments 7, March 2, 2015.) It recommends including destination dwell time in this metric. (*Id.*) NGFA also recommends requiring ''the weekly percentage of a rail carrier's local service design plan that has been fulfilled for all manifest traffic, broken down by business traffic category.'' (*Id.*) It argues that this would capture the actual percent of local industry switches versus plan for the week. (*Id.*) WCTL urges the Board to retain reporting of interchange times and require carriers to report dwell times at each railroad's 10 largest interchange locations and at individual interchanges for *empty* coal unit trains (in addition to *loaded* coal unit trains). (WCTL Comments 8, March 2, 2015; WCTL Mtg. Summary 3.) BASF requests that this metric include manifest trains. (BASF Mtg. Summary 2.)

*Revised Proposal.* For Request No. 4, the Board proposes to delete the ''at interchange'' component of the *NPR,* which would align the request with the *Interim Data Order.* This change reflects railroads' comments that measuring the elapsed time at interchange would be difficult because railroads do not operate with a common understanding as to when a train is considered to be ''released'' or ''accepted'' at interchange or share common practices for measuring elapsed time at interchange. On further consideration, we believe that this additional information would not materially help the Board's monitoring of service performance in light of the other data that the Board would collect, such as dwell at origin, terminal dwell, trains holding, and cars that have not moved in two days or longer.

**Request No. 5 (Trains Held Short of Destination or Interchange)**

This metric seeks to capture the weekly total number of loaded and empty trains held short of destination or scheduled interchange for longer than six consecutive hours, sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and all other) and by cause (crew, locomotive power, track maintenance, mechanical issue, or other (with explanation)).

*Railroad Interests.* The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015; BNSF Comments 4, 5, 6–8, March 2, 2015.)

[7] For the same reasons, we are also proposing changes to Requests Nos. 1, 4, 5, and 6 to add fertilizer reporting.

[8] Although requests 1–3 are currently reported to AAR by six of the seven Class I railroads, and AAR makes this data publicly available, this reporting to AAR is voluntary. In the event that AAR changed its practices, the Board would lose access to this information, which is not otherwise available. Additionally, the data that AAR makes available to the public does not extend beyond the previous 53 weeks.

BNSF points out that the *NPR's* proposed metric differs from the one in the *Interim Data Order* by no longer using the ''snapshot'' approach and instead requiring that the railroad identify every instance during a week in which empty or loaded trains sit for at least six hours. (BNSF Comments 5, March 2, 2015.) BNSF and CSXT suggest that eliminating the snapshot approach would necessitate creating a new report that would require considerable resources and would not reflect a train held as the term is commonly understood in the railroad industry. (BNSF Comments 6, March 2, 2015; CSXT Comments 4–5, March 2, 2015.) CSXT comments that providing the ''cause'' of a train held would be problematic because it is subjective and must be manually entered. (CSXT Comments 5, March 2, 2015.) BNSF asserts that data regarding trains held may be misleading because a train may be held due to factors outside the railroad's control, or according to plan, and thus may not be indicative of a service disruption. (BNSF Comments 7, March 2, 2015.) As with Request No. 4, UP suggests that the Board normalize this data request to account for differences between types of traffic and between carriers. (UP Comments 6, March 2, 2015.)

*Shipper Interests and Other Stakeholders.* WCTL comments that the Board should clarify the ''other'' category and require a more detailed explanation of the causes for trains being held. (WCTL Comments 8–9, March 2, 2015; WCTL Mtg. Summary 3.) ACC also requests additional information for the underlying reasons why trains were held. (ACC Comments 2, March 2, 2015.) NGFA suggests the metric could be expanded to include a breakdown of the type of train by different commodities and unit train service. (NGFA Comments 7, March 2, 2015.)

*Revised Proposal.* For Request No. 5, the Board proposes to eliminate the six-hour component of this metric. This modification would allow railroads to run a same-time snapshot each day to report the average numbers of trains holding by train type. This approach comports with the railroads' current practices for monitoring fluidity. The Board originally proposed the six-hour component in an effort to capture trains holding outside of their normal operating plan. However, the railroads emphasized that a six-hour hold may be consistent with a specific train's operating plan or a train could be instructed to hold for six hours or longer to alleviate congestion or otherwise improve overall network fluidity. As such, the Board believes that capturing a weekly average figure should provide insight into fluidity and allow the agency to detect aberrations, which may prompt further inquiry. For example, if a railroad averages 25 coal trains holding per day for eight consecutive weeks, but then the number spikes to 50 or more trains for two consecutive weeks, this could prompt the agency to seek further information. Additionally, we propose to add a line item for unit train shipments of fertilizer to this request for the reason stated above. *See supra* n.7. Again, the Board requests that parties comment on whether a sufficient volume of fertilizer moves in unit train service to make it meaningful data or recommend alternative proposals to gauge rail service to fertilizer shippers.

With regard to reporting the cause for why a locomotive was held, some shipper interests advocated that we break down the ''other'' category into additional specific categories. (WCTL Comments 3, March 2, 2015.) On the other hand, railroad interests explain that the assignment of cause is a manual and subjective process, which is initially performed by the dispatcher or a field-level employee based on limited information available at the time. Railroad interests therefore advocate for eliminating the reporting of causes for trains held. (BNSF Comments 6, March 2, 2015.) Upon further consideration, the Board believes that tracking causation remains important, but that the key issues for purposes of monitoring fluidity are availability of power and crew. Accordingly, the Board proposes to eliminate ''track maintenance'' and ''mechanical issue'' as categories of causes, but to retain ''other'' as a catch-all category.

**Request No. 6 (Cars Held at Origin or Destination)**

This metric requires the daily average number of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in (a) more than 120 hours; and (b) more than 48 hours, but less than or equal to 120 hours, all sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, or all other).

*Railroad Interests.* The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015; BNSF Comments 4, 5, 6–8, March 2, 2015.) CSXT urges the Board to limit reporting to yard and terminal activity because ''*train* line of road velocity is the central interest outside of terminals,'' which should be sufficient to assess train operations (CSXT Comments 6–7, March 2, 2015, emphasis original.) CSXT also indicates that it was not providing the Board with information showing cars held for 120 hours because it does not measure that data. (CSXT Mtg. Summary 3.) BNSF argues that, like a trains held metric, a cars held metric may reflect factors outside the railroad's control or a car may be held according to plan, and thus may not be indicative of a rail service disruption. (BNSF Comments 7, March 2, 2015.)

*Shipper Interests and Other Stakeholders.* NGFA requests that the Board require reporting by additional commodity type. (NGFA Comments 7–8, March 2, 2015.) BASF requests that this metric include manifest trains. (BASF Mtg. Summary 2.)

*Revised Proposal.* For Request No. 6, the Board proposes to modify this request by requiring railroads to report only cars that have not moved in 48 hours or more. Both shippers and railroads comment that the ''greater than 120-hour'' demarcation was superfluous because stationary cars generally become a concern at the 48 hour point, or sooner. Moreover, several railroads advise that they generally track this metric, either at the 36 or 48 hour point. By keeping the metric consistent with how the railroads actually track this information, the metric would not be overly burdensome. Additionally, the Board proposes to add a subcategory for cars moving in fertilizer service.

**Request No. 7 (Grain Cars Loaded and Billed)**

This metric seeks to capture the weekly total number of grain cars loaded and billed, reported by State, and aggregated for the following STCCs: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). It also seeks reporting on the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering systems, including private cars.

*Railroad Interests.* The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015.) AAR argues that metrics related to grain and

specific regions were triggered by the ''unique economic and operational factors that emerged during 2013–2014'' and that there is no indication the same focus would be warranted for a potential future service disruption. (*Id.* at 15.) AAR stresses that the Board's focus ''should be on the fluidity of the national system'' and that micro-level, commodity-specific reporting may ''obscure rather than clarify how a particular railroad or . . . the rail industry's network as a whole is performing.'' (*Id.*)

*Shipper Interests and Other Stakeholders.* NGFA requests that the Board require reporting to be further delineated by car type and to expand the listing of STCCs to which the metric applies. (NGFA Comments 8, March 2, 2015.)

*Revised Proposal.* For Request No. 7, the Board does not propose any changes to the *NPR* metric. This metric provides information that is useful in monitoring grain carloadings by service type on a state by state basis, and would be helpful in the event of future service issues.

**Request No. 8 (Grain Car Orders)**

This metric seeks, for the same aggregated STCCs included in Request No. 7, a report by State for the following: (a) The total number of overdue car orders (a car order equals one car; overdue means not delivered within the delivery window); (b) the average number of days late for all overdue grain car orders; (c) the total number of new orders received during the past week; (d) the total number of orders filled during the past week; and (e) the number of orders cancelled, respectively, by shipper and railroad during the past week.

*Railroad Interests.* The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015.) In particular, the railroads comment that they each have disparate commercial practices when it comes to shipping grain, and therefore this metric does not provide meaningful insight. CSX refers, in part, to car ordering through its ''BidCSX'' auction program, during peak season, and regular car ordering during the off-peak season. Unfilled regular car orders are expired on a weekly basis. (CSX Comment 4, Oct. 22, 2014, EP 724 (Sub-No. 3).) NS states that it does not operate its grain network on the basis of car orders, at all. (NSR Comments at 4.) UP refers to a number of problems, including a mismatch between orders and order ''closing dates,'' aggregating different commercial programs into one metric, and, more fundamentally, the exclusion of unit train service, which is not based on car orders. (UP Comments 18–19.)

*Shipper Interests and Other Stakeholders.* NGFA states that because railroads use different methodologies to define when a car order is received, the Board needs to provide a standardized approach. (NGFA Comments 8, March 2, 2015.) NGFA asserts that this will facilitate comparisons between railroads. (*Id.*) NGFA also argues that the Board should require reporting of whether the railroad placed or pulled cars that were ordered or cancelled due to a railroad spotting more cars than a facility requested. (*Id.*) Finally, NGFA suggests that the Board require a cars ordered metric for short line railroads that haul significant amounts of grain in order to avoid erroneous conclusions about Class I carriers that interchange with those short lines. (*Id.*)

*Revised Proposal.* For Request No. 8, the Board seeks to continue receiving weekly information related to railroads' service to grain shippers, including how well railroads are meeting demand for grain cars and whether railroads are experiencing substantial backlogs of unfilled orders. However, it appears that the proposed request does not comport with railroads' commercial practices in serving their grain shipping customers. First, Request No. 8 seeks to capture ordering data pertaining to grain cars moving in carload (or manifest) service, yet the vast majority of grain traffic moves in unit train service (and as such, is captured elsewhere by other requests). And even for those cars that do move in unit train service, the unit train commercial offerings available to customers vary among carriers. For example, some railroads commit trainsets to specific customers for a defined period of time. During that period, the customers control the movement of their trainsets, and, depending on the commercial terms, can resell the trainsets to other shippers. The activity of these trainsets is not captured in the railroads' car ordering systems and thus would not be easily reportable for purposes of this metric.

In addition, even for grain cars that do move in carload service, the focus of Request No. 8 still would not properly capture the car ordering data the Board intends to seek in the *NPR,* as railroads also maintain disparate ordering systems for carload shipments. Specifically, there is no uniformity among the Class Is as to how the number of new orders is derived, when an order becomes past due, or how to measure the number of days an order is overdue. (NSR Comments 4, March 2, 2015; UP Comments 18–19, March 2, 2015; CSXT Comments 4, Oct. 22, 2014, EP 724 (Sub-No. 3).)

Accordingly, the Board proposes a simpler approach by asking that railroads report running totals of grain car orders placed versus grain car orders filled by State for cars moving in manifest service. The Board also requests that the railroads report the number of unfilled orders that are 1–10 days overdue and 11+ days overdue, as measured from the due date for placement under the carrier's governing tariff. However, the Board expressly requests comments from stakeholders and railroads that would refine this metric regarding grain car order fulfillment so that the final rule will best achieve the Board's goal to effectively monitor service to grain shippers.

**Request No. 9 (Coal Carloadings)**

Under Request No. 9, railroads would no longer be required to provide data comparing actual coal loadings against their service plans (as required by the *Interim Data Order*), but instead, to report the total number of coal unit train loadings (by production region) on a weekly basis.

*Railroad Interests.* The railroads contend that the information required by this request would not provide additional insight, would be burdensome for the railroads to collect, and would not provide added benefits to the public or the Board. (AAR Comments 14, March 2, 2015.) In response to arguments from parties asking the Board to return to a performance versus plan component, several railroads noted that plans for coal loadings are not static, but rather are fluid, reflecting utility customers' generation decisions, conditions at the mine, equipment availability, unplanned outages, and commercial issues, among other factors. (UP Reply 8, April 29, 2015; NSR Mtg. Summary 1; BNSF Mtg. Summary 4.)

*Shipper Interests and Other Stakeholders.* WCTL argues for the Board to continue using the performance versus plan component that is used in the *Interim Data Order.* WCTL states that the elimination of the comparison to plan in the *NPR* diminishes the usefulness of the data point by making it difficult to evaluate whether the railroads are keeping up with demand. (WCTL Comments 9, March 2, 2015; WCTL Mtg. Summary 3.) NGFA again requests that the Board require reporting by additional

commodity and traffic categories. (NGFA Comments 8–9, March 2, 2015.) NGFA also requests that the Board require reporting on velocity and cycle time by corridor for grains and oilseeds shipped by unit train and by relevant corridor for other commodities that ship by unit train. (*Id.* at 9.)

*Revised Proposal.* For Request No. 9, the Board proposes to modify this request by reverting back to what is currently reported in the *Interim Data Order,* which requires railroads to report actual coal loadings against their service plan. Railroads would be permitted the flexibility to report in terms of carloads or trains. The Board recognizes the concerns railroads have regarding this request, given the numerous factors involved in developing fluid monthly or weekly loading plans for coal traffic.[9] The Board believes, however, that there is value in having coal loadings reported against plan for purposes of ascertaining whether railroads are meeting their own expectations regarding the needs of their utility customers.

**New Requests No. 10 (Grain Unit Train Performance), No. 11 (Originated Carloads by Commodity Group), and No. 12 (Car Order Fulfillment Rate by Car Type)**

The Board proposes three additional metrics not included in the *NPR.*

New Request No. 10 would continue a requirement in the *Interim Data Order* under which BNSF and CP report average grain shuttle (or dedicated grain train) trips per month (TPM), by region. Under Request No. 10 carriers would be required to include this data in their first report of each month, covering the previous calendar month.[10] TPM should be reported on an average basis—for example, if a particular train set makes three origin to destination moves and another train set makes five origin to destination moves during the same calendar month, the railroad's average would be four TPM. Class I railroads other than BNSF and CP have indicated that their operations do not permit this reporting, for various reasons.[11] Accordingly, the Board anticipates issuing a waiver decision with the final rules that would permit other Class I railroads to satisfy their obligations under Request No. 10 by reporting average grain unit train TPM for their total system, including this data in their first report of each month, covering the previous calendar month. Such reports would not include planned TPM or data by region. For purposes of reporting under this item, other Class I railroads would report for all grain unit train movements, regardless of whether or not they maintain a grain shuttle or dedicated train program.

New Request No. 11 would require the Class I railroads to report weekly originated carloads by major commodity group and intermodal units, as proposed by multiple Class I railroads. The Board believes that having this information on a weekly basis will better allow it to track demand and volume growth or decline on the rail network and to correlate other metrics. The Class I railroads presently report this information to AAR and many make it available on their Web sites. Consequently, the reporting burden is minimal. However, the Board also proposes that the railroads break out an additional commodity category for ''fertilizer.'' As noted above, the Board seeks stakeholder guidance on the primary fertilizer STCCs.

New Request No. 12 would require Class I railroads to report their weekly car order fulfillment rates by major car type. Fulfillment should be stated as a percentage of cars due to be placed during the reporting week versus cars actually or constructively placed. The car types to be reported are for railroad owned or leased open hoppers, covered hoppers, gondolas, auto racks, center-beam, boxcars, flatcars, and tank cars. The Board believes that this request will provide the agency with an understanding of railroads' service to broad classes of industries which routinely ship products via specific car types (for example, grain moves primarily in covered hopper cars, so looking at the car fulfillment rates for covered hopper cars would give grain shippers some indication of how their service compares to other grain shippers). Additionally, this request would allow railroad customers to monitor their order fulfillment against their broader peer group.

**Chicago**

The *NPR* asks that the Class I railroads operating at the Chicago gateway jointly report the following performance data elements for the reporting week: (1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and (2) average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. Moreover, the request required Class I railroad members of the CTCO to provide certain information regarding the CTCO Alert Level status and protocols.

*Railroad Interests.* CP argues that obtaining a number of operating metrics from the Belt Railway Company of Chicago (BRC) and the Indiana Harbor Belt Railroad (IHB) would provide a more complete picture of operational fluidity in Chicago and the health of the network. (CP Comments 3, March 2, 2015.) CP elaborated that, given the experience in the winter of 2013–14, it recognizes that the Board has a legitimate interest in understanding the congestion in Chicago and that BRC and IHB are the heart of the Chicago terminal. CP added that reporting changes in the Chicago terminal's operating level is useful. (CP Mtg. Summary 2).

*Shipper Interests and Other Stakeholders.* Shippers and stakeholders generally agree that a focus on Chicago is important. (NITL Comments 4, March 2, 2015; USDOT Reply 7; WCTL Comments 7 n.6, March 2, 2015.) NITL suggests that the Board include dwell time in the Chicago metrics and develop appropriate and specific metrics for BRC and IHB. (NITL Comments 4–5, March 2, 2015.) NGFA suggests that the Board expand the Chicago data to include cars idled for more than 48 hours in a Chicago area yard for origin, destination, and interchange traffic. (NGFA Comments 9, March 2, 2015.) CMAP made a number of requests for additional data specific to the Chicago terminal. (CMAP Mtg. Summary 1–2.)

*Revised Proposal.* As the Board noted in the *Interim Data Order,* railroads cited congestion in Chicago as one significant cause of network service problems. While congestion in the area was particularly acute during the winter of 2013–14, it has been a recurring problem at this crucial network hub. Chicago is an important hub in national rail operations, and extreme congestion there has an impact on rail service in the Upper Midwest and beyond. Most

[9] These factors include customer demand, mine production and capacity, railroad fluidity and resource availability, and contractual commitments.

[10] We note that BNSF has been reporting this data broken out by week; BNSF may continue to do so, if it chooses, but it would only be required to report figures for the previous calendar month.

[11] *See, e.g.,* UP Comments 2, Oct. 22, 2014, EP 724 (Sub-No. 3) (''Item 9 asks for data on 'plan versus performance' for round trips on grain shuttle trains by region. Union Pacific cannot comply with this request because it does not have a 'plan' for round trips on grain shuttles. As more fully explained in Union Pacific's filings in Ex Parte 665 (Sub-No. 1), movement of our shuttle trains is determined by our customers, not by Union Pacific.''); CSXT Comments 4, Oct. 22, 2014, EP 724 (Sub-No. 3) (''CSX grain trains do not operate as a 'shuttle' nor do they operate in 'loops' between origins and destinations. As requested by the customer, a train-set will be placed and will be transported to destination anywhere on CSX, or to a CSX interline connection. CSX does not recognize sub-regions within its service territory.'')

participants either endorse the current reporting of Chicago metrics or did not provide comments. However, CMAP and CP propose to significantly augment the granularity of reporting. For example, CMAP suggests that the Board require reporting of speed and transit times for federally supported Chicago Region Environmental and Transportation Efficiency Program corridors, including information on train length, crosstown transit times through the Chicago terminal, and the number of intermodal container lifts at key Chicago terminals. (CMAP Mtg. Summary 1–2.) CP, in turn, suggests that the Board should request from BRC and IHB weekly reports including: The number of cars arrived per day; number of cars humped or processed per day; number of cars re-humped or reprocessed per day; number of cars pulled per day, number of trains departed each day by railroad; average terminal dwell; average departure yard dwell; and percentage of trains departed on-time each day by railroad. (CP Comments 3, March 2, 2015.)

The Board appreciates the recommendations provided by CMAP and CP to further augment the Board's monitoring of the Chicago gateway. Therefore, we invite comment on how such reporting could be provided by the BRC and IHB with the least amount of burden to these carriers. We also seek views on whether such reporting would be better handled on a temporary basis in the event of an emerging service issue.

**Infrastructure Reporting**

The *NPR* requires that each Class I railroad, on a quarterly basis, report on major work-in-progress rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose.

*Railroad Interests.* AAR and several railroads request clarification of the terms ''project,'' ''qualifying projects,'' ''project purpose,'' ''percentage complete,'' ''maintenance-of-way,'' and ''planned completion date.'' (AAR Comments 17–18, March 2, 2015; BNSF Comments 10–12, March 2, 2015; UP Comments 19–20, March 2, 2015.) They also submit that the Board should consider altering the infrastructure request to an annual narrative report and periodic updates. (AAR Comments 17–18, March 2, 2015; BNSF Comments 10, March 2, 2015; AAR Mtg. Summary 2.) UP argues that limiting the projects on which the railroad must report would reduce repetition between reports and relieve some burden on the reporting railroads. (UP Comments 20, March 2, 2015.) UP also states that the proposed reporting date (the first Tuesday of each quarter) often falls before the date it closes its books and suggests the third Tuesday of each quarter to avoid this problem. (*Id.* at 21.) CP opposes providing project-specific information or requirements that could inhibit the railroad's ability to adjust its capital spending decisions. (CP Comments 4, March 2, 2015.)

*Shipper Interests and Other Stakeholders.* WCTL suggests that the Board review planned infrastructure projects with an eye toward meeting long-term common carrier obligations. (WCTL Comments 10, March 2, 2015.) BASF considers the requirement reasonable and valuable. (BASF Mtg. Summary 2.)

*Revised Proposal.* The Board proposes to significantly modify the previously proposed version of 1250.3(d), which seeks information related to major infrastructure projects. As the railroads point out, much of the information called for in this request is available to the public through presentations to investors, outreach at industry conferences, in marketing materials, in trade press and media reports, and through financial filings. To the extent that reporting of this information would allow the Board to identify congestion or service issues arising from major infrastructure projects, railroads also point out that their customers are typically made aware of potential disruptions and traffic delays through regular email updates and information available on railroad Web sites, which describe maintenance and capital projects in real-time or near real-time. Some railroads also raise confidentiality and competitive concerns about reporting on customer-specific projects and long term strategic projects such as land acquisitions. (BNSF Comments 11, March 2, 2015.) Railroads also object to this request, asserting that many of the terms, such as ''planned completion date,'' ''percentage complete,'' and ''project description and purpose'' are subjective and ambiguous. As an alternative, railroads suggest that this information could be provided to the Board through the Chairman's annual ''Peak Season'' letter or in another manner that would not subject them to additional regulatory obligations.

Based on the comments received, this request is being revised to require annually a description of significant rail infrastructure projects that will be commenced during the current calendar year, and a six-month update on those projects. Railroads are instructed to respond in a narrative form to briefly describe each project, its purpose, location, and projected date of completion. Reports are to be filed on March 1 of each year and updated on September 1. The Board proposes to define a significant project as one with a budget of $75 million or more. Our goal is to establish a dollar figure threshold that captures significant projects for all six of the Class I carriers, recognizing variations in size and capital budgets. Parties should comment on whether a different threshold is more appropriate.

**Other Recommendations**

*Railroad Interests.* AAR and many of the Class I railroads argue that the *NPR* is overbroad and should be streamlined to include fewer and less granular metrics. They state that more granular metrics may not be helpful in the long run as an indicator of carrier performance. (AAR Comments 1, 9–10, 15, March 2, 2015; CSXT Comments 3–4, March 2, 2015; UP Comments 3, March 2, 2015.) They argue that too much granularity may obscure information showing how a railroad or the industry is performing and that the focus should be on the fluidity of the national system. (AAR Comments 15, March 2, 2015; BNSF Comments 4–5, March 2, 2015; CP Comments 1–2, March 2, 2015; UP Comments 3–5, March 2, 2015.) As an alternative to permanent granular reporting, NSR argues that commodity- or region-specific reporting should be used in response to performance issues and then be phased out as performance improves. (NSR Comments 2–3, March 2, 2015.)

The railroad interests also assert that the Board must examine service issues within the context of the entire supply chain. (CP Comments 1–2, March 2, 2015; UP Comments 1, March 2, 2015; UP Reply 3–4, 4–6.) They argue that factors throughout the supply chain can cause or compound rail service issues. As such, they argue, a railroad's responsibility for service problems may be limited, in any given situation. (CP Comments 2, March 2, 2015.)

The railroads emphasize that they currently provide considerable service information to their customers, the public, and the Board on their Web sites and through the AAR. They argue that the existing information allows the Board and the public to monitor service issues, performance, and system fluidity. (AAR Comments 12–13, March 2, 2015; UP Comments 7–8, March 2, 2015; BNSF Reply 2.)

UP states that a data reporting rule is not necessary for the Board to perform its functions properly. (UP Comments

21, March 2, 2015.) AAR cautions that ongoing data collection should be limited to information that is necessary for the Board to properly perform its statutory responsibilities. (AAR Comments 9, March 2, 2015.) It states that because of the Board's limited authority to remedy certain service disruptions, many of the costs and burdens outweigh the benefits of the *NPR.* (*Id.* at 10.) CSXT advocates for creating a voluntary set of rules, asserting that a flexible, voluntary framework would suffice for the information the Board seeks and it would also reduce the burden to the railroads. (CSXT Comments 3–4, 7, March 2, 2015.)

Finally, AAR and the railroads expressed concern about parties' use of the data to make comparisons between railroads, commodity groups, or geographic regions. (AAR Comments 15, March 2, 2015; CSXT Comments 3–4, March 2, 2015; UP Reply 6–7, March 2, 2015; KCS Mtg. Summary 1; UP Mtg. Summary 1.) They contend that different commodities and customer groups are served differently, and that comparisons of performance either cannot be made or are not valid unless they account for such distinctions. (AAR Comments 15, March 2, 2015; UP Comments 6–7, March 2, 2015.) CSXT states that comparing carriers against each other should not be the goal and could be counterproductive since each system is unique. CSXT further asserts that what matters is the trend on each carrier. (CSXT Comments 3–4, March 2, 2015.) [12]

*Shipper Interests and Other Stakeholders.* Shipper interests and other stakeholders generally requested greater granularity and more metrics, including metrics that would be segregated by geography and commodity, which they argue would provide insight and transparency into railroad performance. (NGFA Comments 4, March 2, 2015; USDOT Reply 1–2; WCTL Reply 1–2; NGFA Reply 7–12; NGFA Mtg. Summary 1.) They suggest that data be uniform across railroads to facilitate comparisons. (TTMS Comments 4, March 2, 2015; NGFA Comments 3–4, 5, March 2, 2015.) ACC suggests that the Board establish criteria to facilitate the modification or addition of future data requests on then-current service issues. (ACC Comments 2, March 2, 2015.) TFI asks the Board to make clear that if commodities are excluded in the final rule, data about those commodities are not precluded from being collected in response to future performance issues. (TFI Comments 8, March 2, 2015.) NGFA asks the Board to require Canadian providers to separately delineate Canadian service. (NGFA Comments 5–6, March 2, 2015.) WCTL requests additional coal data in the trains held metric, more information about coal trainsets, data about restrictions on equipment and crews, and cycle times over key corridors. (WCTL Comments 11–13, March 2, 2015; WCTL Mtg. Summary 1–2.) ACC requests resource counts (such as locomotive and crew counts) by region. (ACC Comments 1–2, March 2, 2015.) NITL asks the Board to require data broken down further by key corridors and additional data about manifest service and fertilizer. (NITL Comments 5–7, March 2, 2015.) TFI seeks to ensure that railroads are not favoring other commodities over fertilizer and asks for metrics similar to the proposed grain-specific metrics. (TFI Comments 2–4, 6, 8, March 2, 2015; TFI Mtg. Summary 1; TFI Comments 1, Dec. 23, 2015.) Senator Thune recommends that the final rule include several metrics the railroads are currently reporting under the *Interim Data Order.* (Thune Comments 1–2.)

USDA requests that the Board add weekly carloadings for major commodities and collect information about railcar auction markets. (USDA Comments 4–5, March 2, 2015; USDA Mtg. Summary 1–2.) NGFA urges the Board to include a measure of local service, such as industry spot and pull reports, as well as scheduled curfew hours that may cause stoppages. (NGFA Comments 5, 10, March 2, 2015.) TTMS suggests that the board include railroad ''dash board'' data. (TTMS Comments 4, March 2, 2015.) HRC suggests that the Board consider adding percent of car orders filled, percent of cars placed versus percent of cars ordered in, and number of missed switches. (HRC Mtg. Summary, Ex. 1 at 13.) ARC argues that the Board must require reporting for trains other than unit trains and states that rail service must evolve to meet the changing face of the agricultural commodity mix by meeting smaller shipment/shipper priorities. (ARC Comments 6–7, 9–10, March 2, 2015.) Finally, USDA and NGFA comment that the Board should create a user friendly data portal for rail performance data on its Web site. (USDA Comments 5, March 2, 2015; NGFA Comments 5, March 2, 2015.)

McFarland and MacDougall submitted comments regarding the meeting summaries posted on the Board's Web site. (McFarland and MacDougall Comments 3–6, Dec. 23, 2015.)

*Revised Proposal.* As stated earlier, the changes to the Board's proposed rules reflect the robust discussion to date regarding what data would be most beneficial to collect and monitor. Although not every suggested change is contained in our revised proposal, the general themes behind many of those proposals have informed our decision-making. We address those themes below.

We are not persuaded at this stage that we need additional, more granular performance data. Some shipper parties advocated for a number of additional metrics, but they have not sufficiently explained why or how their recommendations would materially enhance the Board's ability to monitor rail service, as compared to *Interim Data Order* or *NPR.* At this point, the Board believes that the burden of more granular metrics outweighs their value as a tool for identifying regional or national system-wide problems. Should more granular data become necessary due to emerging service issues, the Board has the authority to request such information on a case-by-case and as-needed basis. On the other hand, the railroad comments make clear that the industry would prefer less granularity. We believe that the Board has struck a reasonable balance between these competing concerns in our supplemental proposal.

The Board also received comments requesting reporting by short line railroads and requiring Canadian railroads to report on their operations in Canada. Although short lines play an indispensable role in the Nation's freight rail network, commenters have not shown that reporting of short line service data would materially enhance the STB's perspective on system fluidity. As a practical matter, service problems of national or regional significance tend to emerge on Class I railroads, rather than on short line railroads. Additionally, the Board is concerned about the burden that reporting requirements would place on short line carriers, which often do not have the resources available to Class I carriers. As discussed earlier, we do seek comment on CP's request to require reporting from certain Chicago-area belt lines. With regard to Canadian railroads' operations in Canada, the Board is necessarily governed by its statutory jurisdictional limitations.

Some commenters seek improvements regarding the availability of service data

[12] AAR also recommends that the Board clarify whether the carriers should file through the normal formal filing process *and* by emailing the Board's Office of Public Affairs, Governmental Affairs, and Compliance (OPAGAC) (as is currently done), or only by emailing OPAGAC. (AAR Comments 19, March 2, 2015.) The Board has clarified that carriers should file their reports only with OPAGAC.

on the Board's Web site. The Board presently makes the service data available on a specific Web page and has also developed a live master spreadsheet that is updated each week and can be downloaded by stakeholders.[13] The Board anticipates further improvements to data availability as it enhances Web site functionality going forward.

CSXT questions the need for a permanent weekly reporting rule at all, and AAR questions whether the cost and burdens of the *NPR* outweigh the benefits when the Board has a limited ability to remedy a service disruption. We believe the need and justification for a permanent reporting rule is clear. The Board has the authority to require reports by rail carriers (49 U.S.C. 1321, 11145), and has an interest in ensuring transparency and accountability, improving rail service (19 U.S.C. 10101(4)), and has the responsibility under a variety of statutory provisions for monitoring the adequacy of service by rail carriers (49 U.S.C. 11123, 10907). Notably, railroads have the responsibility to provide service on reasonable request (49 U.S.C. 11101) and to provide safe and adequate car service (49 U.S.C. 11121). The permanent reporting proposed here would aid the Board and industry stakeholders in identifying whether railroads are adequately meeting those statutory requirements. In particular, the permanent collection of performance data on a weekly basis would allow continuity of the current reporting and improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly, as well as determine whether more granular data is needed. Transparency would also benefit rail shippers and other stakeholders by helping them to better plan operations and make informed decisions based on publically available, near real-time data, and their own analysis of performance trends over time.

The railroads expressed a general concern that the data not be used to compare railroads against one another. The Board is confident that stakeholders recognize that there are significant differences between the railroads as to geography, network, customer base, traffic volumes, resources, operating practices, and business philosophy. In collecting data pursuant to the *Interim Data Order* and as proposed in this rulemaking, the Board's main objective is to be able to identify trends and monitor potential service issues on individual Class I railroads.

In seeking public comments, the Board requests that interested stakeholders evaluate the utility of each revised data request, offer specific proposed modifications, and/or propose other requests that would assist the Board and the public in gaining complete and accurate near real-time assessment of the performance of Class I railroads.

*Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The rules proposed here would not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA. The reporting requirements would apply only to Class I rail carriers, which, under the Board's regulations, have annual carrier operating revenues of $250 million or more in 1991 dollars (adjusted for inflation using 2014 data, the revenue threshold for a Class I rail carrier is $475,754,803). Class I carriers generally do not fall within the Small Business Administration's definition of a small business for the rail transportation industry.[14] Therefore, the Board certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

*Paperwork Reduction Act.* Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether the collection of information in the proposed rule, and further described in this section, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. Information pertinent to these issues is included below. The collection in this proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

*Description of Collection*

*Title:* Rail Service Data Collection.

*OMB Control Number:* 2140–XXXX.

*STB Form Number:* None.

*Type of Review:* New collection.

*Respondents:* Class I railroads (on behalf of themselves and the Chicago Transportation Coordination Office (''CTCO'')).

*Number of Respondents:* Seven.

*Estimated Time per Response:* The proposed rules seek three related responses, as indicated in the table below.

TABLE—ESTIMATED TIME PER RESPONSE

| Type of responses | Estimated time per response (hours) |
|---|---|
| Weekly | 3 |
| Semiannually | 3 |
| On occasion | 3 |

*Frequency:* The frequencies of the three related collections sought under the proposed rules are set forth in the table below.

[13] See EP 724—Rail Service Issues Reports, *http://www.stb.dot.gov/stb/railserviceissues/rail_service_reports.html.*

[14] The Small Business Administration's Office of Size Standards has established a size standard for rail transportation, pursuant to which a line-haul railroad is considered small if its number of employees is 1,500 or less, and a short line railroad is considered small if its number of employees is 500 or less. 13 CFR 121.201 (industry subsector 482).

TABLE—FREQUENCY OF RESPONSES

| Type of responses | Frequency of responses |
|---|---|
| Weekly | 52/year. |
| Semiannually | 2/year. |
| On occasion | 2/year. |

*Total Burden Hours (annually including all respondents):* The recurring burden hours are estimated to be no more than 1,182 hours per year, as derived in the table below. In addition, there are some one-time, start-up costs of approximately 2 hours for each respondent filing a quarterly report that must be added to the first year's total burden hours. To avoid inflating the estimated total annual hourly burden, the two-hour start-up burden has been divided by three and spread over the three-year approval period. Thus, the total annual burden hours for each of the three years are estimated at no more than 1,186.67 hours per year.

TABLE—TOTAL BURDEN HOURS (PER YEAR)

[Excluding 2-hour one time start up burden]

| Type of responses | Number of respondents | Estimated time per response (hours) | Frequency of responses | Total yearly burden hours |
|---|---|---|---|---|
| Weekly | 7 | 3 | 52/year .... | 1,092 |
| Semiannually | 7 | 3 | 2/year ..... | 42 |
| On occasion | 1 | 3 | 2/year ..... | 6 |
| Total | ..... | ..... | ..... | 1,182 |

*Total ''Non-hour Burden'' Cost:* None identified. Reports will be submitted electronically to the Board.

*Needs and Uses:* The new information proposed here would aid the Board in identifying rail service issues, determining if more granular data would be appropriate, and working toward improving service when necessary. Transparency would also benefit rail shippers and other stakeholders by helping them to better plan operations and make informed decisions based on publicly available, near real-time data, and their own analysis of performance trends over time.

*Retention Period:* Information in this report will be maintained in the Board's files for 10 years, after which it is transferred to the National Archives.

**Summary of Revised Proposal**

Having considered all written and oral comments on the *NPR,* the Board seeks to revise the proposed metrics. Accordingly, the Board is issuing this SNPR to seek supplemental public comments on proposed new regulations to be codified at 49 CFR 1250.1–1250.3 to require Class I rail carriers, Class I carriers operating in the Chicago gateway, and the CTCO, through its Class I members, to submit to the Board weekly reports on railroad performance. The table below provides a brief description of the differences between this revised proposal and the *NPR,* which were explained in detail above.

TABLE 1—SUMMARY OF CHANGES IN THE DATA REQUESTS BETWEEN THE *NPR* AND SNPR

| *NPR* | Proposed changes in SNPR |
|---|---|
| Sunday to Saturday reporting week with reports to be filed the following Tuesday. | Adopt a Saturday through Friday reporting week with reports to be filed the following Wednesday. |
| Unit trains are defined as comprising 60 or more railcars of the same or similar type, carrying a single commodity in bulk. | Allow carriers to report unit train data based on their assignment of train codes in the ordinary course of business. |
| (1) System-average train speed for intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, manifest, and all other. | Add line items for system average and fertilizer unit. |
| (2) Weekly average terminal dwell time for each carrier's system and its 10 largest terminals. | No proposed changes. |
| (3) Weekly average cars online for seven car types, other, and total ..... | No proposed changes. |
| (4) Weekly average dwell time at origin or interchange for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. | Delete the interchange location component and modify the list of train types to which the request would apply, including the addition of fertilizer unit. |
| (5) Weekly total number of loaded and empty trains held short of destination or scheduled interchange for longer than six hours by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and all other) and by cause (crew, locomotive power, track maintenance, mechanical issue, or other). | Delete the six hour component.<br>Delete all other from the list of train types.<br>Add fertilizer unit and manifest to the list of train types.<br>Reduce list of causes to crew, locomotive power, or other.<br>Instruct railroads to run a same-time snapshot of trains holding each day and then calculate the average for the reporting week. |
| (6) Daily average number of loaded and empty cars operating in normal movement, which have not moved in > 120 hours and > 48 but ≤ 120 hours, sorted by service type and measured by a daily same-time snapshot. | Delete the > 120 hours requirement.<br>Modify the > 48 but ≤ 120 hours requirement to ≥ 48 hours. |
| (7) Weekly total number of grain cars loaded and billed, by State, for certain Standard Transportation Commodity Codes (STCCs). Also include total cars loaded and billed in shuttle service versus all other ordering systems. | No proposed changes. |
| (8) For the STCCs delineated in Request No. 7, total overdue car orders, average days late, total new orders in the past week, total orders filled in the past week, number of orders cancelled in the past week. | Modify to require reporting of weekly running totals of grain car orders in manifest service submitted versus grain car orders filled, and for unfilled orders, the number of car orders that are 1–10 days past due and 11 or more days past due. |

TABLE 1—SUMMARY OF CHANGES IN THE DATA REQUESTS BETWEEN THE *NPR* AND SNPR—Continued

| *NPR* | Proposed changes in SNPR |
|---|---|
| (9) Weekly total coal unit train loadings or car loadings by coal production region. | Return to the form of prior Request No. 10 in the *Interim Data Order* and require actual coal loadings against railroad service plans. |
| (10) ..... | Add new Request No. 10 requesting grain shuttle (or dedicated grain train) trips per month. |
| (11) ..... | Add new Request No. 11 requesting the weekly originated carloads by 23 commodity categories. |
| (12) ..... | Add new Request No. 12 requesting car order fulfillment percentage for the reporting week by 10 car types. |
| *Chicago.* Class Is operating in Chicago must jointly report each week: Average daily car volume in certain yards, and average daily number of cars held for delivery to Chicago sorted by receiving carrier. Class I railroad members of the CTCO must provide certain information regarding the CTCO Alert Level status and protocols. | No proposed changes. Seeking comment on whether to require additional reporting as requested by CP and CMAP. |
| *Infrastructure.* A quarterly report on major work-in-progress rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose. | Modify to require an annual report of significant rail infrastructure projects that will be commenced during that calendar year, and a six-month update on those projects. The report is to be in a narrative form briefly describing each project, its purpose, location, and projected date of completion. The Board proposes to define a significant project as one with a budget of $75 million or more. |

**List of Subjects in 49 CFR Part 1250**

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

*It is ordered:*

1. The Petition for Reconsideration is denied.

2. Comments on the Supplemental Notice of Proposed Rulemaking are due by May 31, 2016. Reply comments are due by June 28, 2016.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. Notice of this decision will be published in the **Federal Register**.

5. This decision is applicable on its service date.

Decided: April 29, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

**Tia Delano,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, subchapter D, of the Code of Federal Regulations by adding part 1250 to read as follows:

## PART 1250—RAILROAD PERFORMANCE DATA REPORTING

Sec.



**Authority:** 49 U.S.C. 1321 and 11145.

### § 1250.1 Reporting requirements.

(a) Each Class I railroad is required to report to the Board on a weekly basis, the performance data set forth in § 1250.2(a)(1) through (12), except for § 1250.2(a)(10) which shall be reported with the first report of each month. The Class I railroads operating at the Chicago gateway are required to jointly report on a weekly basis the performance data set forth in § 1250.2(b)(1) and (2). The reports required under § 1250.2(b)(1) and (2) may be submitted by the Association of American Railroads (AAR). The data must be reported to the Board between 9 a.m. and 5 p.m. Eastern Time on Wednesday of each week, covering the previous reporting week (12:01 a.m. Saturday to 11:59 p.m. Friday), except for § 1250.2(a)(10), which covers the previous calendar month. In the event that a particular Wednesday is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open. The data must be emailed to *data.reporting@stb.dot.gov* in Excel format, using an electronic spreadsheet made available by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC). Each week's report must include data only for that week, and should not include data for previous weeks. Each reporting railroad shall provide an explanation of its methodology for deriving the data with its initial filing. Unless otherwise provided, the data will be publicly available and posted on the Board's Web site.

(b) For reporting under § 1250.2(c)(1) and (2), changes in the Alert Level status or the protocol of service contingency measures shall be reported by email to the Director of the Office of Public Assistance, Governmental Affairs and Compliance and *data.reporting@stb.dot.gov.*

(c) For reporting under § 1250.2(d), the narrative report should be submitted via email to the Director of the Office of Public Assistance, Governmental Affairs and Compliance and *data.reporting@stb.dot.gov.*

### § 1250.2 Railroad performance data elements.

(a) Each Class I railroad must report the following performance data elements for the reporting week. However, with regard to paragraphs (a)(7) and (8) of this section, Kansas City Southern Railway Company is not required to report information by State, but instead shall report system-wide data.

(1) System-average train speed for the overall system and for the following train types for the reporting week. Train speed should be measured for line-haul movements between terminals. The average speed for each train type should be calculated by dividing total train-miles by total hours operated.

(i) Intermodal;
(ii) Grain unit;
(iii) Coal unit;
(iv) Automotive unit;
(v) Crude oil unit;
(vi) Ethanol unit;
(vii) Manifest;
(viii) Fertilizer unit;
(ix) System.

(2) Weekly average terminal dwell time, measured in hours, excluding cars on run-through trains (*i.e.,* cars that arrive at, and depart from, a terminal on the same through train) for the carrier's system and its 10 largest terminals in terms of railcars processed. Terminal dwell is the average time a car resides at a specified terminal location expressed in hours.

(3) Weekly average cars on line by the following car types for the reporting week. Each railroad is requested to average its daily on-line inventory of freight cars. Articulated cars should be counted as a single unit. Cars on private tracks (*e.g.,* at a customer's facility) should be counted on the last railroad on which they were located. Maintenance-of-way cars and other cars in railroad service are to be excluded.

(i) Box;
(ii) Covered hopper;
(iii) Gondola;
(iv) Intermodal;
(v) Multilevel (Automotive);
(vi) Open hopper;
(vii) Tank;
(viii) Other;
(ix) Total.

(4) Weekly average dwell time at origin for the following train types: Grain unit, coal unit, automotive, crude oil unit, ethanol unit, fertilizer unit, all other unit trains, and manifest. For the purposes of this data element, dwell time refers to the time period from release of a unit train at origin until actual movement by the receiving carrier. For manifest trains, dwell time refers to the time period from when the train is released at the terminal until actual movement by the railroad.

(5) The weekly average number of trains holding per day sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, fertilizer unit, other unit, and manifest) and by cause (crew, locomotive power, or other). Railroads are instructed to run a same-time snapshot of trains holding each day, and then to calculate the average for the reporting week.

(6) The weekly average of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer, or all other). In order to derive the averages for the reporting week, carriers are requested to run a same-time snapshot each day of the reporting week, capturing cars that have not moved in 48 hours or more. The number of cars captured on the daily snapshot for each category should be added, and then divided by the number of days in the reporting week, typically seven days. In deriving this data, carriers should include cars in normal service anywhere on their system, but should not include cars placed at a customer facility, in constructive placement, placed for interchange to another carrier, in bad order status, in storage, or operating in railroad service (*e.g.,* ballast).

(7) The weekly total number of grain cars loaded and billed, reported by State, aggregated for the following Standard Transportation Commodity Codes (STCCs): 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). ''Total grain cars loaded and billed'' includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and private cars. Additionally, separately report the total cars loaded and billed in shuttle service (or dedicated train service), if any, versus total cars loaded and billed in all other ordering systems, including private cars.

(8) For the aggregated STCCs in paragraph (a)(7) of this section, report by State the following:

(i) Running total of orders placed;
(ii) The running total of orders filled;
(iii) For orders which have not been filled, the number of orders that are 1–10 days past due and 11+ days past due, as measured from when the car was due for placement under the railroad's governing tariff. Railroads are instructed to report data for railroad-owned or leased cars that will move in manifest service.

(9) Weekly average coal unit train loadings or carloadings versus planned loadings for the reporting week by coal production region. Railroads have the option to report unit train loadings or carloadings, but should be consistent week over week.

(10) The average grain shuttle or dedicated grain train trips per month (TPM), for the total system and by region, versus planned TPM, for the total system and by region, included in the first report of each month, covering the previous calendar month.

(11) Weekly originated carloads by the following commodity categories:

(i) Chemicals;
(ii) Coal;
(iii) Coke;
(iv) Crushed stone, sand, and gravel;
(v) Farm products except grain;
(vi) Fertilizer (STCC Codes: 14–7XX–XX, 28–125–XX, 28–18X–XX, 28–19X–XX, 28–71X–XX, and 49–18X–XX);
(vii) Food and kindred products;
(viii) Grain mill products;
(ix) Grain;
(x) Iron and steel scrap;
(xi) Lumber and wood products;
(xii) Metallic ores;
(xiii) Metals;
(xiv) Motor vehicles and equipment;
(xv) Non metallic minerals;
(xvi) Petroleum products;
(xvii) Primary forest products;
(xviii) Pulp, paper, and allied products;
(xix) Stone, clay, and glass products;
(xx) Waste and scrap materials;
(xxi) All other;
(xxii) Containers;
(xxiii) Trailers.

(12)(i) Car order fulfillment percentage for the reporting week by car type:

(A) Box;
(B) Covered hopper;
(C) Center-beam;
(D) Gondola;
(E) Flatcar;
(F) Intermodal;
(G) Multilevel (automotive);
(H) Open hopper;
(I) Tank car;
(J) Other.

(ii) Car order fulfillment should be stated as the percentage of cars due to be placed during the reporting week, as determined by the governing tariff, versus cars actually and on constructive placement.

(b) The Class I railroads operating at the Chicago gateway (or AAR on behalf of the Class I railroads operating at the Chicago gateway) must jointly report the following performance data elements for the reporting week:

(1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and

(2) Average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. The average daily number should be derived by taking a same time snapshot each day of the reporting week, capturing the trains held for each railroad at that time, and then adding those snapshots together and dividing by the days in the reporting week. For purposes of this request, ''held for delivery'' refers to a train staged by the delivering railroad short of its scheduled arrival at the Chicago gateway at the request of the receiving railroad, and that has missed its scheduled window for arrival.

**Note to paragraph (b):** If Chicago terminal yards not identified in paragraph (b)(1) of this section are included in the Chicago Transportation Coordination Office's (CTCO) assessment of the fluidity of the gateway for purposes of implementing service contingency measures, then the data requested in paragraph (b)(1) of this section shall also be reported for those yards.

(c) The Class I railroad members of the CTCO (or one Class I railroad member of the CTCO designated to file on behalf of all Class I railroad members, or AAR) must:

(1) File a written notice with the Board when the CTCO changes its operating Alert Level status, within one business day of that change in status.

(2) If the CTCO revises its protocol of service contingency measures, file with the Board a detailed explanation of the new protocol, including both triggers and countermeasures, within seven days of its adoption.

(d) Class I railroads are instructed to submit annually a description of significant rail infrastructure projects that will be commenced during the current calendar year, and a six month update on those projects. Initial reports are to be filed on March 1 and updated on September 1. Railroads are requested to report in a narrative form that briefly describes each project, its purpose, location (State/counties), and projected date of completion. ''Significant project'' is defined as a project with anticipated expenditures of $75 million or more over the life of the project. In the event that March 1 or September 1 is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the report should be submitted on the next business day when the offices are open.

[FR Doc. 2016–10442 Filed 5–4–16; 8:45 am]

**BILLING CODE 4915–01–P**

# Notices

Federal Register

Vol. 81, No. 87

Thursday, May 5, 2016

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

### Forest Service

### Southern New Mexico Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southern New Mexico Resource Advisory Committee (RAC) will meet in Socorro, New Mexico. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/gila/workingtogether/advisorycommittees.*

**DATES:** The meeting will be held June 8, 2016, at 8:30 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meeting will be held at the Socorro County Annex Building, 198 Neel Avenue, Socorro, New Mexico.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Gila National Forest Office. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Julia Faith Rivera, RAC Coordinator, by phone at 575–388–8212 or via email at *jfrivera@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review and recommend funding of project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 18, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Julia Faith Rivera, RAC Coordinator, 3005 E. Camino del Bosque, Silver City, New Mexico 88061; by email to *jfrivera@fs.fed.us,* or via facsimile to 575–388–8204.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 29, 2016.

**Adam Mendonca,**

*Forest Supervisor, Gila National Forest.*

[FR Doc. 2016–10531 Filed 5–4–16; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

**[Docket No. 160309221–6221–01]**

**RIN 0605–XC034**

### Privacy Act of 1974; Amended System of Records

**AGENCY:** National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of proposed amendment to Privacy Act system of records: COMMERCE/NOAA–3, Commissioned Officer Official Personnel Folders.

**SUMMARY:** This notice announces the Department of Commerce's (Department's) proposal to amend the system of records entitled ''COMMERCE/NOAA–3, ''Commissioned Officer Official Personnel Folders'' under the Privacy Act of 1974, as amended. This amendment would change the name of the SORN from the ''Commissioned Officer Official Personnel Folders'' to ''NOAA Corps Officer Official Personnel Folders.'' This amendment would also update the following sections of the current NOAA–3: Addresses, For Further Information Contact, Security Classification, Authority for Maintenance of the System, Storage, Purposes, and Routine Uses.

The National Oceanic and Atmospheric Administration (NOAA) Commissioned Officer Corps (NOAA Corps) is the uniformed service of NOAA, a bureau of the Department. The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve their country by supporting NOAA's mission of surveying the Earth's oceans, coasts, and atmosphere to ensure the economic and physical well-being of the Nation. Personnel records and folders must be created as they are required by law, Executive Order, operational guidance from central management agencies, and/or agency records management programs.

**DATES:** To be considered, written comments must be submitted on or before June 6, 2016. Unless comments are received, the amended system of records will become effective as proposed on June 14, 2016. If comments are received, the Department will publish a subsequent notice in the **Federal Register** within 10 days after the comment period closes, stating that the current system of records will remain in effect until publication of a final action in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Director, NOAA Corps, 8403 Colesville Road, Suite 500, NOAA, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Director, NOAA Corps, 8403 Colesville

Road, Suite 500, NOAA, Silver Spring, Maryland 20910.

**SUPPLEMENTARY INFORMATION:** This notice announces NOAA's proposal to amend the system of records entitled ''COMMERCE/NOAA–3, ''Commissioned Officer Official Personnel Folders.'' In addition to changing the name to NOAA Corps Officer Official Personnel Folders, this system of records is being updated to add Addresses, For further Information Contact, and Security Classification sections. It is also needed to update the Authority for maintenance of the system and the Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system sections. NOAA Corps records are created and maintained for all members—active, retired, and deceased—of the NOAA Corps. Selected information is disseminated to determine eligibility for retention, promotion, retirement, separation, and other personnel actions; physical fitness; entitlement to pay and various allowances; entitlement to social security benefits, Veteran's benefits, unemployment compensation, waivers for repayment of student loans, death benefits, survivor benefits, and FHA in-service loans; assignments; selective service status; and to report taxes withheld.

**COMMERCE/NOAA–3**

**SYSTEM NAME:**

COMMERCE/NOAA–3, NOAA Corps Officer Official Personnel Folders

**SECURITY CLASSIFICATION:**

Moderate

**SYSTEM LOCATION:**

Office of the Director, NOAA Corps, NOAA, Silver Spring, Maryland 20910.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Commissioned Officers of the NOAA Corps (active, retired, and deceased) and commissioned officers who have been separated within previous six months.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This information is collected and/or maintained by all systems covered by this system of records: Name, social security number, selective service number, promotion history, assignment history, performance/awards history, date of birth, education/training history, prior employment history, prior uniformed service, relatives, references, discipline, insurance, and similar personal information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Navigation and Navigable Waters, 33 U.S.C. 853a–t, 854a–a2, 855, 856, 857, 857–1–5, 857a, 858, 864, 865, 872–876; Departmental Regulations, 5 U.S.C. 301; Judiciary and Judicial Procedure, 28 U.S.C. 533–535; Records Management by Agency Heads, 44 U.S.C. 3101; and Security Requirements for Government Employment, E.O. 10450.

**PURPOSES:**

Selected information is disseminated to determine eligibility for retention, promotion, retirement, separation, and other personnel actions, entitlement to pay and various allowances, Veteran's benefits, unemployment compensation, death benefits, survivor benefits, and FHA In-service loans, assignments, and selective service status. Users are: Selective Service System; Veteran's Administration; Federal Housing Administration; Social Security Administration; Public Health Service; Department of Defense elements; Taxing authorities (Federal, State and local); unemployment compensation authorities; and the organization to which the officer is assigned such as branches of U.S. Military Service, branches of foreign military services, World Weather Organizations, etc.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department. The records or information contained therein may specifically be disclosed as a routine use as stated below. The Department will, when so authorized, make the determination as to the relevancy of a record prior to its decision to disclose a document.

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records, may be referred to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, rule, regulation, or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate, hearing officer or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations, administrative appeals and hearings.

3. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether the Freedom of Information Act (5 U.S.C. 552) requires disclosure thereof.

5. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

6. A record in this system of records may be disclosed to appropriate agencies, entities and persons when: (1) It is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or whether systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

7. A record from this system of records may be disclosed, as a routine use, to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment; hiring or retention of an individual; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant or other benefit.

8. A record from this system of records may be disclosed, as a routine use, to a Federal, state, local, or international agency, in response to its

request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

9. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

10. A record in this system may be transferred, as a routine use, to the Office of Personnel Management: For personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

11. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services Administration (GSA), or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Department) directive. Such disclosure shall not be used to make determinations about individuals.

12. A record in this system of records which contains medical information may be disclosed, as a routine use, to the medical advisor of any individual submitting a request for access to the record under the Act and 15 CFR part 4b if, in the sole judgment of the Department, disclosure could have an adverse effect upon the individual, under the provision of 5 U.S.C. 552a(f)(3) and implementing regulations at 15 CFR part 4b.26.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosure to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders in a secured location and electronic records in a database.

**RETRIEVABILITY:**

Records are organized and retrieved by the individual's name.

**SAFEGUARDS:**

Records are maintained in a secured area and in a database. Access is granted only on the authority of the Director, NOAA Corps or the Director, Commissioned Personnel Center.

**RETENTION AND DISPOSAL:**

Records are retained indefinitely on active duty officers; retired, discharged and deceased officers' records are retained for approximately one year then transferred to the National Archives and Records Administration (NARA), National Records Center, Kansas City, Missouri 64141.

**SYSTEM MANAGER AND ADDRESS:**

Director, NOAA Corps and Director, Commissioned Personnel Center (CPC), 8403 Colesville Road, Suite 500, NOAA, Silver Spring, Maryland 20910.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: Director, CPC, see above address. Requester should provide full name, address, social security number, and date of birth, date of separation, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

**RECORD ACCESS PROCEDURES:**

See NOAA Corps Directive, Chapter 6, part 16107, Requests for Information.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for access, for contesting contents, and appealing initial determinations by the individuals concerned appear in 15 CFR part 4b.

**RECORD SOURCE CATEGORIES:**

Subject individual, official correspondence and forms generated by routine personnel actions, previous employers, prior military service, Selective Service System, Federal Housing Administration, Social Security Administration, and similar sources.

**EXEMPTIONS CLAIMED FOR SYSTEM:**

Pursuant to 5 U.S.C. 552a(k)(5), all investigatory material in the record which meets the criteria of 5 U.S.C. 552a(k)(5), is exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f)) of the agency regulations in order to fulfill commitments made to protect the confidentiality of sources, and to maintain access to sources of information which are necessary to determine an employee's suitability for employment in the NOAA Corps.

Dated: May 2, 2016.

**Michael J. Toland,**

*Department of Commerce, Freedom of Information/Privacy Act Officer.*

[FR Doc. 2016–10541 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–12–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–26–2016]**

### Foreign-Trade Zone (FTZ) 76—Bridgeport, Connecticut; Notification of Proposed Production Activity; ASML US, Inc., (Optical, Metrology, and Lithography System Modules), Newtown and Wilton, Connecticut

ASML US, Inc. (ASML), operator of Subzone 76A, submitted a notification of proposed production activity to the FTZ Board for its facilities in Newtown and Wilton, Connecticut. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 26, 2016.

The facilities are used for the production of advanced system modules for optical, metrology, and lithography semiconductor manufacturing equipment. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt ASML from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, ASML would be able to choose the duty rate during customs entry procedures that applies to advanced system modules for optical, metrology, and lithography semiconductor manufacturing equipment (free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Sample holders; tool tests; absorption tubes;

silica gel; aluminum oxides; iron oxides/hydroxides; SIC powder fillers; greases; oils; hydraulic fluids; adhesives; pastes; epoxies; Loctite; special bonding adhesives; photographic plates/hardener/developer/topcoat; artificial graphite; discs; wafers; chemical elements; hardening agents; fire resistant hydraulic fluids; zero oxygen solutions; heat transfer pastes; heat conducted pastes; plastic hoses/hose sets/tubes/shrink sleeves/connection sets/sleeves/couplings/plugs/adapters/unions/connectors/adhesive tape/foil/strip/labels/tape/stickers/protective foil/cable guiding foil/insulation/sheets/foam/foam containers and seals/packaging/boxes/covers/bins/lids/cases/containers/sacks/bags/packaging/pallets/shrink sleeve/seals/timing belts/geared belts/shims/covers/spacers/thermal pads/protective caps/washers/wire end slices/cable ties/shrink sleeves/spiral wrap/zipper tubing/grommets/grommet strips/wiring ducts/front plates/guide strips/sidewalls/brackets/plugs/screws/spacers/bolts/nuts/knobs/o-rings/insulation/springs/clamps/gaskets/syringes/castors/pins/rings/shock absorbers/bushings; rubber cords/profiles/strip/gloves/gaskets/seals/o-rings/grommets/nuts/pads/bellows/profiles/washers/dampers; cases of textile materials (HTSUS Subheading 4202.99); wooden packing cases/boxes/crates/packaging/packing material; corrugated cartons/boxes; paperboard and related containers; paper labels/diagrams/designs/stickers; cellulose wadding/webbing; printed materials; technical procedures manuals; cleaning wipes; cleaning stones; lapping film; worked float glass; lens blanks; optical elements/prisms/mirrors/filters; glass petri dishes/spheres/beads/holders/viewports/covers; steel tubes/pipes/flanges/ferrules/couplings/elbows/unions/bends/connectors/couplings/adapters/bushings/nipples/plugs/sleeves/bellows/elbows/bushings/inserts/glands/coverings/flooring/platforms/cables/wires/chains/chain parts/bolts and nuts (stainless)/clamps/knobs/pins/rods/spacers/studs/rivets/rings/gaskets/dowels/caps/leaf springs/plug seals/ring seals/springs/wire/covers/spring clips/shims/rackets/plates/strips/rails/clamps/ducts/ferrules/panels/inserts/bars/studs/holders/pins/washers/handles/latches/dampers/guides/mounts/spindles/frames/balls/housings/carrying arms/lids/links/vanes/shafts/shields/restrictors/plungers/disks/blocks/nipples/alignment tools/adjuster tools/supports/straps/lock assemblies/container assemblies/bellows; copper foil/nipples/couplings/platforms/unions/plugs/banjos/sleeves/adaptors/pillars/screws/bolts/nuts/rings/spacers/plain bearings/gaskets/caps/ferrules/pads/clamps/strips; nickel couplings/rings/gaskets/dampers/inserts/plates/blocks/bushings/covers/pads/brackets/support clamps; aluminum clad/unions/adaptors/connection tubes/couplings/flanges/banjos/couplings/plates/hatches/jars/cups/covers/screws/rivets/spacers/washers/pins/nuts/plates/tool stands/brackets/caps/profiles/bars/guards/cylinders/manifolds/handles/holders/hinges/clamps/profiles/railings/carrying arms/housings/mounts/holders/flanges/plugs/frames/fittings/blocks/tube supports/plungers/strips/shields/inserts/air ducts/guide bushings/rings/studs/locking assemblies/fixtures/positioning tools/stands/vanes/struts/lock shim assemblies/spacers/adaptors/wiring ducts/identification tags; titanium inserts/clamp ties/clip filter holders/mounts/clip spacers/spring washer spacers/nut spacers/magnet pins/link arms/washer plates/blocks/flexures/removable foots; tweezers; pliers; wrenches; ratchets; allen keys; spanners; nut drivers; hex screwdriver bits and tool bits; extension shafts; hammers; screwdrivers; metal clamps; drill bits; scalpel crescent blades; razor blades; padlocks; casters; latches; adjuster knobs; handles; identification plates; vacuum pumps; fans; heat exchange units; filters; spindle traps; hoisting tools; grinding and polishing machines; computers; CPU boards; transponder readers; barcode reader assemblies; data storage units; ATCA racks; carrier boards; interface assemblies; PCI boards and cards; transceiver modules; bus adapters; Ethernet switches/transceivers/connection boxes; network cards; barcode readers; dongles; parts of automatic data processing machines; memory/processor modules; rack assemblies; print servers; vacuum pincets and tubes; vessel presses; pneumatic units/manifolds; generators; locking disk tools; top plate assemblies; polarization assemblies; duct plates; dump assemblies; air cylinders; plunger assemblies; wafer clamps; valves (pressure reducing, check, transmission, safety, relief, ball, solenoid, ballcock, regulator, angle, in-line, gate, two-way); hand-operated appliances; manifold assemblies; bearing cups/bushings/discs/spacers; camshafts; crankshafts; drive shafts; transmission shafts; plain shaft bearings; bearing housings; gear boxes; ball screws; gears; pulleys; air bearings; air spindle traps; conical gear modules; gear wheel assemblies; gaskets; ring seals/washers; electrical cabinets; low-end/high-end/advanced modules for semiconductor manufacturing equipment (optical, lithography); electric motors; electric assemblies/coils; power amplifiers/supplies/inverters; permanent magnets; Ethernet switches; encoders; tag readers; cameras; smoke sensors; printed circuit boards; electrical switches/connectors; optical fiber connectors; cable connectors; multi-point electrical apparatus; electrical boards; electrical panels/consoles/desks/cables/bundles/cabinets/bases/encoder strips/insulators/switching apparatus; sealed beams; electric lamps; electrical semiconductor photosensitive devices/signal generators; electric synchros/transducers/diffusers/interpolators/amplifiers/converters/controllers; coaxial cables/electric conductors; insulated wire; optical fiber cables; transport containers and carts; sheets/plates of polarizing material; UV safety glasses; microscopes and related parts; lasers and related parts; measuring devices and related parts; temperature sensors; flow meters/sensors; pressure sensors; multimeters; test benches; process control instruments; temperature control instruments; metal cabinets; lighting fittings; and, black thermal transfer ribbons (duty rates range from free to 20%). Inputs included in certain textile categories (classified within HTSUS Subheading 4202.99) will be admitted to Subzone 76A in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 14, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: May 2, 2016.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2016–10626 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–560–822, A–557–813, A–570–886, A–583–843, A–549–821, A–552–806, C–552–805]**

## Polyethylene Retail Carrier Bags From Indonesia, Malaysia, the People's Republic of China, Taiwan, Thailand, and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders and Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) and the International Trade Commission (the ITC) have determined that revocation of the antidumping duty (AD) orders on polyethylene retail carrier bags (PRCBs) from Indonesia, Malaysia, the People's Republic of China (PRC), Taiwan, Thailand, and the Socialist Republic of Vietnam (Vietnam) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States. The Department and the ITC have also determined that revocation of the countervailing duty (CVD) order on PRCBs from Vietnam would likely lead to continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States. Therefore, the Department is publishing a notice of continuation of the AD orders and CVD order.

**DATES:** *Effective Date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer or Minoo Hatten, 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) 482–0410 or (202) 482–1690, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 1, 2015, the Department initiated [1] and the ITC instituted [2] five-year (sunset) reviews of the AD orders on PRCBs from Indonesia, Malaysia, the PRC, Taiwan, Thailand, and Vietnam, and the CVD order on PRCBs from Vietnam [3] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, the Department determined that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of net countervailable subsidies. Therefore, the Department notified the ITC of the magnitude of the margins and the net countervailable subsidy rate likely to prevail should the orders be revoked, pursuant to sections 751(c)(1) and 752(b) and (c) of the Act.[4]

On April 22, 2016, the ITC published its determination that revocation of the AD orders on PRCBs from Indonesia, Malaysia, the PRC, Taiwan, Thailand, and Vietnam and the CVD order on PRCBs from Vietnam would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.[5]

### Scopes of the Orders

The merchandise covered in the sunset reviews of the AD orders on PRCBs from Indonesia, Malaysia, the PRC, Taiwan, Thailand, and Vietnam and the CVD order on PRCBs from Vietnam is PRCBs, which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

As a result of changes to the Harmonized Tariff Schedule of the United States (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

### Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the AD orders and the CVD order would likely lead to a continuation or recurrence of dumping and, in the case of Vietnam, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD orders on PRCBs from Indonesia, Malaysia, the PRC, Taiwan, Thailand, and Vietnam and the CVD order on PRCBs from Vietnam. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the AD orders and the CVD order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of this continuation notice.

These five-year sunset reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

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[1] *See Initiation of Five-Year (''Sunset'') Review,* 80 FR 17388 (April 1, 2015).

[2] *See Polyethylene Retail Carrier Bags From China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam; Institution of Five-Year Reviews,* 80 FR 17490 (April 1, 2015).

[3] *See Antidumping Duty Orders: Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam,* 75 FR 23667 (May 4, 2010); *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Malaysia,* 69 FR 48203 (August 9, 2004); *Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China,* 69 FR 48201 (August 9, 2004); *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand,* 69 FR 48204 (August 9, 2004); and *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Countervailing Duty Order,* 75 FR 23670 (May 4, 2010).

[4] *See Polyethylene Retail Carrier Bags From Indonesia, Malaysia, the People's Republic of China, Taiwan, Thailand, and the Socialist Republic of Vietnam: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 80 FR 39997 (July 13, 2015), and *Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Final Results of Expedited First Sunset Review of the Countervailing Duty Order,* 80 FR 46539 (August 5, 2015).

[5] *See Polyethylene Retail Carrier Bags From China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam; Determinations,* 81 FR 23749 (April 22, 2016). *See also* the letter from the ITC Chairman Meredith M. Broadbent to Deputy Assistant Secretary Christian Marsh dated April 18, 2016.

Dated: April 28, 2016.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–10625 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–867]**

### Large Power Transformers From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2013–2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is amending its final results in the administrative review of the antidumping duty order on large power transformers from the Republic of Korea (Korea) for the period August 1, 2013, through July 31, 2014, to correct a ministerial error.

**DATES:** *Effective Date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Brian Davis (Hyosung) or Edythe Artman (Hyundai), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7924 or (202) 482–3931, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 6, 2016, the Department published the final results for the 2013/2014 administrative review of the antidumping duty order on large power transformers from Korea.[1]

On March 16, 2016, Petitioner, ABB Inc., and one of the respondents, Hyosung Corporation and HICO America, Inc. (collectively, Hyosung), submitted allegations of ministerial errors. The other respondent, Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation, USA (collectively, Hyundai) and Petitioner filed comments on the allegations on March 21, 2016. Based on our analysis of the allegations, we made changes to the calculation of the weighted-average dumping margin for Hyosung and for the non-individually examined respondents.[2]

#### Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete.

Incomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs. The ''active part'' of the transformer consists of one or more of the following when attached to or otherwise assembled with one another: the steel core or shell, the windings, electrical insulation between the windings, the mechanical frame for an LPT.

The product definition encompasses all such LPTs regardless of name designation, including but not limited to step-up transformers, step-down transformers, autotransformers, interconnection transformers, voltage regulator transformers, rectifier transformers, and power rectifier transformers.

The LPTs subject to this order are currently classifiable under subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (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.''

Hyosung argues that in the *Final Results,* the Department did not update certain programming language in the Margin Calculation Program. As a result, Hyosung contends, the programming language did not fully implement the Department's intended changes. We agree with Hyosung and, therefore, have corrected our Margin Calculation Program.[3] As a result, the weighted-average dumping margin for Hyosung changes from 9.40 percent to 7.89 percent. Furthermore, the rate for the respondents not selected for individual examination, which is based on the weighted, simple-average of the two respondents selected for individual examination, changes from 6.74 percent to 5.98 percent.[4]

Hyosung also claimed that the Department erred in its application of a freight-revenue cap, but we find this claim does not constitute a ministerial error within the meaning of 735(e) of the Act or 19 CFR 351.224(f), because our adjustment is methodological in nature and the adjustment we made was consistent with our stated intention in the *Final Results*.[5]

Finally, Petitioner argued that the Department made a ministerial error when it determined it was not necessary to cap sales-related revenues of directly-associated expenses in the calculation of Hyundai's final dumping margin. We find that this claim does not constitute a ministerial error within the meaning of 735(e) of the Act or 19 CFR 351.224(f), as our decision is methodological in nature and our intent to not impose any such caps is reflected in our final margin calculations.[6]

#### Amended Final Results of the Review

The Department determines that the following amended weighted-average dumping margins exist for the period August 1, 2013, through July 31, 2014:

| Company | Weighted-average dumping margin (percent) |
|---|---|
| Hyosung Corporation | 7.89 |
| Hyundai Heavy Industries Co., Ltd | 4.07 |
| ILJIN Electric Co., Ltd | 5.98 |
| ILJIN | 5.98 |
| LSIS Co., Ltd | 5.98 |

#### Disclosure

We will disclose the calculation memorandum used in our analysis to parties to this segment of the proceeding within five days of the date of the publication of these amended final results pursuant to 19 CFR 351.224(b).

[1] *See Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 14087 (March 6, 2016) and accompanying Issues and Decision Memorandum (*Final Results*).

[2] This analysis is set forth in the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, on the subject of ''Ministerial Error Memorandum for the Amended Final Results of the 2013/2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea'', dated April 29, 2016 (Ministerial Error Memorandum).

[3] *See* Ministerial Error Memorandum at 3.

[4] The rate applied to the non-selected companies (*i.e.,* ILJIN, ILJIN Electric, and LSIS) is a simple average percentage margin calculated based on Hyosung's and Hyundai's dumping margins for the period August 1, 2013, through July 31, 2014.

[5] *See* Ministerial Error Memorandum at 3–5.

[6] *Id.* at 6–7.

**Duty Assessment**

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[7] For Hyosung, whose sales were individually examined and whose weighted-average dumping margin is above *de minimis,* we calculated an *ad valorem* importer-specific duty assessment rate 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). Upon issuance of the amended final results of this administrative review, the Department will not issue instructions to CBP to assess antidumping duties on entries due to the preliminary injunction that was issued by the Court of International Trade after the issuance of the *Final Results. See* CBP Message Number 6098301.

Upon lifting of the injunction, we will determine if the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2). For each respondent we will calculate importer (or customer)-specific rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent reported reliable entered values, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period.

For entries of subject merchandise during the POR produced by Hyosung or Hyundai which they did not know were destined for the United States, we instructed CBP to liquidate unreviewed entries at the all-others rate if there was no rate for the intermediate company or companies involved in the transaction.[8] *See* CBP Message Numbers 6102304 and 6102305 for Hyosung and Hyundai entries, respectively.

**Cash Deposit Instructions**

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these amended final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the amended final results of this administrative review; (2) for merchandise exported by manufacturers 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 manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.00 percent, the all-others rate established in the antidumping investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers Regarding the Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and, subsequently, the assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (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 govern 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.

**Notification to Interested Parties**

We are issuing and publishing these amended final results in accordance with section 751(h) of the Act and 19 CFR 351.224(f).

Dated: April 29, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–10632 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–DS–P**

[7] In these final 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).

[8] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See Large Power Transformers From the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–433–812, A–423–812, A–351–847, A–427–828, A–428–844, A–475–834, A–588–875, A–580–887, A–570–047, A–791–822, A–583–858, A–489–828]**

### Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman at (202) 482–3931 (Austria), Elizabeth Eastwood at (202) 482–3874 (Belgium and Italy), Mark Kennedy at (202) 482–7883 (Brazil), Brandon Custard at (202) 482–1823 (Federal Republic of Germany (Germany)), Terre Keaton Stefanova at (202) 482–1280 (France), Kabir Archuletta at (202) 482–2593 (Japan), Steve Bezirganian at (202) 482–1131 (Republic of Korea (Korea)), Ryan Mullen at (202) 482–5260 (the People's Republic of China (the PRC)), Julia Hancock at (202) 482–1394 (South Africa), Tyler Weinhold at (202) 482–1121 (Taiwan), or Dmitry Vladimirov at (202) 482–0665 (Republic of Turkey (Turkey)), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**The Petitions**

On April 8, 2016, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain carbon and alloy steel cut-to-length plate (CTL

plate) from Austria, Belgium, Brazil, France, the Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and the Turkey, filed in proper form on behalf of ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises, LLC (collectively, Petitioners).[1] The AD petitions were accompanied by countervailing duty (CVD) petitions on imports from Brazil, Korea, and the PRC. Petitioners are domestic producers of CTL plate.[2]

On April 13, 2016, April 20, 2016, and April 21, 2016, the Department requested additional information and clarification of certain areas of the Petitions.[3] Petitioners filed responses to these requests on April 18, 2016,[4] April 21, 2016 [5], and April 25, 2016.[6]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that imports of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed these Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioners are requesting.[7]

## Periods of Investigation

Because the Petitions were filed on April 8, 2016, the period of investigation (POI) is, pursuant to 19 CFR 351.204(b)(1), as follows: April 1, 2015, through March 31, 2016, for Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey, and October 1, 2015, through March 31, 2016, for the PRC.

## Scope of the Investigations

The product covered by these investigations is CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, PRC, South Africa, Taiwan, and Turkey. For a full description of the scope of these investigations, *see* the ''Scope of the Investigations,'' in Appendix I of this notice.

## Comments on Scope of the Investigations

During our review of the Petitions, the Department issued questions to and received responses from Petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.[8]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Wednesday, May 18, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Tuesday, May 31, 2016, which is the next business day after 10 calendar days from the deadline for initial comments.[10]

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

## Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[11] An electronically-filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and

[1] *See* Letter to the Secretary of Commerce from Petitioners ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitions for the Imposition of Antidumping and Countervailing Duties'' (April 8, 2016) (the Petitions).

[2] *See* Volume I of the Petitions, at 2.

[3] *See* Country-specific letters to Petitioners from the Department concerning supplemental questions on each of the country-specific records (April 13, 2016); *see also* Letter to Petitioners from the Department ''Petition for the Imposition of Antidumping Duties on Imports of Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Supplemental Questions'' (April 20, 2016); and Memorandum to the File from Vicki Flynn ''Phone Call with Counsel to Petitioners'' (April 21, 2016).

[4] *See* Letter from Petitioners to the Secretary of Commerce ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and the Republic of Turkey—Petitioners' Amendment to Petition Volume I Related to General Issues'' (April 18, 2016) (General Issues Supplement); *see also* responses to the Department's April 13, 2016, questionnaires concerning supplemental questions on each of the country-specific records (April 18, 2016); and Letter to the Secretary of Commerce from Petitioners ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and the Republic of Turkey—Petitioners' Amendment to Petition Volume I Related to General Issues'' (April 25, 2016) (Second General Issues Supplement).

[5] *See* Letter from Petitioners regarding the Belgium Petition ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitioners' Second Amendment to Petition'' (April 21, 2016); *see also* Letter from Petitioners to the Secretary of Commerce ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitioners' Amendment to Petition Volume XVI Relating to Austria Antidumping Duties'' (April 21, 2016).

[6] *See* Second General Issues Supplement.

[7] *See* the ''Determination of Industry Support for the Petitions'' section below.

[8] *See* Memorandum to the File from Robert James ''Phone Calls with Counsel to Petitioners'' (November 6, 2015); *see also* General Issues Supplement at 1–4 and Exhibit I-Supp-8.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[10] *See* 19 CFR 351.303(b).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

stamped with the date and time of receipt by the applicable deadlines.

**Comments on Product Characteristics for AD Questionnaires**

The Department will be giving interested parties an opportunity to provide comments on the appropriate physical characteristics of CTL plate to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Subsequent to the publication of this notice, the Department will be releasing a proposed list of physical characteristics and product-comparison criteria, and interested parties will have the opportunity to provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics used by manufacturers to describe CTL plate, it may be that only a select few product characteristics take into account commercially-meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

The Department intends to establish a deadline for relevant comments and submissions at the time it releases the proposed list of physical characteristics and product-comparison criteria. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the records of the Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey less-than-fair-value investigations.

**Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that CTL plate constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. To establish industry support, Petitioners provided their shipments of the domestic like product in 2015, as well as the 2015

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria (Austria AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and the Republic of Turkey (Attachment II); Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium (Belgium AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil (Brazil AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from France (France AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany (Germany AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy (Italy AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Japan (Japan AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from South Africa (South Africa AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan (Taiwan AD Initiation Checklist); and Antidumping Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Turkey (Turkey AD Initiation Checklist). These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

shipments of Universal Stainless & Alloy Products, Inc., a supporter of the Petitions, and compared these shipments to the estimated total shipments of the domestic like product for the entire domestic industry.[15] Because total industry production data for the domestic like product for 2015 is not reasonably available to Petitioners and Petitioners have established that shipments are a reasonable proxy for production data,[16] we have relied upon the shipment data provided by Petitioners for purposes of measuring industry support.[17]

Our review of the data provided in the Petitions, General Issues Supplement, and other information readily available to the Department indicates that Petitioners have established industry support.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total shipments [19] of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act for the Petitions because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total shipments of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the shipments of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[22] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting the Department initiate.[23]

## Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, with regard to Brazil, the PRC, France, Germany, Italy, Japan, and Korea, Petitioners allege that subject imports exceed the three percent negligibility threshold provided for under section 771(24)(A) of the Act.[24]

With regard to Austria, Belgium, South Africa, Taiwan, and Turkey, while the allegedly dumped imports from each of these countries do not individually exceed the statutory requirements for negligibility, Petitioners note that the aggregate import share from these five countries is 7.29 percent, which exceeds the seven percent threshold established by the exception in section 771(24)(A)(ii) of the Act.[25] Therefore, none of the subject imports from these countries are negligible for purposes of the material injury analysis in these Petitions.[26]

Petitioners contend that the industry's injured condition is illustrated by reduced market share; declines in production, capacity utilization, U.S. shipments, labor hours, and wages; underselling and price suppression or depression; deteriorating financial performance; and lost sales and revenues.[27] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[28]

## Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate AD investigations of imports of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

## Export Price

For Brazil, France, Germany, Italy, Japan, the PRC, Taiwan, and Turkey, Petitioners based export price (EP) U.S. prices on price quotes for sales of CTL plate produced in, and exported from,

[15] *See* Volume I of the Petitions, at 2–4 and Exhibits I–3 through I–5; *see also* General Issues Supplement, at 7–11 and Exhibits I-Supp-2 through I-Supp-4 and I-Supp-11.

[16] *See* Volume I of the Petitions, at 3 and Exhibit I–4; *see also* General Issues Supplement, at 7.

[17] *See* Volume I of the Petitions, at 2–4 and Exhibits I–4 and I–5; *see also* General Issues Supplement, at 8–11 and Exhibits I-Supp-2, I-Supp-3, and I-Supp-11. For further discussion, *see* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, Brazil AD Initiation Checklist, PRC AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment II.

[18] *See* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, Brazil AD Initiation Checklist, PRC AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment II.

[19] As mentioned above, Petitioners established that shipments are a reasonable proxy for production data. Section 351.203(e)(1) of the Department's regulations states ''production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.''

[20] *See* section 732(c)(4)(D) of the Act; *see also* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, Brazil AD Initiation Checklist, PRC AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment II.

[21] *See* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, Brazil AD Initiation Checklist, PRC AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment II.

[22] *Id.*

[23] *Id.*

[24] *See* Volume I of the Petitions, at 25–29 and Exhibits I–13 and I–16; *see also* General Issues Supplement, at 15 and Exhibit I-Supp-7.

[25] Section 771(24)(A)(ii) of the Act states ''{i}imports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported in to the United States during the applicable 12-month period.''

[26] *See* Volume I of the Petitions, at 25–26, 29–30, and Exhibit I–13.

[27] *Id.,* at 20–22, 34–47 and Exhibits I–4, I–5, I–9, I–10, I–12 through I–14, I–16, and I–17; *see also* General Issues Supplement, at 11–15 and Exhibits I–Supp–1, I–Supp–6, I–Supp–7, and I–Supp–9.

[28] *See* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, Brazil AD Initiation Checklist, PRC AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and the Republic of Turkey.

those countries and offered for sale in the United States.[29] For South Africa, Petitioners based EP on the average unit values of publicly available import data.[30] Where applicable, Petitioners made deductions from U.S. price for movement expenses and trading company/importer mark-ups, consistent with the terms of sale.[31]

**Constructed Export Price**

For Austria, Belgium, and Korea, because Petitioners had reason to believe the sale was made through a U.S. affiliate, Petitioners based constructed export price (CEP) on a price quote/offer for sale of CTL plate produced in, and exported from, those countries.[32] Petitioners made deductions from U.S. price for movement expenses consistent with the delivery terms.[33] Where applicable, Petitioners also deducted from U.S. price imputed credit expenses, trading company/importer mark-ups, and CEP expenses.[34]

**Normal Value**

For Austria, Belgium, Brazil, France, Germany, Korea, Taiwan, and Turkey, Petitioners provided home market price information obtained through market research for CTL plate produced in and offered for sale in each of these countries.[35] For all eight of these countries, Petitioners provided a declaration from a market researcher for the price information.[36] Where applicable, Petitioners made deductions for movement expenses, taxes, and imputed credit expenses, consistent with the terms of sale.[37]

For Austria, Brazil, France, Germany, Korea, and Taiwan, Petitioners provided information that sales of CTL plate in the respective home markets were made at prices below the cost of production (COP) and also calculated NV based on constructed value (CV).[38] For Italy, Japan, and South Africa, Petitioners were unable to obtain home market price quotes for CTL plate and calculated NV based on CV.[39] For further discussion of COP and NV based on CV, *see* below.[40]

With respect to the PRC, Petitioners stated that the Department has found the PRC to be a non-market economy (NME) country in every administrative proceeding in which the PRC has been involved.[41] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners claim that South Africa is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of the PRC, it is a significant producer of the merchandise under consideration, and the data for valuing FOPs, factory overhead, selling, general and administrative (SG&A) expenses and profit are both available and reliable.[42]

Based on the information provided by Petitioners, we believe it is appropriate to use South Africa as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs no later than 30 days before the scheduled date of the preliminary determination.

**Factors of Production**

Because information regarding the volume of inputs consumed by Chinese producers/exporters is not reasonably available, Petitioners relied on a surrogate company's actual consumption of direct materials, labor, and energy as an estimate of the PRC manufacturers' FOPs.[43] Petitioners valued the estimated FOPs using surrogate values from South Africa,[44] and used the average POI exchange rate to convert the data to U.S. dollars.[45]

**Valuation of Raw Materials**

Petitioners valued direct materials based on publicly-available data for imports into South Africa obtained from the Global Trade Atlas for the period September 2015 through February 2016 (*i.e.,* the latest six months available).[46] For three items (beach iron scrap, ferromanganese, and slag iron offsets), there was insufficient import volume to calculate a surrogate value, and so Petitioners relied on South African export statistics.[47] Petitioners excluded all import data from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies, from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, Petitioners excluded imports that were labeled as originating from an unidentified country.[48] Petitioners added to these import values an inland freight rate derived from a report issued by the Human Sciences Research Council, based on the distance from the

[29] *See* Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, PRC AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist.

[30] *See* South Africa AD Initiation Checklist.

[31] *See* Austria AD Initiation Checklist, Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Korea AD Initiation Checklist, Japan AD Initiation Checklist, PRC AD Initiation Checklist, South Africa AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist.

[32] *See* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, and Korea AD Checklist.

[33] *Id.*

[34] *Id.*

[35] *See* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Korea AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist.

[36] *Id.; see also* Memorandum to the File ''Telephone Call to Foreign Market Researcher Regarding Antidumping Petition'' on each of the country-specific records (April 19 and 22, 2016).

[37] *See* Austria AD Initiation Checklist, Belgium AD Initiation Checklist, Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Korea AD Initiation Checklist, Taiwan AD Initiation Checklist, and Turkey AD Initiation Checklist.

[38] *See* Austria AD Initiation Checklist, Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Korea AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[39] *See* Italy AD Initiation Checklist, Japan AD Initiation Checklist, and South Africa AD Initiation Checklist.

[40] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for all of the investigations, the Department will request information necessary to calculate the CV and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. The Department will no longer require a COP allegation to conduct this analysis.

[41] *See* Volume IV of the Petition at 10.

[42] *Id.* at 11–23; *see also* section 773(c) of the Act.

[43] *See* Volume IV of the Petition at 13–17.

[44] *Id.* at 16–17.

[45] *Id.* at 17 and Exhibit AD–CN–9.

[46] *Id.* at 18–19 and Exhibits AD–CN–22 and AD–CN–23; *see also* Letter to the Secretary of Commerce from Petitioners regarding amendment to the PRC Petition (April 18, 2016) (PRC AD Petition Supplement) at 7 and Exhibits AD–CN–Supp–10 and AD–CN–Supp–11.

[47] *See* Volume IV of Petition at 19.

[48] *Id.*

nearest port to the PRC producing mill.[49]

**Valuation of Labor**

Petitioners relied on 2013 data from the International Labor Organization's ILOSTAT data service to derive an hourly labor rate, and then inflated it using the Consumer Price Index.[50]

**Valuation of Energy**

Petitioners valued electricity using electricity rates in effect during the POI as collected and disseminated by the South African electricity producer Eskom,[51] water and natural gas by obtaining the surrogate values used by a recent Department case using South Africa as surrogate country,[52] coke oven gas (which is neither imported nor sold on the commercial market) by taking South African pricing for natural gas as a substitute and making a downward revision to the value of natural gas to reflect the lower heat value of coke oven gas,[53] and oxygen using the average unit pricing for oxygen imported into South Africa.[54]

**Valuation of Packing Materials**

Petitioners valued the packing expenses used by the PRC producers based on actual production experience of a U.S. producer of CTL plate.[55]

**Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit**

Petitioners valued factory overhead, SG&A, and profit using publicly available financial statements from Evraz Highveld, a South African company that produces the merchandise under consideration.[56]

**Normal Value Based on Constructed Value**

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), SG&A expenses, financial expenses, and packing expenses. Petitioners calculated COM based on the experience of a surrogate producer, adjusted for known differences between the surrogate producer and the producer(s) of the respective country (*i.e.,* Austria, Brazil, France, Germany, Italy, Japan, Korea, South Africa, and Taiwan), during the proposed POI.[57] Using publicly-available data to account for price differences, Petitioners multiplied the surrogate usage quantities by the submitted value of the inputs used to manufacture CTL plate in each country.[58] For Austria, Brazil, France, Germany, Italy, Japan, Korea, South Africa, and Taiwan, labor rates were derived from publicly available sources multiplied by the product-specific usage rates.[59] For Austria, Brazil, France, Germany, Italy, Japan, Korea, South Africa, and Taiwan, to determine factory overhead, SG&A, and financial expense rates, Petitioners relied on financial statements of companies they asserted were producers of identical or comparable merchandise operating in the respective foreign country.[60] For Brazil, we adjusted the financial expense rate to reflect the results from the consolidated rather than non-consolidated financial statements.[61]

For Austria, Brazil, France, Germany, Korea, and Taiwan, because certain home market prices fell below COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, as noted above, Petitioners calculated NVs based on CV for those countries.[62] For Italy, Japan, and South Africa, Petitioners indicated they were unable to obtain home market or third country prices; accordingly, Petitioners based NV only on CV for those countries.[63] Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, financial expenses, packing expenses, and profit. Petitioners calculated CV using the same average COM, SG&A, and financial expenses, to calculate COP.[64] With the exception of Brazil and Italy, Petitioners relied on the financial statements of the same producers that they used for calculating manufacturing overhead, SG&A, and financial expenses to calculate the profit rate.[65] For Brazil and Italy, because the relevant financial statements indicated that the companies were operating at a loss, Petitioners did not include profit in CV.[66]

**Fair Value Comparisons**

Based on the data provided by Petitioners, there is reason to believe that imports of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP, or CEP, to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for CTL plate are as follows: (1) Austria ranges from 35.50 to 121.90 percent; [67] (2) Belgium is 51.78 percent; [68] (3) Brazil is 74.52 percent; [69] (4) France ranges from 28.43 to 148.02 percent; [70] (5) Germany ranges from 42.59 to 174.03 percent; [71] (6) Italy is 130.63 percent; [72] (7) Japan is 179.2 percent; [73] (8) Korea ranges from 44.70 to 248.64; [74] (9) South Africa ranges from 81.29 to 94.14 percent; [75] (10) Taiwan ranges from 8.30 to 77.13 percent; [76] and (11) Turkey ranges from 34.03 to 50.00 percent.[77]

Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margin for CTL plate from the PRC ranges from 67.93 to 68.27 percent.[78]

**Initiation of Less-Than-Fair-Value Investigations**

Based upon the examination of the AD Petitions on CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to

[49] *Id.* at 17–18 and Exhibit AD–CN–7.

[50] *Id.* at 20–21 and Exhibits AD–CN–10, AD–CN–25, and AD–CN–29.

[51] *Id.* at 19 and Exhibit AD–CN–24.

[52] *Id.* at 19–20 and Exhibits AD–CN–26 and AD–CN–27.

[53] *Id.* at 20; *see also* PRC AD Petition Supplement at 7–8 and Exhibits AD–CN–Supp–12, AD–CN–Supp–13, and AD–CN–Supp–14.

[54] *See* PRC AD Petition Supplement at 8–9 and Exhibits AD–CN–Supp–10 and AD–CN–Supp–14.

[55] *See* Volume IV of Petition at 1 and 23 and Exhibits AD–CN–18 and AD–CN–21.

[56] *See* Volume IV of Petition at 21–23 and Exhibits AD–CN–21 and AD–CN–30; *see also* PRC AD Petition Supplement at 9–10 and Exhibits AD–CN–Supp–16.

[57] *See* Austria AD Initiation Checklist, Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *See* Brazil AD Initiation Checklist.

[62] *See* Austria AD Initiation Checklist, Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Korea AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[63] *See* Italy AD Initiation Checklist, Japan AD Initiation Checklist, and South Africa AD Initiation Checklist.

[64] *See* Austria AD Initiation Checklist, Brazil AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Italy AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[65] *See* Austria AD Initiation Checklist, France AD Initiation Checklist, Germany AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, South Africa AD Initiation Checklist, and Taiwan AD Initiation Checklist.

[66] *See* Brazil AD Initiation Checklist and Italy AD Initiation Checklist.

[67] *See* Austria AD Initiation Checklist.

[68] *See* Belgium AD Initiation Checklist.

[69] *See* Brazil AD Initiation Checklist.

[70] *See* France AD Initiation Checklist.

[71] *See* Germany AD Initiation Checklist.

[72] *See* Italy AD Initiation Checklist.

[73] *See* Japan AD Initiation Checklist.

[74] *See* Korea AD Initiation Checklist.

[75] *See* South Africa AD Initiation Checklist.

[76] *See* Taiwan AD Initiation Checklist.

[77] *See* Turkey AD Initiation Checklist.

[78] *See* PRC AD Initiation Checklist.

determine whether imports of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[79] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[80] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these investigations.[81]

**Respondent Selection**

Petitioners named three companies in Brazil,[82] three companies in Turkey,[83] 11 companies in Germany,[84] nine companies in Italy,[85] five companies in Japan,[86] 21 companies in Korea,[87] four companies in South Africa,[88] and 10 companies in Taiwan,[89] as producers/exporters of CTL plate. Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of companies is large and it cannot individually examine each company based upon the Department's resources, where appropriate, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed with the scope in Appendix I, below. We also intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on the record within five business days of publication of this **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of these investigations. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments.

Although the Department normally relies on the number of producers/exporters identified in the petition and/or import data from CBP to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, Petitioners identified only one company as a producer/exporter of CTL plate in Austria: Voelstalpine Grobblech GmbH; two companies in Belgium: Industeel and NLMK Clabecq; and two companies in France: Dillinger France and Industeel France.[90] We currently know of no additional producers/exporters of merchandise under consideration from these countries and Petitioners provided information from an independent third-party source as support.[91] Accordingly, the Department intends to examine all known producers/exporters in the investigations for Austria, Belgium, and France (*i.e.,* the companies cited above for each respective investigation).

Comments for the above-referenced investigations 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, by 5:00 p.m. ET by the dates noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

With respect to the PRC, Petitioners named 56 companies as producers/exporters of CTL plate.[92] In accordance with our standard practice for respondent selection in cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to each potential respondent and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Exporters/producers of CTL plate from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement and Compliance Web site. The Q&V response must be submitted by all PRC exporters/producers no later than May 12, 2016, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

**Separate Rates**

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[93] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[94] Exporters and producers who submit a separate-rate application and are selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.

**Use of Combination Rates**

The Department will calculate combination rates for certain respondents that are eligible for a

[79] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[80] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).

[81] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[82] *See* Volume I of the Petition at 18–19 and Exhibit I–8.

[83] Petitioners initially named only one company in Turkey, but later indicated that there are two additional producers in Turkey, MMK Metalurji and Tosçelik Profile & Sheet, that are theoretically capable of producing a product that would fall within the scope of this investigation. *See* Letter to the Secretary of Commerce from Petitioners ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitioners Amendment to the Petition'' (April 18, 2016).

[84] *See* Volume I of the Petition at 18–19 and Exhibit I–8.

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *See* Volume I of the Petition at Exhibit I–9.

[92] *See* Volume I of the Petition, at Exhibit I–8.

[93] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[94] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[95]

**Distribution of Copies of the Petitions**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and/or Turkey are materially injuring or threatening material injury to a U.S. industry.[96] A negative ITC determination for any country will result in the investigation being terminated with respect to that country;[97] otherwise, these investigations will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[98] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[99] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in these investigations.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[100] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[101] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 28, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigations**

The products covered by these investigations are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250

[95] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[96] *See* section 733(a) of the Act.

[97] *Id.*

[98] *See* 19 CFR 351.301(b).

[99] *See* 19 CFR 351.301(b)(2).

[100] *See* section 782(b) of the Act.

[101] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*e.g.,* orders on hot-rolled flat-rolled steel); and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these investigations are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of these investigations unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of these investigations:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350 HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with

acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

At the time of the filing of the petition, there was an existing antidumping duty order on certain cut-to-length carbon-quality steel plate products from Korea. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea,* 64 FR 73196 (Dep't Commerce Dec. 29, 1999), as amended, 65 FR 6585 (Dep't Commerce Feb 10, 2000) (1999 Korea AD Order). The scope of the antidumping duty investigation with regard to cut-to-length plate from Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea AD Order, regardless of producer or exporter; and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the 1999 Korea AD Order as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

At the time of the filing of the petition, there was an existing countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea,* 64 FR 73176 (Dep't Commerce Dec. 29, 1999), as amended, 65 FR 6587 (Dep't Commerce Feb. 10, 2000) (1999 Korea CVD Order). The scope of the countervailing duty investigation with regard to cut-to-length plate from Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea CVD Order regardless of producer or exporter, and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the 1999 Korea CVD Order as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

Excluded from the scope of the antidumping duty investigation on cut-to-length plate from China are any products covered by the existing antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China. *See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order,* 68 FR 60081 (Dep't Commerce Oct. 21, 2003), as amended, *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 76 FR 50996, 50996–97 (Dep't of Commerce Aug. 17, 2011). On August 17, 2011, the U.S. Department of Commerce found that the order covered all imports of certain cut-to-length carbon steel plate products with 0.0008 percent or more boron, by weight, from China not meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.,* Jominy test) result indicating a boron factor of 1.8 or greater.

The products subject to the investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigations may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7206.11.1000, 7226.11.9060, 7229.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

[FR Doc. 2016–10627 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–351–848; C–570–048; C–580–888]**

## Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, the People's Republic of China, and the Republic of Korea: Initiation of Countervailing Duty Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Czajkowski at (202) 482–1395 (Brazil); Katie Marksberry at (202) 482–7906 (the People's Republic of China); and John Drury at (202) 482–0195 (Republic of Korea), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### The Petitions

On April 8, 2016, the Department of Commerce (the Department) received countervailing duty (CVD) petitions concerning imports of certain carbon and alloy cut-to-length plate (CTL plate) from Brazil, the People's Republic of China (PRC), and the Republic of Korea (Korea), filed in proper form on behalf of ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises, LLC (collectively, Petitioners). The CVD petitions were accompanied by antidumping duty (AD) petitions concerning imports of CTL plate from all of the above countries, in addition to Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, South Africa, Taiwan, and Turkey.[1] Petitioners are domestic producers of CTL plate.[2]

On April 13, 2016, and April 21, 2016, the Department requested supplemental information pertaining to certain areas of the Petition.[3] Petitioners filed responses to these requests on April 18, 2016, and April 25, 2016, respectively.[4] Additionally, on April 13, 2016, the Department requested supplemental information pertaining to certain areas of the Petition with respect to Brazil [5] and the Republic of Korea.[6] Petitioners filed responses to these requests on April 18, 2016.[7]

[1] *See* ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated April 8, 2016 (Petitions).

[2] *Id.,* Volume I at 2.

[3] *See* Letter from the Department, ''Petitions for the Imposition of Antidumping Duties on Imports of Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey: Supplemental Questions,'' April 13, 2016 (General Issues Supplemental Questionnaire); *see also* Memorandum to the File from Vicki Flynn ''Phone Call with Counsel to Petitioners,'' April 21, 2016.

[4] *See* Letter from Petitioners, ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey: Petitioners' Amendment to Petition Volume I Related to General Issues,'' April 18, 2016 (General Issues Supplement); *see also* Letter from Petitioners to the Secretary of Commerce ''Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and the Republic of Turkey—Petitioners' Amendment to Petition Volume I Related to General Issues'' (April 25, 2016) (Second General Issues Supplement).

[5] *See* Letter from the Department ''Petition for the Imposition of Countervailing Duties on Imports of Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil: Supplemental Questions,'' April 13, 2016.

[6] *See* Letter from the Department, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Supplemental Questions,'' April 13, 2016.

[7] *See* Letter from Petitioners ''Re: Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and Turkey—Petitioners' Amendment to Petition,'' dated April 18, 2016.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that the Governments of Brazil (GOB), the PRC (GOC), and Korea (GOK) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to imports of CTL plate from Brazil, the PRC, and Korea, respectively, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 702(b)(1) of the Act, for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the CVD investigations that Petitioners are requesting.[8]

**Period of Investigations**

The period of investigation is January 1, 2015, through December 31, 2015.[9]

**Scope of the Investigation**

The product covered by these investigations is CTL plate from Brazil, the PRC, and Korea. For a full description of the scope of these investigations, *see* Appendix I of this notice.

**Comments on Scope of the Investigations**

During our review of the Petitions, the Department issued questions to and received responses from Petitioners pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[10]

As discussed in the preamble to the Department's regulations,[11] we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope). The Department will consider all comments received from interested parties and, if necessary, will consult with the interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[12] all such factual information should be limited to public information. In order to facilitate preparation of its questionnaire, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Wednesday, May 18, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Tuesday, May 31, 2016, which is the next business day after 10 calendar days from the initial comments deadline.[13]

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the record of the concurrent CVD investigations, as well as the AD investigations of CTL plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, South Africa, Taiwan, and Turkey.

**Filing Requirements**

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[14] An electronically-filed document must be received successfully in its entirety by the time and date it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

**Consultations**

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the GOB, GOC and GOK of the receipt of the Petition. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOB, GOC and GOK the opportunity for consultations with respect to the CVD Petitions. Consultations with the GOB were held at the Department's main building on April 26, 2016. The GOC submitted consultation comments to the Department on April 23, 2016, in lieu of holding consultations.[15] All invitation letters and memoranda regarding these consultations are on file electronically *via* ACCESS.[16]

**Determination of Industry Support for the Petitions**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether

[8] *See* ''Determination of Industry Support for the Petition'' section, below.

[9] *See* 19 CFR 351.204(b)(2).

[10] *See* General Issues Supplemental Questionnaire; *see also* General Issues Supplement; Second General Issues Supplement.

[11] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[12] *See* 19 CFR 351.102(b)(21).

[13] *See* 19 CFR 351.303(b).

[14] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[15] *See* Memo to the File, from Katie Marksberry, Case Analyst, Re: Countervailing Duty Petition on Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Comments from the Government of the People's Republic of China Regarding the Petition, dated April 25, 2016.

[16] As the GOK did not request consultations prior to the initiation of this investigation, the Department and the GOK did not hold consultations.

''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[17] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[18]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that CTL Plate constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[19]

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. To establish industry support, Petitioners provided their shipments of the domestic like product in 2015, as well as the 2015 shipments of Universal Stainless & Alloy Products, Inc., a supporter of the Petitions, and compared these shipments to the estimated total shipments of the domestic like product for the entire domestic industry.[20] Because data regarding total production of the domestic like product are not reasonably available to Petitioners and Petitioners have established that shipments are a reasonable proxy for production,[21] we have relied on the shipment data provided by Petitioners for purposes of measuring industry support.[22]

Our review of the data provided in the Petitions, General Issues Supplement, and other information readily available to the Department indicates that Petitioners have established industry support.[23] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total shipments [24] of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[25] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act for all of the Petitions because the domestic producers (or workers) who support each of the Petitions account for at least 25 percent of the total shipments of the domestic like product.[26] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act for all of the Petitions because the domestic producers (or workers) who support each of the Petitions account for more than 50 percent of the shipments of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[27] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigations that they are requesting the Department initiate.[28]

**Injury Test**

Because Brazil, the PRC, and Korea are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Brazil, the PRC, and Korea materially injure, or threaten material injury to, a U.S. industry.

**Allegations and Evidence of Material Injury and Causation**

Petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, with regard to the PRC and Korea, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[29]

In CVD petitions, section 771(24)(A) of the Act provides that imports of subject merchandise must exceed the negligibility threshold of three percent, except that imports of subject merchandise from developing countries in CVD investigations must exceed the negligibility threshold of four percent, pursuant to section 771(24)(B) of the

[17] *See* section 771(10) of the Act.

[18] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[19] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from Brazil (Brazil CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and the Republic of Turkey (Attachment II); Countervailing Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II; and Countervailing Duty Investigation Initiation Checklist: Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea (Korea CVD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[20] *See* Volume I of the Petitions, at 2–4 and Exhibits I–3 through I–5; *see also* General Issues Supplement, at 7–11 and Exhibits I–Supp–2 through I–Supp–4 and I–Supp–11.

[21] *See* Volume I of the Petitions, at 3 and Exhibit I–4; *see also* General Issues Supplement, at 7.

[22] *See* Volume I of the Petitions, at 2–4 and Exhibits I–4 and I–5; *see also* General Issues Supplement, at 8–11 and Exhibits I–Supp–2, I–Supp–3, and I–Supp–11. For further discussion, *see* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, and Korea CVD Initiation Checklist, at Attachment II.

[23] *See* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, and Korea CVD Initiation Checklist, at Attachment II.

[24] As mentioned above, Petitioners established that shipments are a reasonable proxy for production data. Section 351.203(e)(1) of the Department's regulations states ''production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.''

[25] *See* section 702(c)(4)(D) of the Act; *see also* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, and Korea CVD Initiation Checklist, at Attachment II.

[26] *See* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, and Korea CVD Initiation Checklist, at Attachment II.

[27] *Id.*

[28] *Id.*

[29] *See* Volume I of the Petitions, at 25–29 and Exhibits I–13 and I–16.

Act. Brazil has been designated as a developing country.[30]

While the allegedly subsidized imports from Brazil do not individually meet the statutory negligibility threshold of four percent, Petitioners allege and provide supporting evidence that there is the potential that imports from Brazil will imminently exceed the negligibility threshold and, therefore, are not negligible for purposes of a threat determination.[31] Petitioners' arguments regarding the potential for imports to imminently exceed the negligibility threshold are consistent with the statutory criterial for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

Petitioners contend that the industry's injured condition is illustrated by reduced market share; declines in production, capacity utilization, U.S. shipments, labor hours, and wages; underselling and price suppression or depression; deteriorating financial performance; and lost sales and revenues.[32] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[33]

## Initiation of CVD Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to Petitioners supporting the allegations.

Petitioners allege that producers/exporters of CTL plate in Brazil, the PRC, and Korea benefit from countervailable subsidies bestowed by the governments of these countries, respectively. The Department examined the Petitions and finds that they comply with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating CVD investigations to determine whether manufacturers, producers, and/or exporters of CTL plate from Brazil, the PRC, and Korea receive countervailable subsidies from the governments of these countries, respectively.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[34] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[35] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these CVD investigations.[36]

### Brazil

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 24 of the 25 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the Brazil CVD Initiation Checklist.

### The PRC

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 43 of the 44 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the PRC CVD Initiation Checklist.

### Korea

Based on our review of the petition, out of the 42 alleged programs, we find that there is sufficient information to initiate a CVD investigation on 39 programs and to partially initiate an investigation regarding one program. For a full discussion of the basis for our decision to initiate or not initiate on each program, see the Korea CVD Initiation Checklist.

A public version of the initiation checklist for each investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

## Respondent Selection

Petitioners named three companies as producers/exporters of CTL plate in Brazil, 56 in the PRC, and 21 in Korea.[37] In the event the Department determines the number of companies subject to each investigation is large, the Department intends to follow its standard practice in CVD investigations, and, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of CTL plate during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers. We intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of publication of this **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of this investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for initial comments.

Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

## Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the

[30] *See* section 771(36)(A)–(B) of the Act.

[31] *See* Second General Issues Supplement, at 1–4 and Exhibit 1.

[32] *See* Volume I of the Petitions, at 20–22, 34–47 and Exhibits I–4, I–5, I–9, I–10, I–12 through I–14, I–16, and I–17; *see also* General Issues Supplement, at 11–15 and Exhibits I–Supp–1, I–Supp–6, I–Supp–7, and I–Supp–9.

[33] *See* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, and Korea CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, South Africa, Taiwan, and the Republic of Turkey.

[34] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[35] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[36] *See Applicability Notice,* 80 FR at 46794–95.

[37] *See* Petition, Volume I at Exhibit I–8.

GOB, GOC and GOK *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each known exporter (as named in the Petitions), consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of CTL plate from Brazil, the PRC, and Korea are materially injuring, or threatening material injury to, a U.S. industry.[38] A negative ITC determination will result in the investigation being terminated.[39] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in this investigation.

**Extension of Time Limits Regulation**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

**Certification Requirements**

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[40] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[41] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: April 28, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix I

**Scope of the Investigations**

The products covered by these investigations are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'', (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*e.g.,* orders on hot-rolled flat-rolled steel); and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these investigations are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including

[38] *See* section 703(a)(2) of the Act.

[39] *See* section 703(a)(1) of the Act.

[40] *See* section 782(b) of the Act.

[41] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of these investigations unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of these investigations:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

At the time of the filing of the petition, there was an existing antidumping duty order on certain cut-to-length carbon-quality steel plate products from Korea. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea,* 64 FR 73,196 (Dep't Commerce Dec. 29, 1999), as amended, 65 FR 6,585 (Dep't Commerce Feb 10, 2000) (1999 Korea AD Order). The scope of the antidumping duty investigation with regard to cut-to-length plate from Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea AD Order, regardless of producer or exporter; and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the 1999 Korea AD Order as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

At the time of the filing of the petition, there was an existing countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea,* 64 FR 73,176 (Dep't Commerce Dec. 29, 1999), as amended, 65 FR 6,587 (Dep't Commerce Feb. 10, 2000) (1999 Korea CVD Order). The scope of the countervailing duty investigation with regard to cut-to-length plate from Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea CVD Order regardless of producer or exporter, and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the 1999 Korea

CVD Order as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

Excluded from the scope of the antidumping duty investigation on cut-to-length plate from China are any products covered by the existing antidumping duty order on certain cut-to-length carbon steel plate from the People's Republic of China. *See Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order,* 68 FR 60,081 (Dep't Commerce Oct. 21, 2003), as amended, *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 76 FR 50,996, 50,996–97 (Dep't of Commerce Aug. 17, 2011). On August 17, 2011, the U.S. Department of Commerce found that the order covered all imports of certain cut-to-length carbon steel plate products with 0.0008 percent or more boron, by weight, from China not meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.,* Jominy test) result indicating a boron factor of 1.8 or greater.

The products subject to the investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigations may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7206.11.1000, 7226.11.9060, 7229.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

[FR Doc. 2016–10631 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration (NOAA)

### Marine Protected Areas Federal Advisory Committee; Public Meeting

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Winter Harbor, Maine.

**DATES:** The meeting will be held Tuesday, May 24, 2016, from 9:00 a.m. to 5:00 p.m.; Wednesday, May 25, 2016, from 8:30 a.m. to 5:00 p.m.; and Thursday, May 26, 2016, from 8:30 a.m. to 5:00 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

**ADDRESSES:** The meeting will be held at the Schoodic Institute at Acadia National Park, Schoodic Point, 9 Atterbury Circle, Winter Harbor, Maine 04693.

**FOR FURTHER INFORMATION CONTACT:** Lauren Wenzel, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–7265, Fax: 301–713–3110); email: *lauren.wenzel@noaa.gov;* or visit the National MPA Center Web site at *http://marineprotectedareas.noaa.gov/*.

**SUPPLEMENTARY INFORMATION:** The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158, on marine protected areas (MPAs). The meeting is open to the public, and public comment will be accepted from 4:30 p.m. to 5:00 p.m. on Tuesday, May 24, 2016. In general, each individual or group will be limited to a total time of five (5) minutes. If members of the public wish to submit written statements, they should be submitted to the Designated Federal Official by Friday, May 20, 2016.

*Matters To Be Considered:* The focus of the Committee's meeting will be to complete and act on Subcommittee and Working Group reports and recommendations related to ecological connectivity, external financing, and Arctic MPAs; provide an opportunity for public comment on MPA issues; and provide an opportunity for Committee input on potential future focus areas. The agenda is subject to change. The latest version will be posted at *http://marineprotectedareas.noaa.gov/*.

Dated: April 28, 2016.

**John A. Armor,**

*Acting Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2016–10532 Filed 5–4–16; 8:45 am]

**BILLING CODE 3510–NK–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No: CFPB–2016–0019]**

### Privacy Act of 1974, as Amended

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

**ACTION:** Notice of a Revised Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB or Bureau), gives notice of the establishment of a revised Privacy Act System of Records.

**DATES:** Comments must be received no later than June 6, 2016. The new system of records will be effective June 14, 2016, unless the comments received result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by the title and docket number (see above), by any of the following methods:

- *Electronic: privacy@cfpb.gov* or *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Sensitive personal information, such as account numbers or social security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Claire Stapleton, Chief Privacy Officer,

Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002, (202) 435–7220.

**SUPPLEMENTARY INFORMATION:** The CFPB revises its Privacy Act System of Records Notice (SORN) ''CFPB.009—Employee Administrative Records System.'' As part of an annual review of this System of Records, the CFPB modifies the purpose(s) for which the system is maintained to clarify that the information in the system will be used for personnel actions and for administrative purposes to ensure quality control, performance, and improving management processes; the categories of individuals for the system to include applicants and detailees to the CFPB; and the record source categories for the system to include individuals who have applied for a position with the CFPB and to clarify the use for human resource functions.

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r). The revised system of records entitled ''CFPB.009—Employee Administrative Records System'' is published in its entirety below.

Dated: April 28, 2016.

**Claire Stapleton,**

*Chief Privacy Officer, Bureau of Consumer Financial Protection.*

**CFPB.009**

**SYSTEM NAME:**

Employee Administrative Records System

**SYSTEM LOCATION:**

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former CFPB employees, volunteers, detailees, applicants, and persons who work at the CFPB (collectively ''employees''), and their named dependents and/or beneficiaries, their named emergency contacts, and individuals who have been extended offers of employment.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in this system may contain identifiable information about individuals including, without limitation: (1) Identification and contact information, including name, address, email address, phone number and other contact information; (2) employee emergency contact information, including name, phone number, relationship to employee or emergency contact; (3) Social Security number (SSN), employee ID number, organization code, pay rate, salary, grade, length of service, and other related pay and leave records including payroll data; (4) biographic and demographic data, including date of birth and marital or domestic partnership status; (5) employment-related information such as performance reports, training, professional licenses, certification, and memberships information, fitness center membership information, union dues, employee claims for loss or damage to personal property, and other information related to employment by the CFPB; (6) benefits data, such as health, life, travel, and disability insurance information; and (7) retirement benefits information and flexible spending account information.

General personnel and administrative records contained in this system are covered under the government-wide systems of records notice published by the Office of Personnel Management (OPM/GOVT–1). This system complements OPM/GOVT–1 and this notice incorporates by reference but does not repeat all of the information contained in OPM/GOVT–1.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

12 U.S.C. 5492–93, 5511; 31 U.S.C. 3721.

**PURPOSE(S):**

The information in the system is being collected to enable the CFPB to manage and administer human capital functions, including personnel actions, payroll, time and attendance, leave, insurance, tax, retirement and other benefits, and employee claims for loss or damage to personal property; and to prepare related reports to other federal agencies. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records may be disclosed, consistent with the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The DOJ for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

[1] Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate agencies, entities, and persons to the extent necessary to obtain information relevant to current and former CFPB employees' benefits, compensation, and employment;

(10) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license;

(11) National, state or local income security and retirement agencies or entities involved in administration of employee retirement and benefits programs (*e.g.,* state unemployment compensation agencies and state pension plans) and any of such agencies' contractors or plan administrators, when necessary to determine employee eligibility to participate in retirement or employee benefits programs, process employee participation in those programs, process claims with respect to individual employee participation in those programs, audit benefits paid under those programs, or perform any other administrative function in connection with those programs;

(12) An executor of the estate of a current or former employee, a government entity probating the will of a current or former employee, a designated beneficiary of a current or former employee, or any person who is responsible for the care of a current or former employee, where the employee has died, has been declared mentally incompetent, or is under other legal disability, to the extent necessary to assist in obtaining any employment benefit or working condition for the current or former employee;

(13) The Internal Revenue Service (IRS) and other governmental entities that are authorized to tax employees' compensation with wage and tax information in accordance with a withholding agreement with the CFPB pursuant to 5 U.S.C. 5516, 5517, and 5520, for the purpose of furnishing employees with IRS Forms W–2 that report such tax distributions;

(14) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114; and

(15) Carriers, providers and other federal agencies involved in administration of employee retirement and benefits programs and such agencies' contractors or plan administrators, when necessary to determine employee eligibility to participate in retirement and benefits programs, process employee participation in those programs, process claims with respect to individual employee participation in those programs, audit benefits paid under those programs, or perform any other administrative function in connection with those programs and federal agencies that perform payroll and personnel processing and employee retirement and benefits plan services under interagency agreements or contracts, including the issuance of paychecks to employees, the distribution of wages, the administration of deductions from paychecks for retirement and benefits programs, and the distribution and receipt of those deductions. These agencies include, without limitation, the Department of Labor, the Department of Veterans Affairs, the Social Security Administration, the Federal Retirement Thrift Investment Board, the Department of Defense, OPM, the Board of Governors of the Federal Reserve System, the Department of the Treasury, and the National Finance Center at the U.S. Department of Agriculture.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper and electronic records.

**RETRIEVABILITY:**

Records are retrievable by a variety of fields including, without limitation, the individual's name, SSN, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

**SAFEGUARDS:**

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

**RETENTION AND DISPOSAL:**

The CFPB will maintain electronic and paper records under the National Archives and Records Administration (NARA) schedules General Records Schedule (GRS) GRS 01, GRS 02, and GRS 18–15b.

**SYSTEM MANAGER(S) AND ADDRESS:**

Consumer Financial Protection Bureau, Chief Operating Officer, 1700 G Street NW., Washington, DC 20552.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedures'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedures'' above.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from current and former CFPB employees, their named dependents and/or beneficiaries, their named emergency contacts, individuals who have applied for a position or have been extended offers of employment by the CFPB, and from individuals and entities associated with federal employee benefits, retirement, human resource functions, accounting, and payroll systems administration.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2016–10501 Filed 5–4–16; 8:45 am]

**BILLING CODE 4810–AM–P**

## DEPARTMENT OF DEFENSE OFFICE OF THE SECRETARY

**[Docket ID: DOD–2016–OS–0056]**

## National Environmental Policy Act Implementing Procedures

**AGENCY:** Defense Threat Reduction Agency/USSTRATCOM Center for Combating Weapons of Mass Destruction, Department of Defense.

**ACTION:** Proposed guidance with a request for comment.

**SUMMARY:** The Defense Threat Reduction Agency/USSTRATCOM Center for Combating Weapons of Mass Destruction (DTRA/SCC–WMD or the Agency) proposes to issue procedures to implement the National Environmental Policy Act (NEPA), Executive Order (E.O.) 11514, and Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA. Pursuant to CEQ regulations at 40 CFR 1507.3(a), the DTRA/SCC–WMD is soliciting comments on its proposed procedures.

**DATES:** DTRA/SCC–WMD is providing a 30-day public review period. Comments must be received by June 6, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sherry Davis, Director, Environment, Safety, and Occupational Health Department, at (703) 767–7122 or by email at *sherry.j.davis3.civ@mail.mil.*

**SUPPLEMENTARY INFORMATION:** DTRA/SCC–WMD is a combat support agency that counters weapons of mass destruction (WMD). DTRA/SCC–WMD keeps WMD out of the hands of terrorists and other enemies by locking down, monitoring, and destroying weapons and weapons-related material, assists with plans and responses to WMD events, and develops and delivers cutting-edge technologies to assist with these endeavors.

As a Department of Defense (DoD) agency, the DTRA/SCC–WMD does not own real property. Most agency actions typically occur on host military service installations or ranges, or other Federal agency properties. DTRA/SCC–WMD formerly relied upon host installation NEPA implementing procedures, including categorical exclusions to address potential environmental impacts of agency actions. With the issuance of CEQ guidance ''Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act'' (Nov. 23, 2010) and after consulting with CEQ and other similar DoD components, DTRA/SCC–WMD determined the need to establish NEPA implementing procedures and categorical exclusions specific to DTRA/SCC–WMD projects and actions. The information assembled while developing categorical exclusions is described in the ''DTRA/SCC–WMD Administrative Record for Supporting Categorical Exclusions'' and is available on the DTRA/SCC–WMD Web site at: *http://www.dtra.mil/Home/NEPA.aspx.*

The proposed categorical exclusions describe the categories of actions that DTRA/SCC–WMD determined to normally not individually or cumulatively have significant impact on the environment. These and the other proposed implementing procedures will serve as the agency's guide for complying with the requirements of NEPA for DTRA/SCC–WMD actions.

The text of the complete proposed DTRA/SCC–WMD NEPA implementing procedures can be found on the DTRA/SCC–WMD Web site at: *http://www.dtra.mil/Home/NEPA.aspx* and in this document.

Dated: April 28, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Table of Contents



### Defense Threat Reduction Agency/ Usstratcom Center for Combating Weapons of Mass Destruction NEPA Implementing Procedures

#### 1. Purpose

Pursuant to DTRA/SCC–WMD Instruction 4715.5, ''Environmental Compliance'' (Aug. 22, 2014), this guide identifies requirements and provides procedures for implementing the provisions of the National Environmental Policy Act (NEPA) in accordance with Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508, and E.O. 12114, ''Environmental Effects Abroad of Major Federal Actions'' (Jan. 4, 1979). It supplements 40 CFR parts 1500–1508 and E.O. 12114 by establishing policy, responsibilities, and procedures for fully considering environmental consequences of proposed actions, preparing necessary documentation for actions with the potential for significant environmental impact, and demonstrating transparency in decision-making. DTRA/SCC–WMD does not own real property or undertake projects or programs where actions are planned or funded by private applicants or other non-Federal entities. Therefore, this guide does not include provisions to account for such actions.

#### 2. Applicability

The requirements and procedures of this guide apply to all entities of DTRA/SCC–WMD and its executing agents.

#### 3. Policy

It is DTRA/SCC–WMD policy to:

(a) Integrate environmental consideration into all Agency/Center activities at the earliest possible planning stage, make decisions considering environmental consequences, assess a range of reasonable alternative actions, and take

actions that protect, restore, and enhance the environment.

(b) Prepare all necessary documentation required under NEPA and 40 CFR parts 1500–1508 whenever acting as the proponent or lead agency for a proposed action that has the potential for significant environmental impact.

(c) Serve as a cooperating agency for activities in which DTRA/SCC–WMD participates but is not the proponent or lead agency and provide full cooperation and necessary technical expertise and documentation to the lead agency as requested.

(d) Use programmatic and tiered analyses, when possible, to eliminate redundancies in future project/program analyses, effectively evaluate cumulative environmental effects, and reduce mission delays.

(e) Periodically (at least every 7 years) review the effectiveness of its NEPA procedures including responsibilities, implementing procedures, and categorical exclusions (CATEXs), and when new information or circumstances warrant, review the currency of existing Programmatic Environmental Impact Statements (EISs) and Programmatic Environmental Assessments (EAs).

(f) Involve the public in preparing and executing its NEPA procedures, and publish NEPA implementing procedures, CATEXs, and other relevant NEPA documentation as appropriate on the DTRA/SCC–WMD public Web site.

(g) Prepare NEPA documentation and procedures that are written in plain language so that decision-makers and the public can readily understand them.

(h) To the fullest extent possible, integrate NEPA requirements with other environmental review and consultation requirements including, but not limited to, Clean Water Act, Clean Air Act, Endangered Species Act, National Historic Preservation Act, Resource Conservation and Recovery Act, and Comprehensive Environmental Response, Compensation, and Liability Act.

(i) Eliminate duplication with State and local procedures by providing for, as appropriate, joint planning processes and, where appropriate, joint preparation of NEPA reviews (analyses and documentation).

(j) Eliminate duplication with other Federal procedures by jointly preparing NEPA reviews, or adopting other agencies' EAs and EISs, or incorporating by reference material into an EA or EIS where appropriate.

(k) Comply with host installation NEPA requirements in addition to the requirements set forth in this guide. Equivalent host installation documentation may be used to satisfy DTRA/SCC–WMD documentation requirements.

**4. Responsibilities**

*(a) Director, DTRA/SCC–WMD (J0)*

The J0 has final approval and signature authority of EIS Records of Decision (RODs) generated by DTRA/SCC–WMD or its contractors. This authority may be delegated as deemed appropriate by the J0.

*(b) Joint Director (JDIR), Acquisition, Finance, and Logistics (J4/8C)*

The JDIR, J4/8C monitors the effective implementation of these procedures through the Director, Environment, Safety, and Occupational Health (ESOH) Department (J4E) and hereby appoints the Director, J4E as the principal Agency/Center advisor on NEPA-related requirements.

*(c) Director, J4E*

The Director, J4E as the principal Agency advisor on NEPA-related requirements:

(1) Provides guidance to Project/Program Managers as necessary on the requirements in this guide and maintains direct oversight of the NEPA process.

(2) Reviews project proposals to determine NEPA applicability and requirements, and provides qualified personnel to support Project/Program Managers with NEPA compliance.

(3) Performs environmental compliance reviews of EISs/RODs, EAs/Findings of No Significant Impact (FONSIs), and Records of Environmental Consideration (RECs) generated by DTRA/SCC–WMD or its contractors and provides initial approval by signature as the compliance authority.

(4) When DTRA/SCC–WMD serves as a cooperating agency for activities in which it participates but is not the proponent or lead, reviews and approves NEPA documents as requested by the lead agency.

(5) Maintains an organized administrative record of all NEPA documents generated by DTRA/SCC–WMD or its contractors, including documentation supporting Agency/Center CATEXs.

(6) Represents DTRA/SCC–WMD in NEPA-related matters with external organizations.

(7) Ensures required NEPA mitigation measures are documented in the administrative record, performed, and monitored.

*(d) Office of the General Counsel (J0GC)*

The J0GC provides a legal review of EISs, RODs, EAs, and FONSIs generated by DTRA/SCC–WMD or its contractors.

*(e) Governmental and Public Affairs Office (J0XG)*

The J0XG:

(1) Assists Project/Program Managers with engaging the public for scoping meetings, accepting comments, providing adjudications, outreach efforts, and other related interactions.

(2) Coordinates the public release of DTRA/SCC–WMD NEPA documentation using various mediums including local newspapers, DTRA/SCC–WMD's public Web sites, and the **Federal Register** (FR).

(3) Approves, signs, and publishes Notices of Intent (NOI) and Notices of Availability (NOA).

*(f) Directorate JDIRs/Staff Office Chiefs/SCC–WMD Divisions*

The Directorate JDIRS/Staff Office Chiefs/SCC–WMD Divisions:

(1) Integrate environmental considerations early in the planning stages of all Directorate/Staff Office/SCC–WMD Division activities with adequate time to ensure NEPA requirements can be met.

(2) Provide project proposals to the Director, J4E for any planned DTRA/SCC–WMD activity with potential for environmental impact.

(3) Provide necessary funding to satisfy NEPA requirements for Directorate/Staff Office/SCC–WMD Division activities subject to compliance.

**5. Environmental Planning & Analysis**

*(a) Record of Environmental Review*

(1) A flowchart outlining the general NEPA process can be found in Appendix A.

(2) As early in the planning process as possible, the Project/Program Manager of a proposed action must provide to the J4E a project proposal by completing the top section of a REC (found in Appendix C and the ESOH Team Site at: *https://dtra1/j4-8c/j4e/default.aspx*) with information regarding the scope of the activity.

(3) A REC is used to document the environmental analysis for an activity. The REC could indicate that a CATEX applies and there are no extraordinary circumstances requiring further analysis; that the activity is covered under a previous analysis (EA/EIS) and further analysis is not required, or that additional analysis is needed (EA/EIS).

(4) Based on conclusions of the initial environmental analysis, additional

analysis may be required. Project/Program Managers must also comply with other applicable statutory or regulatory requirements set out in DTRA/SCC–WMD Instruction 4715.5, including but not limited to environmental permits, consultations, and approvals such as those required for actions affecting federally-listed threatened or endangered species or their designated critical habitat, historic and cultural preservation, safe drinking water requirements, as well as other applicable state, DoD, or local regulatory requirements.

*(b) Categorical Exclusion (CATEX)*

(1) A CATEX is a category of Agency/Center actions which have been determined to normally not individually or cumulatively have significant impact on the environment and therefore neither an EA nor EIS is required. Project/Program Managers may use a CATEX for a proposed action with approval from the J4E when there are no extraordinary circumstances that warrant further analysis in an EA or EIS. (i) A list of approved CATEXs can be found in Appendix B. DTRA/SCC–WMD must not use a CATEX that is not listed in the appendix. Proposals for additional CATEXs must be submitted to and approved by the J4E and CEQ, be reviewed through a public comment period, and be supported by appropriate substantiating documentation such as an EA/FONSI, impact demonstration projects, or information from professional staff, expert opinions, and scientific analyses. (ii) Extraordinary circumstances are also listed in Appendix B following the list of CATEXs.

(2) If a CATEX applies, the J4E will document use of the specific CATEX on the REC, and the action may proceed. The REC should document any determination and conclusion where the issue of whether an extraordinary circumstance requires further review has been resolved. This determination can be made using current information and expertise, if available and adequate, or can be derived through conversation, as long as the basis for the determination is included in the REC. Copies of appropriate interagency correspondence can be attached to the REC. Example conclusions regarding screening criteria are as follows: (i) ''U.S. Fish and Wildlife Service concurred in informal coordination that endangered or threatened species will not be adversely affected.'' (ii) ''Corps of Engineers determined action is covered by nationwide general permit.'' (iii) ''State Historic Preservation Officer concurred with action.'' (iv) ''State Department of Natural Resources concurred that no adverse effects to state sensitive species are expected.''

(3) If a CATEX does not apply, either by not including the proposed action or due to extraordinary circumstances, and the action is not covered under an existing document, then an EA or EIS must be prepared unless the proposed action is not further considered.

(4) To use a CATEX, the proponent must satisfy the following three screening conditions: (i) The action has not been segmented. Determine that the proposed action has not been segmented to meet the definition of a CATEX and fits within the category of actions described in the CATEX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected actions, and the effects when applying extraordinary circumstances must consider cumulative impacts. (ii) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CATEX (see Appendix B). (iii) One CATEX encompasses the proposed action. Identify a CATEX that encompasses the proposed action (see Appendix B). If multiple CATEXs could be applicable, proceed when it is clear that the entire proposed action is covered by one CATEX. Any limitation in any potentially applicable CATEX should be considered when determining whether it is appropriate to proceed without further analysis in an EA or EIS.

*(c) Environmental Assessment (EA)*

(1) An EA is a concise public document used to provide sufficient evidence and analysis for determining whether to prepare an EIS or FONSI or to comply with NEPA when an EIS is not necessary.

(2) The EA must include, at a minimum, the following: (i) Cover page, which identifies the proposed action and the geographic location. (ii) Purpose and need for the proposed action or activity. (iii) Description of the proposed action with sufficient detail in terms that are understandable to readers that are not familiar with DTRA/SCC–WMD activities. (iv) Discussion of alternative actions considered, including the preferred action and a ''no action'' alternative. There is no requirement for a specific number of alternatives or a specific range of alternatives to be included in an EA. An EA may limit the range of alternatives to the proposed action and no action when there are no unresolved conflicts concerning alternative uses of available resources. For alternatives considered but eliminated from further study, the EA should briefly explain why these were eliminated. (v) Description of the affected environment. (vi) Analysis of the potential environmental impacts of the proposed action and alternatives. The EA must discuss, in comparative form, the reasonably foreseeable environmental impacts of the proposed action, the no action alternative, and any other reasonable alternatives necessary to address unresolved conflicts concerning the alternative use of resources. The discussion of environmental impacts must focus on substantive issues and provide sufficient evidence and analysis to support a FONSI unless a determination to prepare an EIS is made. (vii) Identification of any permits, licenses, approvals, reviews, or applicable special purpose laws. Although the NEPA process does not preclude separate compliance with these other requirements, DTRA/SCC–WMD will integrate applicable environmental review, consultation, and public involvement requirements under special purpose laws and requirements into its NEPA planning and documentation to reduce paperwork and delay. (viii) List of preparers, agencies, and persons consulted. (ix) Signature of the preparer(s) and the Director, J4E. (x) References and appendices. The appendices may include: (A) References that support statements and conclusions in the body of the EA, including methodologies used. Proper citations and, when available, hyperlinks to reference materials should be provided; (B) Evidence of coordination or required consultation with affected Federal, state, tribal, and local officials and copies or a summary of their comments or recommendations and the responses to such comments and recommendations; and (C) A summary of public involvement, including a summary of issues raised at any public hearing or public meeting.

(3) The analysis of potential environmental impacts (item (c)(2)(vi) above) will include an assessment of the direct, indirect, and cumulative impacts that can reasonably be expected from taking the proposed action or alternatives, and the analysis should address substantive comments raised by interested Federal agencies, non-Federal agencies, and private parties. (i) When direct or indirect impacts exist, the EA must consider cumulative impacts.

Cumulative impacts are impacts on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. (ii) Actions by Federal agencies, non-Federal agencies, and private parties must be included when considering cumulative impacts.

(4) DTRA/SCC–WMD must coordinate, as appropriate, preparation of the EA with other agencies (Federal, state, local, or tribal governments) when the action involves resources they manage or protect, and will invite agencies with jurisdiction by law or with special expertise to participate as cooperating agencies. (i) Agencies with jurisdiction by law are those with the authority to grant permits for implementing actions, approve or veto portions of the proposed action, or finance a portion of the proposed action. Federal agencies with jurisdiction by law must be a cooperating agency. Non-federal agencies may be invited. (ii) Agencies with special expertise are those that have the expertise needed to help meet a statutory responsibility, to carry out in part the DTRA/SCC–WMD mission, or in the proposed actions' relationship to the objectives of regional, state, or local land use plans, policies, and controls. Federal and non-federal agencies may be invited.

(5) DTRA/SCC–WMD must involve the public, to the extent practicable, in preparing EAs. (i) The appropriate level of involvement will vary based on the proposed action. A public scoping meeting, as described in 40 CFR 1501.7, is not required for an EA but is optional. Scoping can be particularly useful when an EA deals with uncertainty or controversy regarding potential conflicts over the use of resources or the environmental impacts of the proposed actions. The scoping process can provide a transparent way to identify environmental issues, focusing the analysis on the most pertinent issues and impacts. (ii) A draft EA should be circulated for 30 days of public comment and, if applicable, with the unsigned proposed FONSI, per paragraph (d)(7) of the FONSI provisions below. The length of comment period may be adjusted based on mission requirements.

(6) DTRA/SCC–WMD will use the conclusions of an EA to determine whether to issue a FONSI or an NOI to prepare an EIS (found in Appendix D and on the ESOH Team Site at: *https://dtra1/j4-8c/j4e/default.aspx*).

*(d) Finding of No Significant Impact (FONSI)*

(1) A FONSI is a document that briefly presents the reasons why a proposed action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared. It must include the EA or a summary of it and note any other environmental documents related to it.

(2) Mitigated FONSIs are appropriate where the J4E and Project/Program Manager, or other decision-maker for the project/program determine that mitigation measures can reduce potentially significant adverse impacts below the level of significance. These mitigation measures may be used to support a FONSI, provided that: (i) The relevant areas of environmental concern are identified in the EA; (ii) The EA supports the Agency's determination that the potential impacts, including the impacts of any mitigation commitments, will be insignificant; and (iii) The Agency has identified mitigation measures that will be sufficient to reduce potential impacts below applicable significance thresholds and has ensured commitments to implement these measures.

(3) Mitigation that is used to support a mitigated FONSI must be included as a condition of project approval. In these cases, if DTRA/SCC–WMD's decision to act is not otherwise evidenced by a final decision document such as a rule, license, or approval, the J4E and the Project Manager or other decision-maker for the project/program must document the decision in the conclusion of the FONSI. The decision must identify those mitigation measures DTRA/SCC–WMD is adopting and identify any monitoring and enforcement program applicable to such measures (see Section 6: Mitigation and Monitoring).

(4) A FONSI or Mitigated FONSI must document, in plain writing, the reasons why an action, not otherwise categorically excluded, would not have a significant impact on the human environment. The FONSI documents the basis for the determination that the proposed action would not have significant environmental impacts and the decision to implement the proposed action. The FONSI may be attached to an EA, or the EA and FONSI may be combined into a single document. If the FONSI is attached or combined with the EA, it need not repeat the discussion in the EA. If the FONSI is not attached or combined with the EA, the FONSI must include a summary of the EA and note any other environmental documents related to it. The FONSI must: (i) Briefly describe the proposed action, the purpose and need, and the alternatives considered (including the no action alternative), and assess and document all relevant matters necessary to support the conclusion that the proposed action would not significantly affect the quality of the human environment; (ii) Determine the proposed action's consistency or inconsistency with community planning, and document the basis for the determination; (iii) Present any mitigation measures that are a condition of project approval. The FONSI should also reflect coordination of mitigation commitments (including any applicable monitoring program) with, and consent and commitment from, those entities with the authority to implement specific mitigation measures committed to in the FONSI; and (iv) Reflect compliance with all applicable environmental requirements, including interagency and intergovernmental coordination and consultation, public involvement, and documentation requirements. Findings and determinations required under special purpose laws and requirements, regulations, and orders, if not made in the EA, must be included in the FONSI. (v) If the FONSI is prepared following adoption of all or part of another agency's NEPA document, the FONSI must identify the part(s) of the document being adopted and include documentation of DTRA/SCC–WMD's independent evaluation of the document.

(5) All FONSIs must include the following approval statement: After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101 of NEPA and other applicable environmental requirements and will not significantly affect the quality of the human environment.

APPROVED: _____

DATE: _____

(6) Following preparation of the FONSI, the Project/Program Manager reviews and signs the FONSI. Issuance of a FONSI signifies that DTRA/SCC–WMD will not prepare an EIS and has completed the NEPA process for the proposed action. Following the approval of a FONSI, the Project/Program Manager may decide whether to take or approve the proposed action. Mitigation measures that were made as a condition of approval of the FONSI must be incorporated in the decision to implement the action.

(7) The J0XG in coordination with the Project/Program Manager will publish an NOA (found in Appendix E and on the ESOH Team Site at: *https://dtra1/j4-8c/j4e/default.aspx)* with local media to open a 30-day public comment period for the final draft EA and unsigned proposed FONSI. For actions with national interest, J0XG shall also publish the NOA in the FR. The length of comment period may be adjusted based on mission requirements.

(8) After closure of the public comment period, the Project/Program Manager in coordination with the J4E will adjudicate the comments received and update the EA as necessary. The Project/Program Manager in coordination with the J4E will decide to prepare an EIS, or terminate the proposed action.

(9) Upon completing the adjudication, the final FONSI will be signed by the J4E and Project/Program Manager or other decision-maker for the project/program, and the action may proceed.

(10) The J0XG will make the final EA and signed FONSI available to the public and post on DTRA/SCC–WMD's public Web site. (i) A copy of the FONSI and EA should be sent to reviewing agencies and organizations or individuals who made substantive comments or specifically requested copies. (ii) When a project involves a resource protected under a special purpose law or requirement, or other directive, the J0XG will send a signed copy of the FONSI and the EA supporting it to the agency(ies) with whom DTRA/SCC–WMD consulted to comply with the applicable law or directive and to any party requesting copies of those documents.

**(e) Environmental Impact Statement (EIS)**

(1) When a proposed action has the potential for significant environmental impact or when an EA does not result in a FONSI, an EIS will be prepared to examine the potential impacts of the proposed action, reasonable alternatives, and measures to mitigate those effects.

(2) Prior to preparing an EIS, the Project/Program Manager in coordination with J0XG will publish an NOI (Appendix D) in the FR to initiate preparation of the EIS. (i) The NOI includes an overview of the proposed action, any reasonable alternatives being considered (including no action), and known potential environmental impacts associated with the action. If the NOI is also used to satisfy public notice and comment requirements of other environmental requirements in addition to NEPA that are applicable to the proposed action, the NOI should include a statement to that effect with a reference to the applicable laws, regulations, or Executive Orders. (ii) The NOI will also identify a DTRA/SCC–WMD point of contact who can provide additional information about the action and to whom comments should be sent. (iii) There will be a public scoping period of 30 days from the date of publication of the NOI in the FR to allow other interested agencies and the public to provide input and comments. If a scoping meeting is planned and sufficient information is available at the time of the NOI, the NOI should also announce the meeting, including the meeting time and location, and other appropriate information such as availability of a scoping document.

(3) The Project/Program Manager must host a public EIS scoping meeting to identify the range of actions, alternatives, and impacts to consider for analysis. Scoping is a required part of the EIS process. Scoping is an early and open process for determining the scope of issues to be addressed in the EIS and identifying the significant issues related to a proposed action. The Project/Program Manager shall tailor the scoping processes to match the complexity of the proposal. (i) DTRA/SCC–WMD representatives must include at a minimum the Project/Program Manager, the J4E, and program subject matter experts. The Project/Program Manager will also invite interested members of the public and representatives from cooperating organizations, and may include other participants as necessary. (ii) Scoping serves additional purposes such as identifying those issues that do not require detailed analysis or that have been covered by prior environmental review, setting the temporal and geographic boundaries of the EIS, determining reasonable alternatives, and identifying available technical information. (iii) The Project/Program Manager with assistance from the J4E must take the lead in the scoping process, inviting the participation of potentially affected Federal, state, and local agencies, any potentially affected tribes, and other interested persons (including those who might oppose the proposed action).

(4) An EIS must include the following components presented in the standard EIS format in accordance with 40 CFR parts 1500–1508: (i) A cover page that includes: (A) A list of the responsible lead and cooperating agencies (identifying the lead agency); (B) The title of the proposed action together with the state(s) and county(ies) where the action is located; (C) The name, address, and telephone number of the responsible DTRA/SCC–WMD official; (D) The designation of the statement as draft, final, or supplement; (E) A one paragraph abstract of the EIS; and (F) For draft EISs, a statement that this EIS is submitted for review pursuant to applicable public law requirements. (ii) An executive summary that adequately and accurately summarizes the EIS. The summary describes the proposed action, stresses the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). It also discusses major environmental considerations and how these have been addressed, summarizes the analysis of alternatives, and identifies the agency preferred alternative. It discusses mitigation measures and any monitoring. (iii) A table of contents that lists the chapters and exhibits (including figures, maps, and tables) presented throughout the EIS. It will also list any appendices, acronym list, glossary, references, and index. (iv) A Purpose and Need section that briefly describes the underlying purpose and need for the Federal action. It presents the problem being addressed and describes what DTRA/SCC–WMD is trying to achieve with the proposed action. It provides the parameters for defining a reasonable range of alternatives to be considered. The purpose and need for the proposed action must be clearly explained and stated in terms that are understandable to individuals who are not familiar with DTRA/SCC–WMD activities. Where appropriate, the responsible DTRA/SCC–WMD official should initiate early coordination with cooperating agencies in developing purpose and need. (v) An Alternatives section that includes the proposed action. This section is the heart of the EIS. It presents a comparative analysis of the no action alternative, the proposed action, and other reasonable alternatives to fulfill the purpose and need for the action, to sharply define the issues, and provide a clear basis for choice among alternatives by the approving official. Whether a proposed alternative is reasonable depends, in large part, upon the extent to which it meets the purpose and need for the proposed action. Reasonable alternatives not within the jurisdiction of the lead agency should be considered. DTRA/SCC–WMD may include alternatives proposed by the public or another agency. However, they must meet the basic criteria for any alternative: it must be reasonable, feasible, and achieve the project's

purpose. The extent of active participation in the NEPA process by the proponent of the alternative also bears on the extent to which a preferred alternative deserves consideration. Charts, graphs, and figures, if appropriate, may aid in understanding the alternatives. To provide a clear basis of choice among the alternatives, graphic or tabular presentation of the comparative impact is recommended. This section also presents a brief discussion of alternatives that were not considered for detailed analysis (*e.g.,* because they do not meet the purpose and need for the proposed action). The draft EIS must identify the preferred alternative or alternatives, if one or more exists at the time the draft EIS is issued. The final EIS must specifically and individually identify the preferred alternative. Criteria other than those included in the affected environment and environmental consequences sections of the EIS may be applied to identify the preferred alternative. Although CEQ encourages Federal agencies to identify the environmentally-preferred alternatives in the EIS, the CEQ Regulations do not require that discussion until the ROD. (vi) An affected environment section that describes the environmental conditions of the potentially affected geographic area or areas. The discussion of the affected environment should be no longer than is necessary. It should include detailed discussion of only those environmental impact categories affected by the proposed action or any reasonable alternatives to demonstrate the likely impacts; data and analyses should be presented in detail commensurate with the importance of the impact. To ensure that this section emphasizes the important aspects of the impacts on the environment, the discussion should summarize and incorporate by reference information or analysis that is reasonably available to the public. This section may include the following, if appropriate: (A) Location map, vicinity map, project layout plan, and photographs; (B) Existing and planned land uses and zoning, including: industrial and commercial growth characteristics in the affected vicinity; affected residential areas, schools, places of outdoor assemblies of persons, churches, and hospitals; public parks, wildlife and waterfowl refuges; federally listed or proposed candidate, threatened, or endangered species or federally designated or proposed critical habitat; wetlands; national and state forests; floodplains; farmlands; coastal zones, coastal barriers, or coral reefs; recreation areas; wilderness areas; wild and scenic rivers; Native American cultural sites, and historic and archeological sites eligible for or listed on the National Register of Historic Places; (C) State or local jurisdictions affected by the proposed action or any reasonable alternatives; (D) Population estimates and other relevant demographic information for the affected environment, including a census map where appropriate; and (E) Past, present, and reasonably foreseeable future actions, whether Federal or non- Federal, including related or connected actions to show the cumulative effects of these actions on the affected environment. (vii) An environmental consequences section, which forms the scientific and analytical basis for comparing the proposed action, the no action alternative, and other alternatives retained for detailed analysis. (A) The discussion of environmental consequences will include the environmental impacts of the alternatives including the proposed action; any adverse environmental impacts that cannot be avoided should the proposed action or any of the reasonable alternatives be implemented; the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; any irreversible or irretrievable commitments of resources that would be involved in the proposed action or any reasonable alternatives should they be implemented; and mitigation. It must include considerations of direct, indirect, and cumulative impacts and their significance and possible conflicts with the objectives of Federal, regional, state, tribal, and local land use plans, policies, and controls for the area concerned and other unresolved conflicts. To avoid excessive length, the environmental consequences section may incorporate by reference background data to support the impacts analysis. 40 CFR 1502.22 sets forth requirements for addressing situations in which information for assessing reasonably foreseeable significant adverse impacts is incomplete or unavailable. (B) Specific environmental impact categories must be discussed to the level of detail necessary to support the comparisons of impacts of each alternative retained for detailed analysis, including the no action alternative. The section should include the information required to demonstrate compliance with other applicable requirements and should identify any permits, licenses, other approvals, or reviews that apply to the proposed action or any reasonable alternatives, and indicate any known problems with obtaining them. This section should also provide the status of any interagency or intergovernmental consultation required, for example, under the National Historic Preservation Act, 16 U.S.C. §§ 470–470x–6, the Endangered Species Act, 16 U.S.C. §§ 1531–1544, the Coastal Zone Management Act, 16 U.S.C. §§ 1451–1466, the American Indian Religious Freedom Act, 42 U.S.C. § 1996, Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 63 **Federal Register** 27655 (May 14, 1998), the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271–1287, and the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661–667d. (viii) An EIS must describe mitigation measures considered or planned to minimize harm from the proposed action and reasonable alternatives. The EIS must discuss mitigation in sufficient detail to disclose that the environmental consequences have been fairly evaluated. Mitigation incorporated into project design must be clearly described in the proposed action and any reasonable alternatives. Environmental impacts resulting from mitigation must be considered in the EIS, when applicable. (A) The following types of mitigation measures should be considered: design and construction actions to avoid or reduce impacts; management actions that reduce impacts during operation of the facility; and replacement, restoration (reuse, conservation, preservation, etc.), and compensation measures. (B) Electronic data collection, tracking, and analysis may be useful in the consideration of appropriate mitigation measures. The DTRA/SCC–WMD ESOH Management System may also be used for tracking and monitoring mitigation commitments. (C) Mitigation and other conditions established in the EIS, or during review of the EIS, and that are committed to in the ROD, must be implemented by DTRA/SCC–WMD or another appropriate entity with authority to implement the identified mitigation measures or other conditions. DTRA/SCC–WMD ensures implementation of such mitigation measures through special conditions, funding agreements, contract specifications, directives, other review or implementation procedures, and other appropriate follow-up actions in accordance with 40 CFR parts 1500–1508. (ix) The EIS must list the preparers of the NEPA document, including the names, and qualifications (*e.g.,* expertise experience, professional disciplines) of DTRA/SCC–WMD staff

that were primarily responsible for preparing the EIS or significant background material, and contractors who assisted in preparing the EIS or associated environmental studies. (x) The EIS must contain a list of agencies, organizations, and persons to whom copies of the EIS are sent. This list is included for reference and to demonstrate that the EIS is being circulated, and thus, that the public review process is being followed. (xi) An index that reflects the key terms used throughout the EIS for easy reference. The index must include page numbers for each reference. (xii) An EIS must include appendices, if necessary. This section consists of material that substantiates any analysis that is fundamental to the EIS, but would substantially contribute to the length of the EIS or detract from the document's readability, if included in the body of the EIS. This section should contain information about formal and informal consultation conducted and related agreement documents prepared, pursuant to other special purpose laws and requirements. (xiii) The Final EIS must assess and respond to comments received on the draft EIS. (xiv) If applicable, the EIS may include footnotes. Footnotes include the title, author, date of document, and page(s) relied upon for sources used.

(5) An EIS may not include any final decisions regarding the Agency/Center's course of action.

(6) The J4E must file the draft EIS with the United States Environmental Protection Agency (EPA) through the e-NEPA electronic filing system at: *http://www.epa.gov/oecaerth/nepa/submiteis/index.html.* As part of the draft EIS filing process, the EPA will issue an NOA in the FR to open a 45-day comment period for the public, federally recognized tribes, or other interested Federal, state, and local agencies. This starts the official comment period for the draft EIS. The J0XG shall also publish an NOA (Appendix E) in a local daily newspaper on the same day that EPA's NOA is published. DTRA/SCC–WMD should send a press release to local media and, if the EIS is national in scope, to national media outlets. DTRA/SCC–WMD must notify EPA if it approves an extension of the public comment period so that EPA may provide an update in its FR notice. (i) The draft EIS should be available at local libraries or similar public depositories. Material used in developing or referenced in the draft EIS must be available for review at the appropriate DTRA/SCC–WMD office(s) or at a designated location. Upon request, copies of the draft EIS must be made available to the public without charge to the extent practical or at a reduced charge, which is not more than the actual cost of reproducing copies. The draft EIS may also be placed on the Internet and/or copies may be made available in digital form. (ii) The J0XG should use the following standard language in press releases and notices announcing the draft EIS's availability for comment and any public meetings or hearing(s) associated with the proposed project: DTRA/SCC–WMD encourages all interested parties to provide comments concerning the scope and content of the draft EIS. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the reviewer's interests and concerns using quotations and other specific references to the text of the draft EIS and related documents. Matters that could have been raised with specificity during the comment period on the draft EIS may not be considered if they are raised for the first time later in the decision process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to DTRA/SCC–WMD in a timely manner so that DTRA/SCC–WMD has an opportunity to address them. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

(7) DTRA/SCC–WMD should hold public meetings or hearings on the draft EIS, when appropriate. If DTRA/SCC–WMD conducts a public meeting or hearing for the purpose of obtaining public comment on a draft EIS, DTRA/SCC–WMD should ensure that the draft document is available for public review at least 15 days before the event occurs. (i) The Project/Program Manager must request comments on the draft EIS from appropriate Federal, state, and local agencies and from tribes when the impacts may be on a reservation or affect tribal interests. (ii) Draft EISs must be coordinated with the appropriate regional offices of other Federal agencies having jurisdiction by law or special expertise, appropriate state and local agencies including cooperating agencies, affected cities and counties, and others known to have an interest in the action, and appropriate tribal governments when the impacts may affect tribal interests.

(8) After closure of the comment period, the Project/Program Manager and the J4E will adjudicate the comments received by considering the input or concern and documenting a response, update the EIS as necessary, and complete an ROD (found in Appendix F and on the ESOH Team Site at: *https://dtra1/j4-8c/j4e/default.aspx*) or terminate the proposed action. (i) DTRA/SCC–WMD must take into consideration all comments received on the draft EIS and comments recorded during public meetings or hearings, and respond to the substantive comments in the final EIS. All substantive comments received on the draft EIS (or summaries where the comments are voluminous) must be attached to the final EIS. Comments must be responded to in one or more of the following ways: (A) Written into the text of the final EIS; (B) Stated in an errata sheet attached to the final EIS; or (C) Included or summarized and responded to in an attachment to the final EIS, and if voluminous, may be compiled in a separate supplemental volume for reference. (ii) DTRA/SCC–WMD may, subject to the conditions set forth below, attach errata sheets to the draft EIS. If the modifications to the draft EIS in response to comments are minor and are confined to factual corrections or explanations of why the comments do not warrant additional agency response, then only the comments, responses, and errata sheets need to be circulated and the draft EIS and errata sheets may be filed as the final EIS as set out in 40 CFR1503.4(c). Use of errata sheets is subject to the condition that the errata sheets: (A) Cite the sources, authorities, or reasons that support the position of DTRA/SCC–WMD; and (B) If appropriate, indicate the circumstances that would trigger agency reappraisal or further response.

(9) The cover page or summary of the final EIS or a draft EIS with errata sheets in lieu of a final EIS must include the following declaration language below. After careful and thorough consideration of the information contained herein and following consideration of the views of those Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section

101(a) of the National Environmental Policy Act of 1969.

(10) Other required environmental findings and conclusions must be included in the summary, if not included in the body or at the end of the EIS.

(11) The final EIS must be reviewed and approved by the Project/Program Manager and the J4E prior to generating an ROD.

(12) The J4E will file the final EIS with the EPA through the e-NEPA electronic filing system at: *http://www.epa.gov/oecaerth/nepa/submiteis/index.html.* The EPA will issue an NOA for the final EIS in the FR. The Project/Program Manager may request that the J0XG also publish a more detailed availability notice in the FR, but the DTRA/SCC–WMD notice cannot be substituted for the EPA FR notice. The final EIS must be sent to: (i) The appropriate regional office of EPA; (ii) Any relevant DoD officials; (iii) Each Federal, state, and local agency, tribe, and private organization that made substantive comments on the draft EIS and to individuals who requested a copy of the final EIS or who made substantive comments on the draft EIS (one copy each); (iv) DOE headquarters for projects having major energy-related consequences (one copy); and (v) The appropriate state-designated single point of contact (or specific agency contacts when states have not designated a single contact point), unless otherwise designated by the governor (adequate number of copies, which varies by state). (vi) Additional copies must be sent to accessible locations to be made available to the general public such as state, metropolitan, and local public libraries to facilitate accessibility. The final EIS, comments received, and supporting documents must be made available to the public without charge to the fullest extent practical or at a reduced charge, which is not more than the actual cost of reproducing copies, at appropriate agency office(s) or at a designated location.

(13) DTRA/SCC–WMD must wait a minimum of 30 days after the EPA NOA of the final EIS is published in the FR (and at least 90 days after filing of the draft EIS) before making a decision on the proposed action and issuing an ROD. The 30-day period provides time for the decision-maker to consider the final EIS and other pertinent information and make a decision; it is not for receiving public comments unless DTRA/SCC–WMD requests comments on the final EIS. At the conclusion of the 30-day waiting period, the J0 may issue the final decision in an ROD and implementation of the selected action may begin. (i) When DTRA/SCC–WMD is the lead Federal agency, the EPA, upon a showing by another Federal agency of compelling reasons of national policy, may extend prescribed periods up to 30 days, but no longer than 30 days without the permission of DTRA/SCC–WMD. The Project/Program Manager may also extend the waiting period or request the EPA to reduce this period for compelling reasons of national policy. The 90-day waiting period after the NOA of the draft EIS cannot be altered by the EPA. (ii) If DTRA/SCC–WMD unilaterally approves an overall extension of a comment period, the EPA must be notified so that the EPA may provide an update in its FR notice.

(14) Under certain circumstances, DTRA/SCC–WMD may choose to terminate an EIS. This could occur, for example, when a proponent has decided not to go forward with the action or it is determined to be no longer needed. DTRA/SCC–WMD may also terminate an EIS and revert to an EA if the environmental analysis shows that there would not be significant impacts from the project. DTRA/SCC–WMD will provide notice of the determination to no longer conduct an EIS that is issued in a manner comparable to the publication and distribution used for the NOI to prepare the EIS. The notice should cite the date of the original NOI to prepare an EIS and state the reasons why DTRA/SCC–WMD has chosen to terminate the EIS.

**(f) Record of Decision (ROD)**

(1) The ROD (Appendix F) will state DTRA/SCC–WMD's final decision on which action will be taken. The ROD may be prepared after the time periods outlined in the EIS section above. The Project/Program Manager and the J4E must provide concurrence on the ROD before submitting to the J0 for approval. Supplements to final EISs may be necessary (see Section (7)(b) Supplemental EAs/EISs) and must be reviewed and approved in the same manner as the original document, and a new draft ROD should be prepared, circulated, and approved. (i) DTRA/SCC–WMD may select any alternative within the range of alternatives analyzed in the final EIS. The selected alternative may be an alternative other than the agency's preferred alternative or the environmentally-preferred alternative. The selected action may not be implemented until the J0 has approved and signed the ROD. (ii) If DTRA/SCC–WMD selects an alternative other than the preferred alternative in the final EIS that involves special purpose laws and requirements, such as those related to Section 4(f) land, federally listed endangered species, wetlands, or historic sites, the Agency must first complete any required permit, evaluation, consultation, or other approval requirement prior to taking the action.

(2) DTRA/SCC–WMD must provide public notice of availability of the ROD through appropriate means as required by 40 CFR 1506.6(b). Such means may include publication in the FR, other media, and on the Internet, although publication in the FR is only required for actions with effects of national concern.

(3) The ROD must: (i) Present DTRA/SCC–WMD's decision on the proposed action, and identify and discuss all factors, including any essential considerations of national policy, that were balanced by the Agency in making its decision and state how those considerations entered into the decision; (ii) Identify all alternatives DTRA/SCC–WMD considered and which alternative(s) is/are considered to be environmentally-preferable. DTRA/SCC–WMD may discuss preferences among alternatives based on relevant factors including economic and technical considerations, and agency statutory missions; (iii) Identify any mitigation measure(s) committed to as part of the decision and summarize any applicable mitigation monitoring and enforcement program. This must include any mitigation measure that was committed to as a condition of the approval of the final EIS; (iv) State whether all practicable means to avoid or minimize environmental harm from the selected alternatives have been adopted, and if not, why; and (v) Include any findings required by Executive Order, regulation, or special purpose law or requirement (*e.g.,* wetlands, Section 4(f), etc.).

(4) As necessary, the ROD can be used to clarify and respond to issues raised on the final EIS when those issues do not require supplementation of the final EIS.

(5) If the ROD is prepared following adoption of all or part of another agency's NEPA document (see Section (7)(c) Adoption of EAs/EISs), the ROD must incorporate by reference the part(s) of the document being adopted and include documentation of DTRA/SCC–WMD's independent evaluation of the document.

(6) The ROD must be signed by the J0 or delegated authority and posted with the EIS on the DTRA/SCC–WMD public Web site by the J0XG.

(7) The action must proceed no less than 30 days after the EPA has

published the NOA for the final EIS (see paragraph (5)(e)(13)).

**6. Mitigation and Monitoring**

(a) DTRA/SCC–WMD must indicate whether mitigation measures will be implemented for the action selected in either a FONSI or ROD, the commitments the Agency/Center considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) If the J4E and the Project Manager or other decision-maker for the project/program determine that a mitigation measure stipulated in a FONSI has not been implemented or the implemented mitigation is failing to mitigate environmental impacts as predicted, and as a result a significant impact may occur, the J4E and the Project Manager or other decision-maker for the project/program must initiate the EIS process by issuing an NOI to prepare an EIS if there remains discretionary DTRA/SCC–WMD action to be taken related to the project.

(c) When possible, the Project/Program Manager should include the cost of mitigation as a line item in the budget for a proposed project/program. DTRA/SCC–WMD ensures implementation of such mitigation measures through memorandums of agreement, funding agreements, contract specifications, directives, other review or implementation procedures, and other appropriate follow-up actions.

(d) DTRA/SCC–WMD may ''mitigate to insignificance'' potentially significant environmental impacts found during preparation of an EA instead of preparing an EIS. The FONSI will include these mitigation measures, which must be implemented simultaneously with the project/program action (see Sections 5(d)(i)–(iii)).

(e) Mitigation includes: (1) Avoiding the impact altogether by not taking a certain action or parts of an action. (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment. (4) Reducing or eliminating the impact over time by preservation and maintenance operation during the life of the action. (5) Compensating for the impact by replacing or providing substitute resources or environments.

**7. Subsequent Analyses**

*(a) Tiering and Programmatic Review*

(1) A programmatic review may assist decision-makers and the public in understanding the environmental impact from proposed broad federal actions and activities. A programmatic EIS or EA may be prepared to cover: (i) A broad group of related actions; or (ii) A program, policy, plan, system, or national level proposal that may later lead to individual actions, requiring subsequent NEPA analysis.

(2) A programmatic document is useful in analyzing the cumulative impacts of a group of related actions and when the proposed actions are adequately analyzed can serve as the NEPA review for those actions. Programmatic documents may also be useful in providing the basis for subsequent project-level specific environmental review. A programmatic EIS or EA may contain a broader, less specific, analysis than is done for a specific proposed project. If a programmatic EIS or EA is prepared, DTRA/SCC–WMD will determine whether project-specific EISs or EAs are needed for individual actions. Broad Federal actions analyzed in a programmatic EIS or EA may be evaluated geographically, generically, or by stage of technological development.

(3) The use of a programmatic EIS or EA, and subsequent preparation of a project-specific EIS or EA is referred to as ''tiering'' the environmental review. Tiering can also be used to sequence environmental documents from the early stage of a proposed action (*e.g.,* need for the action and site selection) to a subsequent stage (*e.g.,* proposed construction) to help focus on issues that are ripe for decision and exclude from consideration issues not yet ripe or already decided. When this approach is used, DTRA/SCC–WMD must ensure that the proposed action is not being segmented by describing the independent utility of each stage. Programmatic and tiered EISs and EAs are subject to the same preparation and processing requirements as other EISs and EAs.

(4) When a programmatic EIS or EA has been prepared, any subsequent EIS or EA for proposed projects within the scope of the programmatic document only needs to incorporate it by reference by summarizing the issues discussed in the programmatic document, providing access to the programmatic EIS or EA, and concentrating the subsequent project-specific EIS or EA on site-specific impacts not covered by the programmatic document. The project-specific document must state how to obtain a copy of the earlier programmatic document (*i.e.,* a Web page or contact person/office).

*(b) Supplemental EAs/EISs*

(1) Project/Program Managers must prepare a supplemental EA, draft EIS, or final EIS if either of the following occurs: (i) There are substantial changes to the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) Significant information is information that paints a dramatically different picture of impacts compared to the description of impacts in the EA or EIS. DTRA/SCC–WMD may also prepare supplements when the purposes of NEPA will be furthered by doing so.

(3) Supplemental documents must be prepared following the same general process as the original EA or EIS addressing the new circumstances, information, or actions and incorporating by reference and summary the original EA or EIS. No new scoping is required for a supplemental EIS, but may be conducted at the discretion of the Project/Program Manager or the Director, J4E.

(4) When a supplemental EA or EIS is completed, a new FONSI or ROD must be issued and made available to the public.

*(c) Adoption of EAs/EISs*

(1) DTRA/SCC–WMD may adopt in whole or in part, another Federal agency's draft or final EA, the EA portion of another agency's EA/FONSI, or EIS in accordance with 40 CFR 1506.3 and CEQ Guidance, ''Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act,'' March 6, 2012, where DTRA/SCC–WMD's proposed action is substantially the same as the action described in the existing EA or EIS. When another agency's NEPA document does not adequately address DTRA/SCC–WMD's proposed action or meet the applicable standards in the CEQ Regulations and these implementing procedures, then DTRA/SCC–WMD cannot adopt the EA or EIS and should consider which portions of that EA or EIS can be incorporated by reference.

(2) The Project/Program Manager and J4E will independently review the EA or EIS and determine whether it is current, satisfies the requirements of NEPA, and covers the proposed action. In adopting all or part of another agency's NEPA document, DTRA/SCC–WMD takes full responsibility for the scope and content that addresses the relevant DTRA/SCC–WMD action(s).

(3) If the actions covered by the original NEPA analysis and the DTRA/

SCC–WMD proposed action are substantially the same, DTRA/SCC–WMD may reissue the EA or EIS as a final document and prepare its own FONSI or ROD. The EA or EIS will be recirculated and a public comment period will be provided per Section 5(e) above. When DTRA/SCC–WMD adopts an EA or EIS where it has acted as a cooperating agency and its comments and suggestions have been satisfied by the lead agency in the original document, then coordination with the public is not required.

**8. Actions on Host Installations/Actions Abroad**

*(a) Actions on Host Installations*

DTRA/SCC–WMD must comply with the host installation NEPA implementing regulations, procedures, and guidance in addition to those set forth in this guide, and all environmental compliance actions must be coordinated with the appropriate host installation point of contact. Equivalent host installation documentation may be used to satisfy DTRA/SCC–WMD documentation requirements when signed and approved by DTRA/SCC–WMD and maintained in its administrative record.

*(b) Actions Occurring Abroad*

(1) Executive Order 12114 is based on the authority vested in the President by the Constitution and the laws of the United States. The objective of the Executive Order is to further foreign policy and national security interests while at the same time taking into consideration important environmental concerns. DTRA/SCC–WMD acts with care in the global commons because the stewardship of these areas is shared by all the nations of the world. DTRA/SCC–WMD will take account of environmental considerations when it acts in the global commons in accordance with these procedures.

(2) DTRA/SCC–WMD also acts with care within the jurisdiction of a foreign nation. Treaty obligations and the sovereignty of other nations must be respected, and restraint must be exercised in applying United States laws within foreign nations unless the Congress has expressly provided otherwise. DTRA/SCC–WMD will take account of environmental considerations in accordance with these procedures when it acts in a foreign nation.

(3) Foreign policy considerations require coordination with the Department of State on communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters. Informal working-level communications and arrangements are not included in this coordination requirement. Consultation with the Department of State also is required in connection with the utilization of additional exemptions from these procedures.

(4) Executive Order 12114, implemented by these procedures, prescribes the exclusive and complete procedural measures and other actions to be taken by DTRA/SCC–WMD to further the purpose of the National Environmental Policy Act with respect to the environment outside the United States. As such, actions with potential for significant environmental impact occurring abroad or in the global commons outside the jurisdiction of any nation (*e.g.,* the ocean or Antarctica) are subject to the environmental analysis procedures set forth in this Guide with the exception of hosting public meetings. Project/Program Managers may choose to host public meetings in consideration of the following factors: (i) Foreign relations sensitivities. (ii) Whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities of another government. (iii) Requirements of domestic and foreign governmental confidentiality. (iv) Requirements of national security. (v) Whether meaningful information could be obtained through hearings; (vi) Time considerations. (vii) Requirements for commercial confidentiality.

(5) Consideration will be given to whether any foreign government should be informed of the availability of environmental documents. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters must be coordinated by the J0XG with the Department of State through the Assistant Secretary of Defense (International Security Affairs).

**9. Classified Actions**

(a) Classification of an action for national security does not relieve DTRA/SCC–WMD from the requirements of NEPA. DTRA/SCC–WMD will prepare, safeguard, and disseminate NEPA documents in accordance with DoD requirements for classified information.

(b) Classified information in NEPA documents will be written in a separate appendix from unclassified information so that the unclassified portions of the documents can be made available to the public.

(c) When classified information is an integral part of the analysis so that a meaningful unclassified NEPA analysis cannot be produced, the Project/Program Manager in coordination with the J4E will form a team to review the classified NEPA analysis. This team will include environmental professionals and subject matter experts who will ensure the consideration of environmental effects is consistent with the intent of NEPA, including public participation requirements for unclassified portions.

**10. Administrative Record**

(a) The J4E will maintain an administrative record for each environmental analysis performed and an administrative record to support these implementing procedures.

(b) The administrative record for a proposed action must be retained for 7 years after completing the action, unless the action involves controversy concerning environmental effects or is of a nature that warrants keeping it longer as determined by the J4E.

(c) The administrative records maintained will include, but are not limited to: (1) All supporting documentation used to generate DTRA/SCC–WMD's NEPA implementing procedures and CATEXs. (2) All supporting documentation and information used to make a decision for Agency actions with potential for significant environmental impact. (3) Maps and other documents relevant to developing an EA or EIS. (4) Formal communication by a consulting, coordinating, or cooperating agency. (5) Studies and inventories of affected environmental resources. (6) Correspondence with regulatory agencies, private citizens, tribes, State or local governments, and other individuals and agencies contacted during public involvement.

**11. Glossary**

*(a) Abbreviations and Acronyms*

CATEX Categorical Exclusion
CEQ Council on Environmental Quality
DoD Department of Defense
DTRA/SCC–WMD Defense Threat Reduction Agency and United States Strategic Command Center for Combating Weapons of Mass Destruction
EA Environmental Assessment
EIS Environmental Impact Statement
EPA Environmental Protection Agency
ESOH Environment, Safety, and Occupational Health
FIRS Federal Information Relay Service
FONSI Finding of No Significant Impact
FR Federal Register
J0 Director, DTRA/SCC–WMD

J0GC Office of the General Counsel
J0XG Governmental and Public Affairs Office
J4/8C Acquisition, Finance, and Logistics Directorate
J4E Environment, Safety, and Occupational Health Department
JDIR Joint Director
NEPA National Environmental Policy Act
NOA Notice of Availability
NOI Notice of Intent
REC Record of Environmental Consideration
ROD Record of Decision
TDD telecommunication devices for the deaf

*(b) Definitions*

Unless otherwise noted, these terms and their definitions are for the purpose of this NEPA Procedures Guide. The definitions in 40 CFR parts 1500–1508 control in the event of any inconsistency or difference.

*CATEX.* A CATEX is defined at 40 CFR 1508.4 as a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in Federal agency NEPA implementing procedures and, therefore, neither an EA nor an EIS is required. This Guide provides for extraordinary circumstances in which an action that is normally categorically excluded may have a significant effect and therefore merit further analysis in an EA or EIS.

*Cooperating agency.* A cooperating agency, defined at 40 CFR 1508.5, is any Federal agency or State, tribal, or local governmental entity which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed action or a reasonable alternative. The selection and responsibilities of a cooperating agency are described at 40 CFR 1501.6.

*EA.* An EA, defined at 40 CFR 1508.9, is a concise public document for which a Federal agency is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI; and (2) aid an agency's compliance with NEPA when no environmental impact is necessary. An EA includes an evaluation of whether a project's potential environmental impacts may be significant. Includes an evaluation of the No Action Alternative and other alternatives to the proposed project, and results in either a FONSI or an NOI.

*EIS.* An EIS, defined at 40 CFR 1508.11, is a detailed written evaluation of the potential environmental impacts and socioeconomic impacts of a proposed action (project), including an evaluation of the No Action Alternative and other alternatives to the proposed project. The EIS identifies mitigation measures needed to address adverse environmental impacts.

*Environmental planning.* The process of identifying and considering environmental factors that impact on, or are impacted by, planned DoD activities and operations.

*FONSI.* A FONSI, defined at 40 CFR 1508.13, is a document briefly presenting the reasons why the proposed action, based on the EA findings, will not have a significant effect on the human environment and therefore an EIS is not required.

*Impact.* Any change to the environment wholly or partially resulting from an organization's activities, products, or services. Impact is synonymous with effect as defined at 40 CFR 1508.7 and 8.

*NEPA.* The National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*] establishes national environmental policy and goals for the protection, maintenance, and enhancement of the environment and provides a process for implementing these goals within Federal agencies. NEPA also established the Council on Environmental Quality.

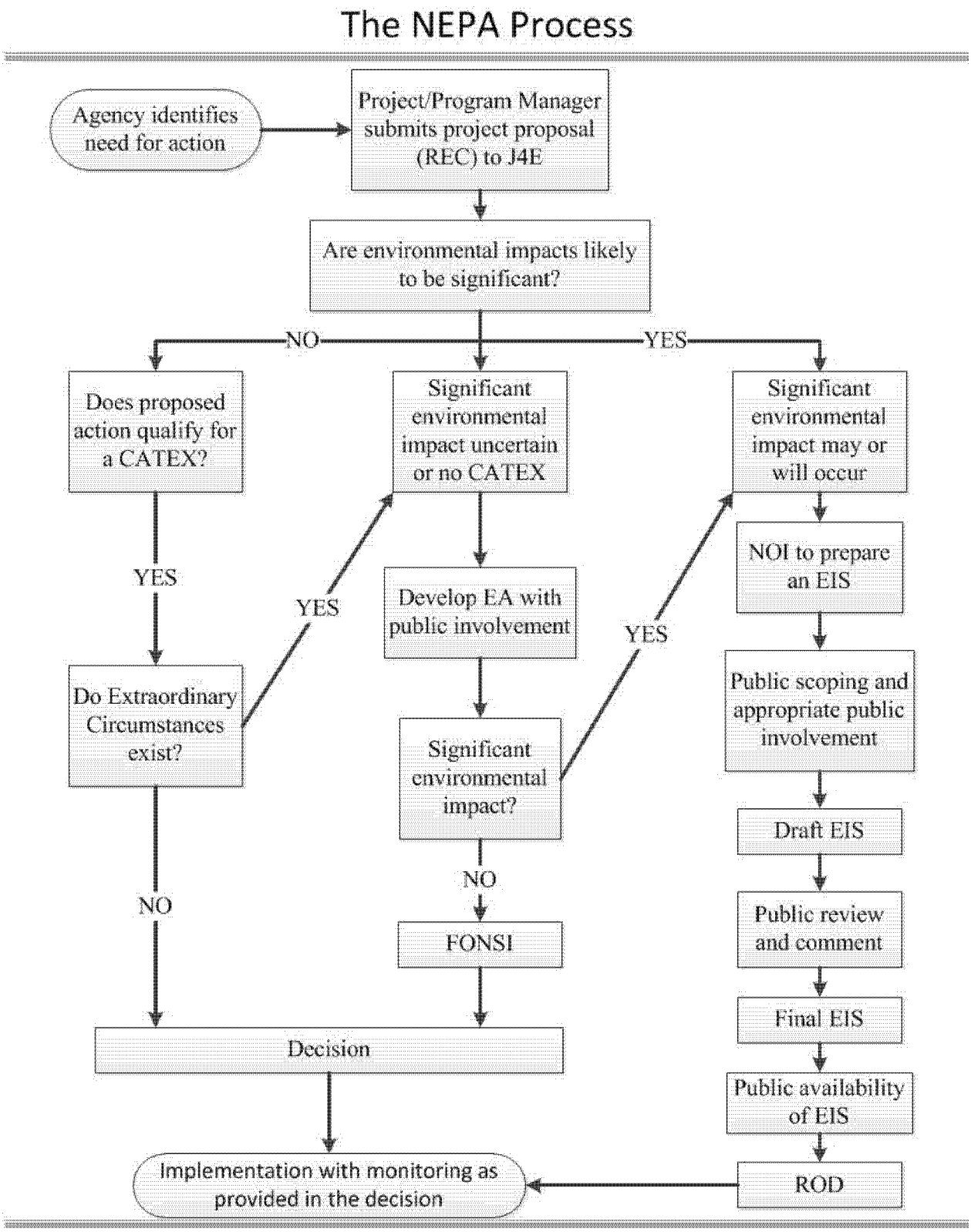
*NOA.* A notice of availability is a document notifying the public and other government agencies that an EA or an EIS is available for review.

*NOI.* A notice of intent, as defined at 40 CFR 1508.22, is a notice that an EIS will be prepared and considered. This notice includes a description of the proposed action and possible alternatives, a description of the agency's proposed scoping process, and the name and address of an agency representative who can answer questions about the proposed action and the EIS.

*Proponent.* The organization that exercises primary management responsibility for a proposed action or activity.

*REC.* Document stating that the proposed action (project) does not require further NEPA documentation.

**Appendix A: The NEPA Process**




**Appendix B: Categorical Exclusions (CATEXS)**

This Appendix includes categorical exclusions (CATEXs) and extraordinary circumstances for DTRA/SCC–WMD activities.

Actions categorically excluded in the absence of extraordinary circumstances are:

1. Normal personnel, fiscal or budgeting, and administrative activities and decisions, including those involving military and civilian personnel (for example, recruiting, processing, data collection, conducting surveys, payroll, and record keeping).

2. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents, including those that implement without substantial

change to the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies.

3. Decreases, increases, relocation, and realignment of personnel into existing Federally-owned or commercially-leased space that does not involve a substantial change affecting the supporting infrastructure or use of space (*e.g.,* no increase in traffic beyond the capacity of the supporting network to accommodate such an increase).

4. Routine procurement of goods and services conducted in accordance with applicable procurement regulations and green purchasing requirements including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance.

5. Administrative study efforts involving no commitment of resources other than personnel and funding allocations. If any of these study efforts result in proposals for further action, those proposals must be considered separately by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to: Studies and surveys conducted to further administrative, personnel-related, architectural, engineering, safety, security, siting, and facility audit activities.

6. Studies, monitoring, data and sample collection, and information gathering that involve no permanent physical change to the environment. If any of these activities result in proposals for further action, those proposals must be considered by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to: Surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties, and archeological sites; wetland delineations; minimal water, air, waste; material and soil sampling (*e.g.,* grab samples). Environmental Baseline Surveys or Environmental Condition of Property Surveys. Topographical surveying and mapping that does not require cutting and/or removal of trees.

7. Sampling, borehole drilling, well drilling and installation, analytical testing, site preparation, and minimally intrusive physical testing. These activities could involve minor clearing, grubbing, or movement of heavy equipment such as drill rigs. If any of these actions result in proposals for further actions, those proposals must be considered by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to: Sampling for asbestos-containing materials, polychlorinated biphenyls, and lead-based paint. Topographical surveys and surveys for unexploded ordnance. Minimally-intrusive (no more than 25 square feet of disturbed surface area) geological, geophysical surveys, geo-technical activities, and seismic studies. Minimally-intrusive sampling to determine if hazardous wastes, contaminants, pollutants, or special hazards are present. Ground water monitoring wells, subsurface soil sampling, and soil borings.

8. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention, Control and Countermeasure Plan or Spill Contingency Plan, or that is otherwise consistent with the requirements of the EPA National Contingency Plan.

9. Temporary use of transportable power generators or operational support equipment when located in a previously disturbed area and when operated in compliance with applicable regulatory requirements.

10. Routine movement, handling, use, and distribution of materials, including hazardous materials or wastes that are moved, handled, or distributed in accordance with applicable regulations, such as Resource Conservation and Recovery Act, National Oil and Hazardous Substance Pollution Contingency Plan, Occupational Safety and Health Act, and Hazardous Materials Transportation Act.

11. Routine movement of mobile test assets (such as instrument trailers, cameras, portable antennas, etc.) for routine test and evaluation, for repair, overhaul, or maintenance where no new support facilities are required.

12. Activities and operations to be conducted in an existing non-historic structure which are within the scope of and are compatible with the present functional use of the building, will not result in a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will remain within established permit limits, if any.

13. Acquisition, installation, modification, routine repair and replacement, and operation of utility (*e.g.,* water, sewer, and electrical) and communication systems, mobile antennas, data processing cable, and similar electronic equipment that use existing rights-of-way, easements, distribution systems, facilities, or previously disturbed land.

14. Acquisition, installation, or minor relocation, operation and maintenance or evaluation of physical security devices or controls to protect human or animal life and to enhance the physical security of existing critical assets in compliance with applicable Federal, tribal, state, and local requirements to protect the environment. Examples include, but are not limited to: Motion detection systems. Lighting. Remote video surveillance systems. Access controls. Physical barriers, fences, grating, on or adjacent to existing facilities.

15. Installation and maintenance of archaeological, historical, and endangered or threatened species avoidance markers, fencing, and signs.

16. Road or trail construction and repair on existing rights-of-ways or in previously disturbed areas which do not result in a change in functional use. Runoff, erosion, and sedimentation controlled through implementation of best management practices.

17. Routine repair and maintenance of buildings, grounds, and other facilities and equipment which do not result in a change in functional use or a significant impact on a historically significant element or setting. Examples include, but are not limited to: Repair of roofs, doors, windows, or fixtures, localized pest management, and minor erosion control measures.

18. New construction or equipment installation or alterations (interior and exterior) to or construction of an addition to an existing structure that is similar to existing land use if the area to be disturbed has no more than five cumulative acres of new surface disturbance.

19. Demolition of non-historic buildings, structures, or other improvements and repairs that result in disposal of debris there-from, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos containing materials, polychlorinated biphenyls, lead-based paint, and other special hazard items.

20. Research, testing, and operations conducted at existing facilities (including contractor-operated laboratories and plants) and in compliance with all applicable safety, environmental, and natural conservation laws (because of these controls, these types of activities have little potential for significant environmental impacts). Examples include, but are not limited to: Nuclear weapons effects simulators, weapons performance measurement, wind tunnels, high energy lasers, remote sensing instruments, vacuum chambers, high altitude simulator facilities, and propellant testing facilities.

21. Routine installation and use of radars, cameras, communications equipment, and other essentially similar

facilities and equipment within a launch facility, mobile platform, military installation, training area, or previously disturbed area that conform to current American National Standards Institute/Institute of Electrical and Electronics Engineers guidelines, Federal Communications Commission Radio Frequency Exposure Limits 1.1310, and Electric and Magnetic Fields Exposure Directive 99/519/EC for maximum permissible exposure to electromagnetic fields.

22. Routine law and order activities performed by military personnel, military police, or other security personnel, including physical plant protection and security.

Extraordinary circumstances that preclude the use of a CATEX are:

1. A reasonable likelihood of significant impact on public health or safety.

2. A reasonable likelihood of significant environmental effects (direct, indirect, and cumulative).

3. A reasonable likelihood of involving effects on the environment that involve risks that are highly uncertain, unique, or are scientifically controversial.

4. A reasonable likelihood of violating any Executive Order, or Federal, state, or local law or requirements imposed for the protection of the environment.

5. A reasonable likelihood of adversely affecting ''environmentally sensitive'' resources, unless the impact has been resolved through another environmental process (*e.g.,* Coastal Zone Management Act, National Historic Preservation Act, Clean Water Act, etc.) a CATEX cannot be used. Environmentally sensitive resources include: a. Proposed federally listed, threatened, or endangered species or their designated critical habitats. b. Properties listed or eligible for listing on the National Register of Historic Places. c. Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity. d. Cultural, scientific or historic resources.

6. A reasonable likelihood of dividing or disrupting an established community or planned development, or is inconsistent with existing community goals or plans.

7. A reasonable likelihood of causing an increase in surface transportation congestion that will decrease the level of service below acceptable levels.

8. A reasonable likelihood of adversely impacting air quality or violating federal, state, local or tribal air quality standards under the Clean Air Act Amendments of 1990.

9. A reasonable likelihood of adversely impacting water quality, sole source aquifers, public water supply systems or state, local, or tribal water quality standards established under the Clean Water Act and the Safe Drinking Water Act.

10. A reasonable likelihood of effects on the quality of the environment that are highly controversial on environmental grounds. The term ''controversial'' means a substantial dispute exists as to the size, nature, or effect of the proposed action rather than to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

11. A reasonable likelihood of a disproportionately high and adverse effect on low income or minority populations (see Executive Order 12898).

12. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (see Executive Order 13007).

13. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

14. A greater scope or size than is normal for this category of action.

15. A reasonable likelihood of degrading already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

16. A precedent (or makes decisions in principle) for future or subsequent actions that have a reasonable likelihood of having a future significant effect.

17. Introduction or employment of unproven technology.

18. A reasonable likelihood of (i) releases of petroleum, oils, and lubricants (except from a properly functioning engine or vehicle) or reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification); (ii) application of pesticides and herbicides; (iii) or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

**Appendix C: Record of Environmental Consideration (REC)**

DEFENSE THREAT REDUCTION AGENCY/UNITED STATES STRATEGIC COMMAND CENTER FOR COMBATING WEAPONS OF MASS DESTRUCTION (DTRA/SCC–WMD)

RECORD OF ENVIRONMENTAL CONSIDERATION

DATE OF REQUEST: _____

PROJECT/PROGRAM MANAGER:
PHONE NUMBER: _____
EMAIL: _____

ORGANIZATION ADDRESS:

_____

_____

_____

PROJECT TITLE: _____
PROPOSED PROJECT START DATE: __
END DATE: _____

A. PURPOSE AND NEED FOR ACTION:

B. PROJECT SPECIFIC DETAILS (PROPOSED LOCATION, etc.):

C: LIST OF PREVIOUS NEPA DOCUMENTATION (EA/EIS) FOR THIS OR SIMILAR ACTIVITY

PRINT NAME _____
SIGNED _____

[Name of Project/Program Manager]
DATE _____

J4E ENVIRONMENTAL REVIEW
ACTION NOT SUBJECT TO NEPA REQUIREMENTS _____
PROPOSED ACTION QUALIFIES FOR CATEGORICAL EXCLUSION (CATEX) # _____
PROPOSED ACTION DOES NOT INVOLVE EXTRAORDINARY CIRCUMSTANCES THAT MERIT REVIEW IN AN EA OR EIS (IDENTIFY ANY ENVIRONMENTAL PROCESS THAT HAS RESOLVED AN IMPACT ARISING FROM AN EXTRAORDINARY CIRCUMSTANCE) _____
PROPOSED ACTION IS COVERED UNDER EXISTING ENVIRONMENTAL DOCUMENTATION (SPECIFY DOCUMENT AND SECTIONS) _____
FURTHER ANALYSIS IS REQUIRED __
REMARKS: _____
PRINT NAME _____
SIGNED _____
DATE _____

Director, Environment, Safety, and Occupational Health Department
DTRA/SCC–WMD
8725 John J. Kingman Rd.
Ft. Belvoir, VA 22060

**Appendix D: Notice of Intent (NOI)**

DEFENSE THREAT REDUCTION AGENCY/UNITED STATES STRATEGIC COMMAND CENTER FOR COMBATING WEAPONS OF MASS DESTRUCTION (DTRA/SCC–WMD)

[Name of Office; Location; Short Title or Subject of the Notice]

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: [Briefly describe the nature and scope of the proposed action. Do not put legal citations or background information in the **SUMMARY** section; these belong in the **SUPPLEMENTARY INFORMATION** section.]

DATES: Comments concerning the scope of the analysis must be received by [insert date 30 days from date of publication in the **Federal Register**].

[Do not alter the text between the brackets. The brackets alert the scheduling office at the Office of the Federal Register to compute the date and enter it prior to publication.]

The draft environmental impact statement is expected [insert estimated month and year] and the final environmental impact statement is expected [insert estimated month and year.]

ADDRESS: Send written comments to [insert address]. Comments may also be sent via email to [insert email address], or via facsimile to [insert fax number]. [In this section, you also may put additional addresses, locations of meetings, etc. Do not put more than four addresses in this section. If there are more than four pertinent addresses, create a heading for them under the SUPLEMENTARY INFORMATION section of the notice.]

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

FOR FURTHER INFORMATION CONTACT: [insert name(s) and contact information you wish to use, such as telephone number and email address].

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

[Describe why DTRA/SCC–WMD is proposing the action: Why here? Why now?]

Proposed Action

[Describe the proposed action. Consider who, what, how, where, and when.]

Possible Alternatives

[Include only if any have been identified (delete heading if not used or request input on any alternatives considered reasonable—including technically and economically feasible—that will meet the purpose and need).]

Lead and Cooperating Agencies

[Include only if there are other agencies to list as joint lead agencies and/or cooperating agencies (delete heading if not used).]

Responsible Official

[Provide the title and address of the official(s) responsible for the proposed action. Use of the responsible official's name is optional.]

Nature of Decision To Be Made

[Describe the framework or scope of the decision(s) to be made by the responsible official(s).]

Preliminary Issues

[Include only if any have been identified (delete heading if not used). To the extent practicable, resolve internal issues before proposing the action.]

Permits or Licenses Required

[Include only if any have been identified (delete heading if not used).]

Addresses

[Include only if all addresses could not be included in the SUMMARY (delete heading if not used).]

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. [Describe any other public comment opportunities, including whether, when, and where any scoping meetings will be held. Describe any additional information related to the scoping process and nature of comments being sought.]

[Name]

Date

Chief, Governmental and Public Affairs Office

DTRA/SCC–WMD

**Appendix E: Notice of Availability (NOA)**

DEFENSE THREAT REDUCTION AGENCY/UNITED STATES STRATEGIC COMMAND CENTER FOR COMBATING WEAPONS OF MASS DESTRUCTION (DTRA/SCC–WMD)

AGENCY: [Office name], DTRA/SCC–WMD, Department of Defense

ACTION: Notice of Availability of the [Draft EA, Final EA and FONSI, Draft EIS, Final EIS, or ROD]

SUMMARY: DTRA/SCC–WMD announces the availability of the [insert type of NEPA document] for a proposed project in [insert location].

DATES: [As applicable, list dates of public scoping meetings, deadlines for comments, etc.]

ADDRESSES: [As applicable, list addresses for public scoping meetings, availability of the document, etc.] The [insert Draft EIS, Final EIS, ROD as appropriate] is also available at [insert project Web site.]

FOR FURTHER INFORMATION CONTACT: [insert name(s) and contact information you wish to use, such as telephone number and email address.]

SUPPLEMENTARY INFORMATION: Effective [Date], the DTRA/SCC–WMD assumed environmental responsibilities for this project. DTRA/SCC–WMD as the agency responsible for the National Environmental Policy Act (NEPA) review has, in cooperation with [insert cooperating agencies], prepared a [insert type of NEPA document] on a proposal for [insert brief description of action] in [location]. [Provide additional details regarding the proposed action, description of the proposed alternatives, length of project, and any anticipated federal approvals, such as permits].

Issued on: [Date signed]

[Name]

Chief, Governmental and Public Affairs Office

DTRA/SCC–WMD

**Appendix F: Record of Decision (ROD)**

RECORD OF DECISION

[Project Name]

DEFENSE THREAT REDUCTION AGENCY/UNITED STATES STRATEGIC COMMAND CENTER FOR COMBATING WEAPONS OF MASS DESTRUCTION (DTRA/SCC–WMD)

[Project Location]

[County, State]

Decision

Based on my review of the Environmental Impact Statement (EIS), I have decided to implement Alternative [X], which [insert description of selected alternative. Include any permits, licenses, grants, or authorizations needed to implement the decision. Also include any mitigation and monitoring actions related to the decision.]

Background

[Provide a brief description of the purpose and need for action.]

Decision Rationale

[Describe the reasons for the decision. Specifically, discuss the following:

How the selected action/alternative best meets the purpose and need and why other alternatives were not selected.

How significant issues and environmental impacts were considered and taken into account.

Any factors other than environmental effects considered in making the decision.

Discuss how the above factors influenced the decision (are some more important than others?)

State whether all practical means to avoid or minimize environmental harm from the selected alternative have been adopted and if not, why not.]

The [Project Name] EIS documents the analysis and conclusions upon which this decision is based.

Public Involvement

A notice of intent to prepare an EIS was published in the **Federal Register** on [date] ([Cite **Federal Register** volume and beginning page number (*i.e.* 73 FR 43084]). People were invited to review and comment on the proposal through [insert public notice methods and dates such as mailings, news releases, phone calls, etc.]. The EIS lists agencies, organizations, and people who received copies on page [X].

The following issues were identified from scoping comments and were used to determine the scope of the analysis. [Briefly describe the significant issues used in the analysis]. A full description of issues significant to the proposed action appears in the EIS on page [X].

A draft EIS was published for review and comment on [date of publication of EPA's notice of availability in the **Federal Register**].

Alternatives Considered

In addition to the selected alternative, I considered [X] other alternatives, which are discussed below. A more detailed comparison of these alternatives can be found in the EIS on pages [X–X].

Alternative 1—[insert a brief description of the alternative; identify which is considered to be environmentally-preferable.]

Alternative 2 —[insert a brief description of the alternative]

[Repeat for each alternative.]

Mitigation

[State (a) which mitigation measures have been adopted; (b) whether all practicable means to avoid or minimize have been adopted, and if not why they were not; and (c) whether monitoring and enforcement programs are adopted, and if so summarize them.]

Implementation Date

[Describe the expected date(s) of implementation].

Contact

For additional information concerning this decision, contact: [contact name, title, office, mailing address, phone number, and email]

Concurrence:

[Name]
Project/Program Manager

Date

Director, J4E

Date

Approval:

Director, DTRA/SCC–WMD

Date

[FR Doc. 2016–10376 Filed 5–4–16; 8:45 am]
**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 16–07]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Heather N. Harwell, DSCA/LMO, (703) 697–9217.

The following is a copy of a letter to the Speaker of the House of Representatives,

Transmittal 16–07 with attached Policy Justification and Sensitivity of Technology.

Dated: May 2, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–P**

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 21 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-07, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Qatar for defense articles and services estimated to cost $260 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 16–07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of Qatar

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * | $ 227 million |
| Other | $ 33 million |
| Total | $ 260 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

*Major Defense Equipment (MDE):*

Two-hundred and fifty-two (252) RIM 116C Rolling Airframe Tactical Missiles

Two (2) RIM 116C–2 Rolling Airframe Telemetry Missiles

Also included are the following non-MDE items; support equipment, publications, technical documentation, personnel training, U.S. Government and contractor engineering, technical and logistics support services, live fire test event support, and other related integration elements. The estimated cost is $260 million.

(iv) *Military Department:* U.S. Navy (AAD)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 21 April 2016

* as defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Qatar—RIM–116C and RIM–116C–2 Rolling Airframe Missiles*

The Government of Qatar has requested a possible sale of two-hundred and fifty-two (252) RIM–116C Rolling Airframe Tactical Missiles, and two (2) RIM 116C–2 Rolling Airframe Telemetry Missiles. Also included are support equipment, publications and technical documentation, personnel training, U.S. Government and contractor engineering, technical and logistics support services, live fire test event support, and other related integration elements. The total estimated value of MDE is $227 million. The overall total estimated value is $260 million.

This proposed sale contributes to the foreign policy and national security of the United States by helping to improve the security of a friendly country. Qatar is an important force for political stability and economic progress in the Persian Gulf region. This proposed sale will provide Qatar with military capabilities to protect its naval forces and nearby oil/gas infrastructure from air and missile threats. Qatar will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment, services, and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips by U.S. Government and contractor representatives to participate in program and technical reviews, system integration, as well as training and maintenance support in country for a period of thirty-six (36) months.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

The RIM–116C Rolling Airframe Missile is an autonomous (*i.e.,* ''fire and forget'') lightweight, supersonic, surface-to-air tactical missile for ship self-defense against current and evolving anti-ship cruise missile threats. Advanced technology in the RIM–116C includes dual-mode RF/IR (radio frequency/infrared) guidance with IR all-the-way capability for non-emitting threats. The highest classification of the hardware, embedded software, and maintenance is CONFIDENTIAL. The RIM–116C–2 is a non-tactical telemetry round, used primarily for test and training purposes; it includes an unclassified telemeter which replaces the warhead section. The data set, generated by RIM–116C–2 is UNCLASSIFIED.

The Rolling Airframe Missile (RAM) is a product of a cooperative program with Germany and has been executed, since 1976, under a series of governing Memoranda of Understanding/Memoranda of Agreements (MOU/MOAs) for the development, production, and in-service support between the United States and Germany.

A determination has been made that the Government of Qatar can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of U.S. foreign policy and national security objectives outlined in the Policy Justification.

All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Qatar.

[FR Doc. 2016–10551 Filed 5–4–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Chief of Engineers Environmental Advisory Board (''the Board'').

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The Board's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/.*

The Board provides the Secretary of Defense and the Deputy Secretary of Defense, through the Secretary of the Army, the Assistant Secretary of the Army (Civil Works), and the Chief of Engineers, with independent advice and recommendations on matters relating to the two distinct component programs of the United States Army Corps of Engineers—the Military Program, which supports Army war fighters, and the Civil Works Program, which manages many of the water resources of the Nation.

The Board is composed of no more than 10 members who are eminent authorities in the fields of natural (*e.g.* biology, ecology), social (*e.g.* anthropology, community planning), and related sciences. All members of the Board are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, Board members serve without compensation.

The DoD, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees.

The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board. All written statements must be submitted to the Board's DFO who will ensure the

written statements are provided to the membership for their consideration.

Dated: May 2, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–10563 Filed 5–4–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 16–19]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Heather N. Harwell, DSCA/LMO, (703) 697–9217.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–19 with attached Policy Justification and Sensitivity of Technology.

Dated: May 2, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–06–P**

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 2 1 2016

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-19 concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost $1.22 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

**BILLING CODE 5001–06–C**

Transmittal No. 16–19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, As Amended

(i) *Prospective Purchaser:* Government of Australia

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment * .. | $1.08 billion |
| Other ..... | $ .14 billion |
| Total ..... | $1.22 billion |

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

*Major Defense Equipment (MDE):*

Up to 450 Advanced Medium-Range Air-to-Air Missiles (AIM–120D)

Up to 34 AIM–120D Air Vehicles Instrumented (AAVI)

Up to 6 Instrumented Test Vehicles (ITVs)

Up to 10 spare AIM–120 Guidance Sections (GSs)

*Non-MDE:*

This request also includes the following Non-MDE: Containers, weapon system support equipment, support and test equipment, site survey, transportation, repair and return warranties, spare and repair parts, publications and technical data, maintenance, personnel training, and training equipment, U.S. Government and contractor representative engineering, logistics, and technical support services, and other related elements of logistics support.

(iv) *Military Department:* Air Force (YLD)

(v) *Prior Related Cases, if any:* AT–D–YKX–01 DEC 98, AT–D–YLB–06 OCT–11 AT–D–YLC–25 FEB–15

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached

(viii) *Date Report Delivered to Congress:* 21 April 2016

* as defined in Section 47(6) of the Arms Export Control Act.

*POLICY JUSTIFICATION*

*Australia—AIM–120D Advanced Medium-Range Air-to-Air Missiles:*

The Government of Australia requested a possible sale of:

*Major Defense Equipment (MDE):*

Up to 450 Advanced Medium-Range Air-to-Air Missiles (AIM–120D)

Up to 34 AIM–120D Air Vehicles Instrumented (AAVI)

Up to 6 Instrumented Test Vehicles (ITVs)

Up to 10 spare AIM–120 Guidance Sections (GSs)

This request also includes the following Non-MDE: Containers, weapon system support equipment, support and test equipment, site survey, transportation, repair and return warranties, spare and repair parts, publications and technical data, maintenance, personnel training, and training equipment, U.S. Government and contractor representative engineering, logistics, and technical support services, and other related elements of logistics support.

The total estimated value of MDE is $1.08 billion. The total overall estimated value is $1.22 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner and major contributor to political stability, security, and economic development in the Pacific region and globally.

This proposed sale is in support of the Royal Australian Air Force's (RAAF) F/A–18, E/A–18G, and F–35 aircraft. This proposed sale will provide the RAAF additional air-to-air intercept capability and increase interoperability with the U.S. Air Force. Australia will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment will not alter the basic military balance in the region.

The principal contractor for production is Raytheon in Tucson, Arizona. The principal contractor for integration is unknown and will be determined during contract negotiations. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–120D AMRAAM hardware, including the missile guidance section, is classified CONFIDENTIAL. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. The increase in capability from the AIM–120C–7 to AIM–120D consists of a two-way data link, a more accurate navigation unit, improved High-Angle Off-Boresight (HOBS) capability, and enhanced aircraft to missile position handoff.

2. AIM–120D features a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection, and warhead burst point determination.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2016–10562 Filed 5–4–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2016–ICCD–0023]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Part 601 Preferred Lender Arrangements

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before June 6, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0023. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the

Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Part 601 Preferred Lender Arrangements.

*OMB Control Number:* 1845–0101.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Individuals or Households; Private Sectors.

*Total Estimated Number of Annual Responses:* 17,405,090.

*Total Estimated Number of Annual Burden Hours:* 3,553,281.

*Abstract:* Part 601—Institution and Lender Requirements Relating to Education Loans is a section of the regulations governing private education loans offered at covered institutions. These regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to ensure that borrowers receive additional disclosures about Title IV, HEA program assistance prior to obtaining a private education loan. The Department is submitting the unchanged Private Education Loan Applicant Self-Certification for OMB's continued approval. While information about the applicant's cost of attendance and estimated financial assistance must be provided to the student, if available, the student will provide the data to the private loan lender who must collect and maintain the self-certification form prior to disbursement of a Private Education Loan. The Department will not receive the Private Education Loan Applicant Self-Certification form and therefore will not be collecting and maintaining the form or its data.

Dated: May 2, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016–10544 Filed 5–4–16; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2016–ICCD–0021]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Streamlined Clearance Process for Discretionary Grants

**AGENCY:** Office of the Secretary (OS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before June 6, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0021. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room2E–105, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Alfreida Pettiford, 202–245–6110.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Streamlined Clearance Process for Discretionary Grants.

*OMB Control Number:* 1894–0001.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 1.

*Total Estimated Number of Annual Burden Hours:* 1.

*Abstract:* Section 3505(a)(2) of the PRA of 1995 provides the OMB Director authority to approve the streamlined clearance process proposed in this information collection request. This information collection request was originally approved by OMB in February of 2007. This information collection streamlines the clearance process for all discretionary grant information collections which do not fit the generic application process. The streamlined clearance process continues to reduce the clearance time for the U.S. Department of Education's (ED's) discretionary grant information collections by 60 days. This clearance would allow ED to provide better customer service to grant applicants and help meet ED's goal for timely awards of discretionary grants.

Dated: May 2, 2016.

**Stephanie Valentine,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016–10512 Filed 5–4–16; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Proposed Agency Information Collection

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice and request for OMB review and comment.

**SUMMARY:** The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will be used to generate an annual Energy and Jobs Report. The rapidly changing nature of energy production, distribution, and consumption throughout the U.S. economy is having a dramatic impact on job creation, workforce training and economic competitiveness, but is inadequately understood and, in some sectors, incompletely measured.

**DATES:** Comments regarding this collection must be received on or before May 28, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

**ADDRESSES:** Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503. And to Cynthia Anderson by email at *Cynthia.Anderson@NNSA.Doe.Gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Cynthia Anderson by email at *Cynthia.Anderson@NNSA.Doe.Gov or by telephone at 202–586–2061.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. {''New''} (2) Information Collection Request Title: Energy and Jobs Survey; (3) Type of Request: New; (4) Purpose: The rapidly changing nature of energy production, distribution, and consumption throughout the U.S. economy is having a dramatic impact on job creation, workforce training and economic competitiveness, but is inadequately understood and, in some sectors, incompletely measured. The new Energy and Jobs Survey will collect data from establishments in in-scope industries, quantifying and qualifying employment among energy activities, workforce demographics and the establishment's perception on the difficulty of recruiting qualified workers. The data will be used to generate an annual Energy and Jobs Report; (5) Annual Estimated Number of Respondents: 30,000; (6) Annual Estimated Number of Total Responses: 10,000; (7) Annual Estimated Number of Burden Hours: 2,908.4; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

**Statutory Authority:** Sec. 301 of the Department of Energy Organization Act (42 U.S.C. 7151); sec. 5 of the Federal Energy Administration Act of 1974 (15 U.S.C. 764); and sec. 103 of the Energy Reorganization Act of 1974 (42 U.S.C. 5813).

Issued in Washington, DC on April 27, 2016.

**Cynthia V. Anderson,**

*Senior Advisor, Office of the Secretary.*

[FR Doc. 2016–10537 Filed 5–4–16; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2015–0805; FRL–9945–92]**

### Chemical Safety Advisory Committee; Notice of Changes to Public Meeting on 1-bromopropane

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

**ACTION:** Notice.

**SUMMARY:** The previously announced 3-day meeting of the Chemical Safety Advisory Committee (CSAC) to consider and review the draft risk assessment for the Toxic Substance Control Act (TSCA) work plan chemical 1-bromopropane (CASRN–106–94–5) is now scheduled for 2 days. Meeting dates and location are provided in this notice and meeting information is now available through the CSAC Web site at *https://www.epa.gov/csac.*

**DATES:** The meeting will be held on May 24 and 25, 2016, from approximately 9:00 a.m. to 5:00 p.m.

*Webcast.* Please refer to the CSAC Web site at *https://www.epa.gov/csac* for information on how to access the meeting webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

*Special accommodations.* For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

**ADDRESSES:** *Meeting:* The meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the hotel is (703) 413–5500.

**FOR FURTHER INFORMATION CONTACT:** Steven M. Knott, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0103; email address: *knott.steven@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information and instructions, please see the **Federal Register** of March 16, 2016, (8 FR 14111; FRL–9940–22), or contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 5 U.S.C. App. 2 § 9(c).

Dated: April 28, 2016.

**Inza Graves,**

*Acting, Director, Office of Science Coordination and Policy.*

[FR Doc. 2016–10583 Filed 5–4–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2016–0225; FRL–9945–75]**

## Sulfoxaflor; Receipt of Applications for Emergency Exemption, Solicitation of Public Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has received specific exemption requests from the Tennessee Department of Agriculture (TDA), the Arkansas State Plant Board (ASPB) and the Mississippi Departments of Agriculture and Commerce (MDAC) to use the pesticide sulfoxaflor (CAS No. 946578–00–3) to treat up to 168,750 acres of cotton in Tennessee, up to 320,000 of acres of cotton fields in Arkansas and up to 337,500 acres of cotton fields in Mississippi to control tarnished plant bug. The applicants propose a use of a pesticide, sulfoxaflor, which is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) owing to the vacature of sulfoxaflor registrations by the United States District court for the Central District of California. In accordance with 40 CFR 166.24(a)(7), EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before May 20, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0225, 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 Confidential Business Information (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.*

**FOR FURTHER INFORMATION CONTACT:** Susan Lewis, 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. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a federal or state agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Tennessee Department of Agriculture, the Arkansas State Plant Board and the Mississippi Departments of Agriculture and Commerce have requested the EPA Administrator to issue specific exemptions for the use of sulfoxaflor on cotton to control tarnished plant bug. Information in accordance with 40 CFR part 166 was submitted as part of this request.

In addition to TDA, ASPB, and MDAC, numerous states have previously requested specific exemptions for the use of sulfoxaflor on cotton to control tarnished plant bug (*Lygus lineolaris*) and are expected to submit similar requests.

The applicants propose to make no more than four applications of Tranform WG per acre per year. Annual use will not exceed 0.266 lbs of active ingredient per acre for all states. Tennessee has requested to treat a total of 168,750 acres of cotton fields. In Arkansas, up to 320,000 of acres of cotton fields are requested to be treated. In Mississippi up to 337,500 acres of cotton fields are requested to be treated to control tarnished plant bug. The use season is from June 2016 through September 2016 for Tennessee and June 2016 through October 2016 for Arkansas and Mississippi. In Tennessee, the maximum amount of insecticide that could be applied is 89,648 lbs of formulated product applied foliarly by air or ground. In Arkansas, the maximum amount of insecticide that could be applied is 160,000 lbs of formulated product applied foliarly. In Mississippi, the maximum amount of insecticide that could be applied is 179,297 lbs of formulated product applied foliarly

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for specific exemptions proposing a use of a pesticide that has be subject to a judicial vacature, however, EPA

considers public notice appropriate in this instance. Accordingly, this notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Tennessee Department of Agriculture, the Arkansas State Plant Board and the Mississippi Departments of Agriculture and Commerce.

The notice provides an opportunity for public comment on the application. The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Tennessee Department of Agriculture, the Arkansas State Plant Board and the Mississippi Departments of Agriculture and Commerce.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: April 28, 2016.

**Daniel J. Rosenblatt, Acting,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–10584 Filed 5–4–16; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10010, First Priority Bank, Bradenton, Florida

*Notice is hereby given* that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First Priority Bank, Bradenton, Florida (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First Priority Bank on August 1, 2008. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: May 2, 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–10530 Filed 5–4–16; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination, 10362, First National Bank of Central Florida; Winter Park, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10362, First National Bank of Central Florida, Winter Park, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First National Bank of Central Florida (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 May 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: May 2, 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–10569 Filed 5–4–16; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Louisiana Community Bancorp, Inc.,* Houma, Louisiana; to acquire 100 percent of the voting shares of Tri-Parish Bancshares, Inc., and thereby, indirectly acquire voting shares of Tri-Parish Bank, both in Eunice, Louisiana.

Board of Governors of the Federal Reserve System, May 2, 2016.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2016–10518 Filed 5–4–16; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently

approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

*Report title:* Recordkeeping and disclosure requirements associated with the Truth in Lending Act (TILA) (Regulation Z).

*Agency form number:* Reg Z.

*OMB control number:* 7100–0199.

*Frequency:* Event-generated.

*Reporters:* State member banks, their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

*Estimated annual reporting hours:* Open-end (not home-secured credit): Applications and solicitations, 16,896 hours; Account opening disclosures, 5,060 hours; Periodic statements, 95,232 hours; Change-in-terms disclosures, 62,000 hours; Timely settlement of estate debts policies (one-time), 7,936 hours; Timely settlement of estate debts policies (ongoing), 744 hours; Ability to pay policies (one-time), 1,408 hours; Ability to pay policies (ongoing), 132 hours; and Reporting and marketing rules for college student open-end credit and Internet posting of credit card agreements, 5,632 hours; Open-end credit (Home Equity Plans): Application disclosures, 12,522 hours; Account opening disclosures, 18,228 hours; Periodic statements, 60,864 hours; Change-in-terms disclosures, 39,625 hours; and Notices to restrict credit, 317 hours; All open-end credit: Error resolution—credit cards, 12,760 hours and other open-end credit, 992 hours; Closed-end credit (Non-mortgage): Closed-end credit disclosures, 265,658 hours; Closed-end credit (Mortgage): Interest rate and payment summary and ''No guarantee-to-refinance'' statement, 304,320 hours; ARM disclosure (one-time), 951 hours; ARM disclosures (ongoing), 107,780 hours; Initial rate adjustment notice (one-time), 1,268 hours; Initial rate adjustment notice (ongoing), 53,890 hours; Periodic statements (one-time), 845 hours; Periodic statements (ongoing), 224,013 hours; and Verification of documents for Qualified Mortgage (QM) and non-QM determination (one-time), 444 hours; Open and closed-end mortgage: Prompt crediting & payoff statement (one-time), 528 hours; Payoff statements (ongoing), 42,267 hours; and Mortgage transfer disclosure, 60,864 hours; Certain home mortgage types: Reverse mortgage disclosures, 188 hours; HOEPA disclosures (one-time), 500 hours; HOEPA disclosures (ongoing), 4,200 hours; HOEPA receipt of certification of counseling for high-cost mortgages (one-time), 19 hours; HOEPA receipt of certification of counseling for high-cost mortgages (ongoing), 25 hours; Appraisals for higher-priced mortgage loans: Order and review initial appraisal, 150 hours; Order and review additional appraisal, 150 hours; and Provide copy of initial and additional appraisals, 1 hour; Private education loans: Private student loan disclosures, 1,836 hours; Advertising rules (all credit types): Advertising rules, 2,067 hours; and Record retention (one-time), 190 hours.

*Estimated average hours per response:* Open-end (not home-secured credit): Applications and solicitations, 8 hours; Account opening disclosures, 1.5 minutes; Periodic statements, 8 hours; Change-in-terms disclosures, 1 minute; Timely settlement of estate debts policies (one-time), 8 hours; Timely settlement of estate debts policies (ongoing), 45 minutes; Ability to pay policies (one-time), 8 hours; Ability to pay policies (ongoing), 45 minutes; and Reporting and marketing rules for college student open-end credit and Internet posting of credit card agreements, 8 hours; Open-end credit (Home Equity Plans): Application disclosures, 1.5 minutes; Account opening disclosures, 1.5 minutes; Periodic statements, 8 hours; Change-in-terms disclosures, 1 minute; and Notices to restrict credit, 3 minutes; All open-end credit: Error resolution—credit cards, 30 minutes and other open-end credit, 30 minutes; Closed-end credit (Non-mortgage): Closed-end credit disclosures, 6.5 minutes; Closed-end credit (Mortgage): Interest rate and payment summary and ''No guarantee-to-refinance'' statement, 40 hours; ARM disclosure (one-time), 1.5 hours; ARM disclosures (ongoing), 17 minutes; Initial rate adjustment notice (one-time), 2 hours; Initial rate adjustment notice (ongoing), 17 minutes; Periodic statements (one-time), 1 hour, 20 minutes; Periodic statements (ongoing), 0.5 minutes; and Verification of documents for Qualified Mortgage (QM) and non-QM determination (one-time), 42 minutes; Open and closed-end mortgage: Prompt crediting & payoff statement (one-time), 50 minutes; Payoff statements (ongoing), 5 minutes; and Mortgage transfer disclosure, 8 hours; Certain home mortgage types: Reverse mortgage disclosures, 3 minutes; HOEPA disclosures (one-time), 20 hours; HOEPA disclosures (ongoing), 14 hours; HOEPA receipt of certification of counseling for high-cost mortgages (one-time), 45 minutes; HOEPA receipt of certification of counseling for high-cost mortgages (ongoing), 1 hour; Appraisals for higher-priced mortgage loans: Order and review initial appraisal, 15 minutes; Order and review additional appraisal, 15 minutes; and Provide copy of initial and additional appraisals, 15 minutes; Private education loans: Private student loan disclosures, 17 hours; Advertising rules (all credit types): Advertising rules, 25 minutes; and Record retention (one-time), 18 minutes.

*Number of respondents:* Open-end (not home-secured credit): Applications and solicitations and Account opening disclosures, 176 respondents; Periodic statements, Change-in-terms disclosures, Timely settlement of estate debts policies (one-time), and Timely settlement of estate debts policies (ongoing), 992 respondents; Ability to pay policies (one-time), Ability to pay policies (ongoing), and Reporting and marketing rules for college student open-end credit and Internet posting of credit card agreements, 176 respondents; Open-end credit (Home Equity Plans): Application disclosures, Account opening disclosures, Periodic statements, Change-in-terms disclosures, and Notices to restrict credit, 634 respondents; All open-end credit: Error resolution—credit cards,

176 respondents and other open-end credit, 992 respondents; Closed-end credit (Non-mortgage): Closed-end credit disclosures, 992 respondents; Closed-end credit (Mortgage): Interest rate and payment summary and ''No guarantee-to-refinance'' statement, ARM disclosure (one-time), ARM disclosures (ongoing), Initial rate adjustment notice (one-time), Initial rate adjustment notice (ongoing), Periodic statements (one-time), Periodic statements (ongoing), and Verification of documents for Qualified Mortgage (QM) and non-QM determination (one-time), 634 respondents; Open and closed-end mortgage: Prompt crediting & payoff statement (one-time), Payoff statements (ongoing), and Mortgage transfer disclosure, 634 respondents; Certain home mortgage types: Reverse mortgage disclosures, 15 respondents; HOEPA disclosures (one-time), HOEPA disclosures (ongoing), HOEPA receipt of certification of counseling for high-cost mortgages (one-time), HOEPA receipt of certification of counseling for high-cost mortgages (ongoing), Appraisals for higher-priced mortgage loans: Order and review initial appraisal, Order and review additional appraisal, and Provide copy of initial and additional appraisals, 25 respondents; Private education loans: Private student loan disclosures, 9 respondents; Advertising rules (all credit types): Advertising rules, 992 respondents; and Record retention (one-time), 634 respondents.

*General description of report:* The disclosure, record-keeping, and other requirements of Regulation Z are authorized by the TILA, which directs the Consumer Financial Protection Bureau (CFPB) and, for certain lenders, the Federal Reserve to issue regulations implementing the statute. Covered lenders are required to comply with the recordkeeping, reporting, and disclosure provisions of Regulation Z. Regulation Z is chiefly a disclosure regulation, so the issue of confidentiality does not normally arise. One aspect of the rule requires certain card issuers to submit annual reports to the CFPB, but no reports are filed with the Federal Reserve.

*Abstract:* TILA and Regulation Z ensure adequate disclosure of the costs and terms of credit to consumers. For open-end credit, such as credit cards and home-equity lines of credit (HELOCs), creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. For closed-end loans, such as mortgage and installment loans, cost disclosures are required prior to and at consummation. Special disclosures are required for certain products, such as reverse mortgages and high cost mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.[1]

Creditors are required to comply with Regulation Z's disclosure and other requirements unless the transaction is exempt.[2] Regulation Z generally does not apply to consumer credit transactions that exceed a threshold amount, adjusted annually for inflation.[3] The threshold amount for credit extended during 2015 was $54,600; this threshold will remain the same in 2016.

However, regardless of the amount of credit extended, Regulation Z applies to: (1) Consumer credit secured by real property; (2) consumer credit secured by personal property used or expected to be used as the principal swelling of the consumer; and (3) private student loans.

*Current Actions:* On February 19, 2016 the Federal Reserve published a notice in the **Federal Register** (81 FR 8492) requesting public comment for 60 days on the extension, with revision, of Reg Z. The comment period for this notice expired on April 19, 2016. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, May 2, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2016–10557 Filed 5–4–16; 8:45 am]

**BILLING CODE 6210–01–P**

[1] In addition, Regulation Z contains requirements that are not considered information collections and thus are not addressed here.

[2] Exemptions include business credit, credit over applicable threshold amounts, public utility credit, securities or commodities accounts, home fuel budget plans, certain student loan programs, and employer-sponsored retirement plans. *See* 12 CFR 1026.3.

[3] 12 CFR 1026.3(b).

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

*Report Title:* Reporting Requirements Associated with Regulation Y (Extension of Time to Conform to the Volcker Rule).

*Agency Form Number:* Reg Y–1.

*OMB Control Number:* 7100–0333.

*Frequency:* Event-generated.

*Reporters:* Insured depository institution (other than certain limited-purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing, and nonbank financial companies designated by the Financial Stability Oversight Council that engage in proprietary trading activities or make investments in covered funds.

*Estimated Annual Reporting Hours:* 774 hours.

*Estimated Average Hours per Response:* 3 hours.

*Number of Respondents:* 258 respondents.

*General description of report:* The Board's Legal Division has determined

that section 13 of the BHC Act specifically authorizes the Board to issue rules to permit entities covered by the Volcker Rule to seek extensions of time of the conformance period. 12 U.S.C. 1851(c)(6). The information collections in Sections 225.181(c) and 225.182(c) of Regulation Y are required for covered entities that decide to seek an extension of time to conform their activities to the Volcker Rule or divest their interest in an illiquid hedge fund or private equity fund. The obligation to respond, therefore, is required to obtain a benefit. As noted above, the information collected under the provisions of section 13 of the BHC Act and Subpart K of Regulation Y is required to be submitted in order to obtain an extension of time to conform a covered entity's assets and activities to the Volcker Rule. As provided in sections 221.181(d) and 221.182(d) of Subpart K, such information includes:

- The terms of private contractual obligations;
- The liquid or illiquid nature of assets proposed to be divested by the regulated entity;
- The total exposure of the covered entity to the activity or investment, and its materiality to the institution;
- The risks and costs of disposing of, or maintaining, the activity or investment; and
- The impact of divestiture or conformance of the activity or investment on any duty owed by the institution to a client, customer, or counterparty.

This information is the type of confidential commercial and financial information that may be withheld under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4). As *required* information, it may be withheld under Exemption 4 only if public disclosure could result in substantial competitive harm to the submitting institution.

*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') was enacted on July 21, 2010.[1] Section 619 of the Dodd-Frank Act, also known as the Volcker Rule, adds a new section 13 to the Bank Holding Company Act of 1956 (the ''BHC Act'') [2] that generally prohibits any banking entity [3] from engaging in proprietary trading or from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund (together, a covered fund). Section 13 of the BHC Act also provides that nonbank financial companies designated by the Financial Stability Oversight Council (the ''Council'') that engage in proprietary trading activities or make investments in covered funds may be made subject by rule to additional capital requirements or quantitative limits.[4] In December 2013, the Board, OCC, FDIC, SEC and CFTC (the ''Agencies'') approved final regulations implementing the provisions of section 13 of the BHC Act (the ''final rule'').[5]

The restrictions and prohibitions of section 13 of the BHC Act became effective on July 21, 2012,[6] however, the statute provided banking entities a grace period until July 21, 2014, to conform their activities and investments to the requirements of the statute and any rule issued by the Agencies. The statute also granted exclusively to the Board authority to provide banking entities additional time to conform or divest their investments and activities covered by section 13. The statute provides that the Board may, by rule or order, extend the conformance period ''for not more than one year at a time,'' up to three times, if in the judgment of the Board, an extension is consistent with the purposes of section 13 and would not be detrimental to the public interest.[7] This would allow extensions of the conformance period until July 21, 2017.[8] Section 13 also permits the Board, upon application by a banking entity, to provide up to an additional five-year transition period to conform certain illiquid funds.[9]

Section 13 also gives nonbank financial companies supervised by the Board the same general two-year conformance period with the potential of up to three, one-year extensions to bring their activities into compliance with any requirements or limits established. Consistent with the conformance period available to banking entities, the Board has the ability to extend this two-year period by up to three additional one-year periods, if the Board determines that such an extension is consistent with the purpose of the Volcker Rule and would not be detrimental to the public interest.[10]

In February 2011, the Board adopted a final rule to implement the conformance period provisions of section 13 (''Conformance Rule'') during which banking entities and nonbank financial companies supervised by the Board must bring their activities and investments into compliance with the Volcker Rule and implementing regulations. The information collections associated with the Conformance Rule are located in sections 225.181(c) and 225.182(c) of Regulation Y. Sections 225.181(c) and 225.182(c) permit a banking entity and nonbank financial company, respectively, to request an extension of time to conform their activities to the Volcker Rule. The Conformance Rule became effective April 1, 2011.

*Current Actions:* On February 19, 2016 the Federal Reserve published a notice in the **Federal Register** (81 FR 8494) requesting public comment for 60 days on the extension, without revision, of Reg Y–1. The comment period for this notice expired on April 19, 2016. The Federal Reserve did not receive any comments. The information collection will be extended as proposed.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

*Report title:* Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 1851.

[3] The term ''banking entity'' is defined in section 13(h)(1) of the BHC Act. See 12 U.S.C. 1851(h)(1). The term means any insured depository institution (other than certain limited-purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing.

[4] See 12 U.S.C. 1851(a)(2) and (f)(4).

[5] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Fund and Private Equity Funds, 79 FR 5536 (Jan. 31, 2014); 79 FR 5808 (Jan. 31, 2014). At the time of the final rule, the Agencies explained they would explore whether a nonbank financial company designated by the Council that was not also a banking entity engages in any activity subject to section 13 of the BHC Act and what, if any, requirements to apply under section 13.

[6] *See* 12 U.S.C. 1851(c)(1).

[7] *See* 12 U.S.C. 1851(c)(2).

[8] At the time of issuance of the final rule in December 2013, the Board exercised authority under the statute to extend this period for one year, until July 21, 2015. *See* Board Order Approving Extension of Conformance Period (Dec. 10. 2013), *available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf.* In addition, in December 2014, the Board extended the conformance period until July 21, 2016 for banking entities to conform investments in and relationships with covered funds and foreign funds that were in place prior to December 31, 2013 (''legacy covered funds'') and stated its intention to act next year to give banking entities until July 21, 2017 to conform legacy covered funds. *See* Board Order Approving Extension of Conformance Period under Section 13 of the Bank Holding Company Act (December 18, 2014), *available at http://www.federalreserve.gov/newsevents/press/bcreg/20141218a.htm.*

[9] *See* 12 U.S.C. 1851(c)(3)–(4).

[10] *See* 12 U.S.C. 1851(c)(2).

*Agency Form Number:* Form MSD–4; Form MSD–5.

*OMB Control Number:* 7100–0100; 7100–0101.

*Frequency:* On occasion.

*Reporters:* State member banks, bank holding companies, and foreign dealer banks that are municipal securities dealers.

*Estimated Annual Reporting Hours:* Form MSD–4, 20 hours; Form MSD–5, 13 hours.

*Estimated Average Hours per Response:* Form MSD–4, 1 hour; Form MSD–5, 0.25 hours.

*Number of Respondents:* Form MSD–4, 20; Form MSD–5, 50.

*General description of report:* The Board's Legal Division has determined that Sections 15B(a)–(b) and 17 of the Securities Exchange Act (15 U.S.C. 78o–4(a)–(b) and 78q) authorize the SEC and MSRB to promulgate rules requiring municipal security dealers to file registration reports about associated persons with the SEC and the ARA. In addition, Section 15B(c) of the Act provides that ARAs may enforce compliance with the SEC's and MSRB's rules. 15 U.S.C. 78o–4(c). Section 23(a) of the Act also authorizes the SEC, the Board, and the other ARAs to make rules and regulations in order to implement the provisions of the Act. 15 U.S.C. 78w(a). The Board is the ARA for bank municipal securities dealers that are savings and loan holding companies, state member banks (including their divisions or departments), and bank holding companies (including a subsidiary bank of the bank holding company if the subsidiary does not already report to another ARA or to the SEC, and any divisions, departments or subsidiaries of that subsidiary).[11] 15 U.S.C. 78c(a)(34)(A)(ii). The Board is also the ARA for state branches or agencies of foreign banks that are municipal securities dealers.[12] Accordingly, the Board's collection of Form MSD–4 and Form MSD–5 for these institutions is authorized pursuant to 15 U.S.C. 78o–4, 78q and 78w.

The Board is also authorized to require that state member banks and their departments file reports with the Board pursuant to Section 11(a)(1) of the Federal Reserve Act, 12 U.S.C. 248(a)(1). Branches and agencies of foreign banks are also subject to the reporting requirements of section 11(a)(1) of the Federal Reserve Act pursuant to Section 7(c)(2) of the International Banking Act, 12 U.S.C. 3105(c)(2). In addition, Section 10(b)(2) of the Home Owners' Loan Act authorizes the Board to require SLHCs to file ''such reports as may be required by the Board'' and instructs that such reports ''shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.'' 12 U.S.C. 1467a(b)(2), as amended by section 369 of the Dodd-Frank Act.

The obligation to file the forms with the Board is mandatory for those financial institutions for which the Board serves as the ARA, and the filing of both forms is event generated.

The data collected on Forms MSD–4 and MSD–5 is compiled in a ''system of records'' within the meaning of the Privacy Act. 5 U.S.C. 552a(a)(5). In 1977, the Board formally designated a system of records for Forms MSD–4 and MSD–5. *See* 4 Fed. Res. Reg. Service ¶ 8–350 (42 FR 16,854 (Mar. 30, 1977)).[13] The Privacy Act prohibits the Board from disclosing the information collected on the forms unless certain exceptions apply that would permit disclosure. 5 U.S.C. 552a(b).

*Abstract:* These mandatory information collections are submitted on occasion by state member banks (SMBs), bank holding companies (BHCs), savings and loan holding companies (''SLHCs''), and foreign dealer banks that are municipal securities dealers.[14] The Form MSD–4 collects information (such as personal history and professional qualifications) on an employee whom the bank wishes to assume the duties of municipal securities principal or representative. The Form MSD–5 collects the date of, and reason for, termination of such an employee.

On August 4, 2014, the Municipal Securities Rulemaking Board (MSRB) (MSRB Notice 2014–13) announced the creation of a new designation of registered person—Limited Representative—Investment Company and Variable Contracts Products—which is a sub-category of Municipal Securities Representative.[15] To conform to MSRB Notice 2011–54, the Federal Reserve Board proposes to make a minor revision to the Form MSD–4 to add the Limited Representative—Investment Company and Variable Contracts Products as a new type of qualification. The Federal Reserve Board also proposes to require electronic submission of both the Form MSD–4 and Form MSD–5 to a secure Federal Reserve Board email address. The total annual reporting burden for these reporting forms is estimated to be 33 hours. A draft copy of the revised Form MSD–4 and Form MSD–5 reporting forms and instructions are attached.

*Current Actions:* On February 19, 2016 the Federal Reserve published a notice in the **Federal Register** (81 FR 8494) requesting public comment for 60 days on the extension, with revision, of the Form MSD–4 and Form MSD–5. The comment period for this notice expired on April 19, 2016. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, May 2, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2016–10558 Filed 5–4–16; 8:45 am]

**BILLING CODE 6210–01–P**

[11] Currently, the instructions to Form MSD–4 and to Form MSD–5 do not explicitly state that a savings and loan holding company (''SLHC'') or a bank holding company (''BHC'') is required to file these forms with the Board. These instructions will be amended to make this requirement explicit, and the forms will be revised to include a Privacy Act notice.

[12] Although Section 3(a)(34) of the Act, 15 U.S.C. 78c(a)(34), does not specify the ARA for municipal securities dealer activities of foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by a foreign bank, or Edge Act corporations (collectively referred to as foreign dealer banks), the Division of Market Regulation of the SEC has agreed that the Federal Reserve should examine the municipal securities dealer activities of foreign dealer banks. *See* Letter from Catherine McGuire, Chief Counsel, SEC's Division of Market Regulation, to Laura M. Homer, Assistant Director, Federal Reserve Board's Division of Banking Supervision and Regulation, June 14, 1994.

[13] In 2008, the Board updated all of the Board's existing systems of records, including the system of records for Forms MSD–4 and MSD–5 (BGFRS–17). *See* 73 FR 24,984, 24,999 (May 6, 2008).

[14] At this time, there are no SLHCs or foreign dealer banks that are registered as municipal securities dealers.

[15] See *http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2014-13.ashx?n=1.*

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–16–1050]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB 0920–1050, exp. 2/28/2018)—Revision—Centers for Disease Control and Prevention (CDC).

As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the CDC has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.).

To request additional information, please contact Leroy A. Richardson, Reports Clearance Officer, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

This is a revision to a previously approved collection of information. Respondents will be screened and selected from Individuals and Households, Businesses, Organizations, and/or State, Local or Tribal Government. This revision adds respondents and burden hours to the previous approval to allow for additional data collections. Below are projected annualized estimates for the next three years. There is no cost to respondents other than their time. The estimated annualized burden hours for this data collection activity are 20,250.

| Type of collection | Average number of respondents per activity | Annual frequency per response | Average number of activities | Average hours per response |
|---|---|---|---|---|
| In person surveys, Online surveys, Telephone Surveys | 7,000 | 1 | 1 | 30/60 |
| Focus groups | 800 | 1 | 1 | 2 |
| Customer comment cards, interactive voice surveys | 61,000 | 1 | 1 | 15/60 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2016–10534 Filed 5–4–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–16–0976; Docket No. CDC–2016–0042]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, 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. This notice invites comment on the Million Hearts® Hypertension Control Challenge, program designed to identify clinical practices and health systems that have been successful in achieving high rates of hypertension control and to develop models for dissemination.

**DATES:** Written comments must be received on or before July 5, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2016–0042 by any of the following methods:

*Federal eRulemaking Portal:* Regulation.gov. Follow the instructions for submitting comments.

*Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

*Please note: All public comment should be submitted through the Federal eRulemaking portal* (Regulations.gov) *or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

*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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

### Proposed Project

Million Hearts® Hypertension Control Challenge (OMB No. 0920–0976, exp. 7/31/2016)—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Cardiovascular disease is a leading cause of death for men and women in the United States, among the most costly health problems facing our nation today, and among the most preventable. Heart disease and stroke also contribute significantly to disability. High blood pressure, also known as hypertension, is one of the leading causes of heart disease and stroke. Currently, about 75 million American adults have high blood pressure but only about half (54%) have adequately controlled blood pressure. The costs of hypertension are estimated at $48.6 billion annually, including the cost of direct medical expenses and the cost of lost productivity.

In September 2011, CDC launched the Million Hearts® initiative to prevent one million heart attacks and strokes by 2017. In order to achieve this goal, at least 10 million more Americans must have their blood pressure under control. Million Hearts® is working to reach this goal through the promotion of clinical practices that are effective in increasing blood pressure control among patient populations. There is scientific evidence that provides general guidance on the types of system-based changes to clinical practice that can improve patient blood pressure control, but more information is needed to fully understand implementation practices so that they can be shared and promoted.

In 2013, CDC launched the Million Hearts® Hypertension Control Challenge, authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act). The Challenge is designed to help CDC (1) identify clinical practices and health systems that have been successful in achieving high rates of hypertension control, and (2) develop models for dissemination. The Challenge is open to single practice providers, group practice providers, and healthcare systems. Providers whose hypertensive population achieves exemplary levels of hypertension control are recognized as Million Hearts® Hypertension Control Champions.

In 2013, 2014, and 2015, CDC collected information needed to assess candidates for recognition through the Million Hearts® Hypertension Control Challenge. First, interested providers or practices completed a web-based nomination form which collected the minimum amount of data needed to

provide evidence of clinical success in achieving hypertension control, including: (a) Two point-in-time measures of the clinical hypertension control rate for the patient population, (b) the size of the clinic population served, (c) a description of the patient population served and geographic location, and (d) a description of the sustainable systems and strategies adopted to achieve and maintain hypertension control rates. The estimated burden for completing the nomination form was 30 minutes. CDC scientists or contractors reviewed each nomination form and assigned a preliminary score.

In the second phase of assessment, nominees with the highest preliminary scores were asked to participate in a one-hour data verification process. The nominee reviewed the nomination form with a reviewer or abstractor, described how information was obtained from the providers' (or practices') electronic records, chart reviews, or other sources, and reviewed the methodology used to calculate the reported hypertension control rate. Data verification was conducted to ensure that all nominees met eligibility criteria and calculated their reported hypertension control rate according to a standardized method.

In the third phase of the assessment, each remaining finalist participated in a two-hour, semi-structured interview and provided detailed information about the patient population served, the geographic region served, and the strategies employed by the practice or health system to achieve exemplary rates of hypertension control, including barriers and facilitators for those strategies. Based on the information collected for Challenges in 2013 and 2014, CDC recognized a total of 39 public and private health care practices and systems as Million Hearts® Hypertension Control Champions. The Champions were announced in 2014 and 2015, approximately six months after each Challenge was launched. Information collection has been completed for the 2015 Challenge, but Champions have not yet been announced (as of April 27, 2016). The Challenge was not conducted in 2016. The current OMB approval for information collection expires July 31, 2016.

CDC plans to reinstate the Million Hearts® Hypertension Control Challenge, with changes, for 2017, 2018, and 2019. Challenges were previously launched in late summer/early fall. The 2017 Challenge will launch in February 2017, coinciding with American Heart Month. The nomination period will be open for approximately 60 days, with recognition of the 2017 Champions in the fall of 2017. A similar calendar year schedule is planned for 2018 and 2019. Additional changes for 2017, 2018, and 2019 include minor changes to the nomination and data verification forms to improve usability and data quality; elimination of the cash prize for Champions; and changes in the estimated number of respondents. During the period of this Reinstatement request, on an annual basis, CDC estimates that information will be collected from up to 500 nominees using the nomination form, at most 40 data verifications, and at most 40 semi-structured interviews. There is an overall reduction in estimated annualized burden hours.

The overall goal of the Million Hearts® initiative is to prevent one million heart attacks and strokes, and controlling hypertension is one focus of the initiative. CDC will use the information collected through the Million Hearts® Hypertension Control Challenge to increase widespread attention to hypertension at the clinical practice level, improve understanding of successful and sustainable implementation strategies at the practice or health system level, bring visibility to organizations that invest in hypertension control, and motivate individual practices to strengthen their hypertension control efforts. Information collected through the Million Hearts® Hypertension Control Challenge will link success in clinical outcomes of hypertension control with information about procedures that can be used to achieve similar favorable outcomes so that the strategies can be replicated by other providers and health care systems.

OMB approval is requested for three years. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|---|
| Physicians (Single or Group Practices) | Million Hearts® Hypertension Control Champion Nomination form. | 500 | 1 | .5 | 250 |
| Finalists | Data Verification Form | 40 | 1 | 1 | 40 |
| Selected Champion | Semi-structured Interview | 40 | 1 | 2 | 80 |
| Total | | | | | 370 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2016–10507 Filed 5–4–16; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration for Native Americans; Notice of Meeting

**AGENCY:** Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Notice of Tribal Consultation.

**SUMMARY:** The Department of Health and Human Services (Department), Administration for Children and Families (ACF), will host a Tribal Consultation to consult on ACF programs and tribal priorities.

**DATES:** June 15, 2016.

**ADDRESSES:** 330 C Street SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Lillian A. Sparks Robinson, Commissioner, Administration for Native Americans, at 202–401–5590, by email at *Lillian.sparks@acf.hhs.gov* or by mail at 330 C Street SW., Mail Stop 4126, Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:** On November 5, 2009, President Obama signed the ''Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation.'' The President stated that his Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications, including, as an initial step, through complete and consistent implementation of Executive Order 13175.

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

The Department has taken its responsibility to comply with Executive Order 13175 very seriously over the past decade; including the initial implementation of a Department-wide policy on tribal consultation and coordination in 1997, and through multiple evaluations and revisions of that policy, most recently in 2010. ACF has developed its own agency-specific consultation policy that complements the Department-wide efforts.

The ACF Tribal Consultation Session will begin the morning of June 15, 2016, at the Residence Inn Marriot, Capitol Hill, 333 E Street SW., Washington, DC.

ACF is soliciting input and dialogue on the following priority areas that will institutionalize ACF's impact on Native American Communities:

- Native Youth and Children Agenda
- Complex Trauma
- Principles for Working with Tribal Governments

The Native Youth and Children Agenda is a document reflecting a structure for innovative policymaking to guide stronger and more effective programming that can provide Native American parents, Native American caregivers, Native American leadership, and Native American children and youth with the tools they need to thrive. ACF's Native American Youth and Children Policy Agenda will stand as the policy standard for fostering connections of Native American children and youth to the relationships they have with their cultures, languages, extended families, and Native communities that foster resiliency and positive outcomes.

ACF's Commissioner of the Administration for Native Americans, in her role as the Chair of the Intra-Departmental Council on Native American Affairs, has been leading efforts with the Department's Office of Intergovernmental and External Affairs to coordinate a Department-wide workgroup of staff from across the Department's Operating and Staff Divisions to develop a strengths-based framework for the Department's work to address trauma, including historical trauma, in Native American communities. This work is in response to a Congressional request for an integrated and comprehensive Department-wide policy addressing complex trauma affecting Native American children and communities.

ACF's Administration for Native Americans and Administration for Children, Youth, and Families have worked together to draft ''Principles for Working with Federally Recognized Indian Tribes'' designed to extend and complement ACF's Tribal Consultation Policy and to articulate ACF's commitment to promote and sustain strong government-to-government relationships, foster Indian self-determination, and protect tribal sovereignty.

Testimonies are to be submitted no later than June 8, 2016, to: Lillian Sparks Robinson, Commissioner, Administration for Native Americans, 330 C Street SW., Mail Stop 4126, Washington, DC 20201, *anacommissioner@acf.hhs.gov*.

Registration for the consultation can be completed at the following: *https://www.regonline.com/acfhrsaconsultation2016,* using passcode ACFHRSAConsultation. From the registration link you will find the tribal consultation draft agenda and information about hotels in and around the meeting site.

Dated: April 28, 2016.

**Mark H. Greenberg,**

*Acting Assistant Secretary for Children and Families.*

[FR Doc. 2016–10525 Filed 5–4–16; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Projects:*

*Title:* Performance Progress Reports for Administration for Children and Families.

*OMB No.:* 0970—New.

*Description:* This notice is to solicit comment on the proposed generic information collection request that will be used for Administration for Children and Families to collect performance and progress information from grantees. The narratives and data will be used to determine if grantees are proceeding in a satisfactory manner in meeting the approved goals and objectives of the project, and if funding should be continue for another budget period.

These reports will be in compliance with the Department of Health and Human Service regulations at 45 CFR 75.342, Monitoring and reporting program performance.

*Respondents:* State and nonprofit grantees.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Program Performance Progress Reports | 2,000 | 1 | 1 | 2,000 |

Estimated Total Annual Burden Hours:

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2016–10510 Filed 5–4–16; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Projects:* Domestic Victims of Human Trafficking (DVHT) Program.

*Title:* Program Progress Report (PPR).

*OMB No:*

*Description:* The Family and Youth Services Bureau (FYSB) in collaboration with the Office on Trafficking in Persons (OTIP) will award approximately 12 cooperative agreements to implement the Domestic Victims of Human Trafficking (DVHT) Program. The DVHT Program is focused on providing comprehensive case management services to domestic victims of severe forms of trafficking to ensure the provision of services with an emphasis on long-term housing, substance abuse treatment, and the integration of survivor-led services.

The intent of this program is to build, expand, and sustain organizational and community capacity to deliver trauma-informed, strength-based, and victim-centered services for domestic victims of human trafficking through coordinated case management, a system of agency services, and community partnerships. The DVHT Program encourages innovative practices and collaboration efforts among community stakeholders to ensure long-term outcomes for domestic victims of severe forms of trafficking.

The Program Progress Report (PPR) aims to measure the progress of the DVHT programs. Grantees are not required to conduct surveys. They will be collecting non-identical information on specific elements as part of their program requirements. The PPR data is intended to be used only to learn about: a) program implementation, b) effectiveness of programs, and c) to ensure programs are meeting goals/objectives as required by funding opportunity announcement. The PPR will be submitted by grantees every 6 months.

*Respondents:* 12 grantees.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| PPR | 12 | 2 | 1 | 24 |

Estimated Total Annual Burden Hours:

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. *Email address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2016–10509 Filed 5–4–16; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0065]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Agency's regulations that require registration for domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

**DATES:** Submit either electronic or written comments on the collection of information by July 5, 2016.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2013–N–0065 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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

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

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

**Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.230 to 1.235 OMB Control Number 0910–0502—Extension**

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) added section 415 to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350d), which requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA. Sections 1.230 to 1.235 of FDA's regulations (21 CFR 1.230 to 1.235) set forth the procedures for registration of food facilities. Information provided to FDA under these regulations helps the agency to notify quickly the facilities that might be affected by a deliberate or accidental contamination of the food supply. In addition, data collected through registration is used to support FDA enforcement activities and to screen imported food shipments. Advance notice of imported food allows FDA, with the support of the Bureau of Customs and Border Protection, to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies. If a facility is not registered or the registration for a facility is not updated when necessary, FDA may not be able to contact the facility and may not be able to target import inspections effectively in case of a known or potential threat to the food supply or other food-related emergency, putting consumers at risk of consuming hazardous food products that could cause serious adverse health consequences or death.

FDA's regulations require that each facility that manufactures, processes, packs, or holds food for human or animal consumption in the United States register with FDA using Form FDA 3537 (§ 1.231), unless exempt under 21 CFR 1.226 from the requirement to register. The term ''Form FDA 3537'' refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov.* Domestic facilities are required to register whether or not food from the facility enters interstate commerce. Foreign facilities that manufacture/process, pack, or hold food also are required to register unless food from that facility undergoes further processing (including packaging) by another foreign facility outside the United States. However, if the further manufacturing/processing conducted by the subsequent facility consists of adding labeling or any similar activity of a de minimis nature, the former facility is required to register.

Information FDA requires on the registration form includes the name and full address of the facility; emergency contact information; all trade names the facility uses; applicable food product categories; and a certification statement that includes the name of the individual authorized to submit the registration form. Additionally, facilities are encouraged to submit their preferred mailing address; type of activity conducted at the facility; type of storage, if the facility is primarily a holding facility; and approximate dates of operation if the facility's business is seasonal.

In addition to registering, a facility is required to submit timely updates within 60 days of a change to any required information on its registration form, using Form FDA 3537 (§ 1.234), and to cancel its registration when the facility ceases to operate or is sold to new owners or ceases to manufacture/process, pack, or hold food for consumption in the United States, using Form FDA 3537a (§ 1.235).

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) amended section 415 of the FD&C Act in relevant part to require registrants for food facilities to submit additional registration information to FDA, and to require facilities required to register with FDA to renew such registrations biennially. Section 415(a)(2) of the FD&C Act, as amended by FSMA, also provides that, when determined necessary by FDA ''through guidance,'' a food facility is required to submit to FDA information about the general food category of a food manufactured, processed, packed or held at such facility, as determined appropriate by FDA, including by guidance. The modified food facility registration forms includes the following mandatory fields: (1) The email address for the contact person of a domestic facility and the email address of the United States agent for a foreign facility; (2) an assurance that FDA will be permitted to inspect the facility; and (3) specific food categories as identified in the guidance document entitled, ''Guidance for Industry: Necessity of the Use of Food Product Categories in Food Facility Registrations and Updates to Food Product Categories'' (section 415(a)(2) of the FD&C Act 21 U.S.C. 350d(a)(2)).

Food Facility Registration, in conjunction with advance notice of imported food, helps FDA act quickly in responding to a threatened or actual bioterrorist attack on the U.S. food supply or to other food-related emergencies. Food Facility Registration provides FDA with information about facilities that manufacture/process, pack, or hold food for consumption in the United States. In the event of an outbreak of foodborne illness, such information helps FDA and other authorities determine the source and cause of the event. In addition, the registration information enables FDA to notify more quickly the facilities that might be affected by the outbreak. See Interim Final Rule entitled, ''Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002'' (68 FR 58894, at 58895; October 10, 2003).

Implementation of the FSMA requirements described previously helps enable FDA to quickly identify and remove from commerce an article of food for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. FDA uses the information collected under these provisions to help ensure that such food products are quickly and efficiently removed from the market.

*Description of Respondents:* Respondents to this collection of information are owners, operators, or agents in charge of domestic or foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section and/or section of FD&C Act | FDA form number | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| **New Facilities** | | | | | | |
| *Domestic* | | | | | | |
| §§ 1.230 to 1.233 and section 415 of the FD&C Act. | FDA 3537 [2] | 11,080 | 1 | 11,080 | 2.7 | 29,916 |
| *Foreign* | | | | | | |
| §§ 1.230 to 1.233 and section 415 of the FD&C Act. | FDA 3537 | 19,900 | 1 | 19,900 | 8.9 | 177,110 |
| New Facility Registration Subtotal | | | | | | 207,026 |
| **Previously Registered Facilities** | | | | | | |
| Updates under § 1.234 and section 415 of the FD&C Act. | FDA 3537 | 118,530 | 1 | 118,530 | 1.2 | 142,236 |
| Cancellations under § 1.235 | FDA 3537a | 6,390 | 1 | 6,390 | 1 | 6,390 |
| Biennial renewal of registration required by section 415 of the FD&C Act. | FDA 3537 | 104,786 | 1 | 104,786 | 0.50 (30 mins.) | 52,393 |
| Updates, Cancellations, or Biennial Renewals Subtotal. | | | | | | 201,019 |
| Total Hours Annually | | | | | | 408,045 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The term ''Form FDA 3537'' refers to both the paper version of the form and the electronic system known as the Food Facility Registration Module, which is available at *http://www.access.fda.gov.*

This estimate is based on FDA's experience and the average number of new facility registrations, updates and cancellations received in the past 3 years. Based on this experience, we estimate the annual number of new domestic facility registrations will be 11,080. We estimate that listing the information required by the Bioterrorism Act and presenting it in a format that will meet the Agency's registration regulations will require a burden of approximately 2.5 hours per average domestic facility registration. We estimate that the FSMA-required additional information for new facility registrations will require an additional 12 minutes (0.2 hour) per response for domestic facilities. The average domestic facility burden hour estimate of 2.7 hours takes into account that some respondents completing the registration may not have readily available Internet access. Thus, the total annual burden for new domestic facility registrations is calculated to be 29,916 hours (11,080 × 2.7 hours).

Based on FDA's experience, we estimate the annual number of new foreign facility registrations will be 19,900. We estimate that listing the information required by the Bioterrorism Act and presenting it in a format that will meet the Agency's registration regulations will require a burden of approximately 8.5 hours per average foreign facility registration. We estimate that the FSMA-required additional information for new facility registrations will require an additional 24 minutes (0.4 hour) per response for foreign facilities. The average foreign facility burden hour estimate of 8.9 hours includes an estimate of the additional burden on a foreign facility to obtain a U.S. agent, and takes into account that for some foreign facilities the respondent completing the registration may not be fluent in English and/or not have readily available Internet access. Thus, the total annual burden for new foreign facility registrations is calculated to be 177,110 hours (19,900 × 8.9 hours).

Based on FDA's experience, we estimate that the average annual number of updates to facility registrations will remain unchanged at 118,530 updates annually over the next 3 years. We also estimate that updating a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. We estimate that the FSMA-required additional information for updates will require an additional 12 minutes (0.2 hour) per response. Thus, the total annual burden of submitting updates to facility registrations is calculated to be 142,236 hours (118,530 × 1.2 hours).

Based on FDA's experience, we estimate that the average annual number of cancellations of facility registrations will remain unchanged at 6,390 cancellations annually over the next 3 years. We also estimate that cancelling a registration will, on average, require a burden of approximately 1 hour, taking into account fluency in English and Internet access. FSMA did not change the required information for cancellations. Thus, the total annual burden for cancelling registrations is estimated to be 6,390 hours.

We estimate that the new biennial registration required by FSMA, which will require the submission of certain new data elements and the verification and possible updating of other information rather than re-entering all information, will require 30 minutes (0.5 hour) per response, including time for the new FSMA-required information. We estimate that, on an annualized basis, the number of biennial registrations submitted over the next 3 years will be 104,786. This estimate is based on the number of currently registered firms (209,573) divided by two. Thus, the total annual burden for biennial registration is calculated to be 52,393 hours (104,786 × 0.5 hours).

Dated: May 2, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–10559 Filed 5–4–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Ryan White HIV/AIDS Program Resource and Technical Assistance Center for HIV Prevention and Care for Black MSM

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of deviation from competition requirements for Ryan White HIV/AIDS Program (RWHAP) Resource and Technical Assistance Center for HIV Prevention and Care for Black men who have sex with men (MSM) (Grant#U69HA27173).

**SUMMARY:** The HIV/AIDS Bureau (HAB) is requesting a deviation from the competition requirements in order to provide a 1 year extension with funds to the Resource and Technical Assistance Center for HIV Prevention and Care for Black MSM cooperative agreement recipient, the National Alliance of State and Territorial AIDS Directors. The purpose of the program is to develop a Resource and Technical Assistance Center for HIV prevention and care of models and interventions that increase the capacity, quality, and effectiveness of HIV/AIDS service providers to screen, diagnose, link, and retain, the adult and young Black MSM community in HIV clinical care. The 2-year project period ends June 30, 2016. The extension through June 30, 2017, for this project provides necessary funding and time to complete previously approved project activities, an orderly phase out, and transition to the next stage of evaluation for the models of HIV clinical care and best practices needed for HIV viral suppression. The next stage of planning by HAB is to use the models, tools, and best practices developed for improved health outcomes by this recipient for fiscal year 2017 competitive funding under the HAB Special Projects of National Significance Program.

**FOR FURTHER INFORMATION CONTACT:** Antigone Dempsey, Director, Division of Policy and Data, HRSA/HAB/DPD, 5600 Fishers Lane, Rockville, MD 20857, email: *adempsey@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:**

Period of Performance: July 1, 2016, to June 30, 2017.

Intended Recipient of the Award: National Alliance of State and Territorial AIDS Directors.

Amount of Non-Competitive Award: $900,000.

CFDA Number: 93.145.

**Authority:** Sections 2606, 2654, 2671, and 2692 of Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. 111–87)

Justification: The National Alliance of State and Territorial AIDS Directors has been very successful at collecting, developing, and analyzing clinical models of care and best practices for HIV care and treatment. Additional time is needed to complete analyses and disseminate them across the country to grant recipients, health centers, and HIV stakeholder communities. This funding reflects the amount needed to complete the final phase of program activities, which is the dissemination of models and best practices for HIV treatment and care through Ryan White Part C and D grant recipients, AIDS Education and Training Centers, and HRSA Bureau of Primary Health Care Health Centers to improve engagement of and retention in care for young Black MSM, one of the highest risk populations identified in the National HIV/AIDS Strategy for HIV transmission. The aim and purpose of dissemination of these interventions is to increase the capacity, quality, and effectiveness of HIV/AIDS service providers to screen, diagnose, link, and retain the adult and young Black MSM community in HIV clinical care.

Dated: April 29, 2016.

**James Macrae,**

*Acting Administrator.*

[FR Doc. 2016–10533 Filed 5–4–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Recruitment of Sites for Assignment of Corps Personnel Obligated Under the National Health Service Corps Scholarship Program

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** General notice.

**SUMMARY:** HRSA announces that the listing of entities, and associated Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) scholarship recipients available for service during the period October 1, 2016, through September 30, 2017, is posted on the NHSC Jobs Center Web site at *http://nhscjobs.hrsa.gov.* The NHSC Jobs Center includes sites that are approved for performance of service by NHSC scholars; however, note that entities on this list may or may not have current job vacancies.

**Eligible HPSAs and Entities**

To be eligible to receive assignment of Corps members, entities must: (1) Have a current HPSA status of ''designated'' by the Division of Policy and Shortage Designation, Bureau of Health Workforce, HRSA, as of January 1, 2016, for placements October 1, 2016, through December 31, 2016, or as of January 1, 2017, for placements January 1, 2017, through September 30, 2017; (2) not deny requested health care services or discriminate in the provision of services to an individual because the individual is unable to pay for the services, because payment for the services would be made under Medicare, Medicaid, or the Children's Health Insurance Program (CHIP), or based upon the individual's race, color, sex, national origin, disability, religion, age, or sexual orientation; (3) enter into an agreement with the state agency that administers Medicaid and CHIP, accept assignment under Medicare, see all patients regardless of their ability to pay and post such policy, and use and post a discounted fee plan; and (4) be determined by the Secretary to have (a) a need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit health professionals; (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there; and (f) demonstrated a willingness to support and facilitate mentorship, professional development, and training opportunities for Corps members.

Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary medical care, mental health, and/or oral health services that matches the discipline to a primary medical care, mental health, or dental HPSA of greatest shortage, respectively; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals (*e.g.,* ancillary, inpatient, and specialty referrals) or arrangements for

secondary and tertiary care; (3) have a documented record of sound fiscal management; (4) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity, and (5) are a nonprofit or public entity to which Corps members may be assigned. Sites that provide specialized care, or a limited set of services, will receive greater scrutiny and may not receive approval as NHSC service sites. This may include clinics that focus on one disease or disorder or offer limited services, such as a clinic that only provides immunizations or a substance abuse clinic.

Entities at which NHSC scholars are performing their service obligations must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the state and site; and (2) the NHSC scholar assigned to the entity is engaged in the requisite amount of clinical practice, as defined below, to meet his or her service obligation:

*Full-Time Clinical Practice*

''Full-time clinical practice'' is defined as a minimum of 40 hours per week for at least 45 weeks per service year. The 40 hours per week may be compressed into no less than 4 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the full-time service obligation, except to the extent the provider is directly treating patients during that period.

For all health professionals, except as noted below, at least 32 of the minimum 40 hours per week must be spent providing patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 8 hours per week must be spent providing patient care for patients at the approved practice site(s), providing patient care in alternative settings as directed by the approved practice site(s), or performing clinical-related administrative activities.

Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-funded Teaching Health Center (see Section 340H of the Public Health Service Act, 42 U.S.C. Section 256h). Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

For obstetrician/gynecologists, certified nurse midwives, family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, and pediatric dentists, at least 21 of the minimum 40 hours per week must be spent providing patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 19 hours per week must be spent providing patient care for patients at the approved practice site(s), providing patient care in alternative settings as directed by the approved practice site(s), or performing clinical-related administrative activities. Of the remaining 19 hours per week, no more than 8 hours can be spent performing clinical-related administrative activities. Teaching activities at the approved service site shall not exceed 8 of the minimum 21 hours per week providing patient care, unless the teaching takes place in a HRSA-funded Teaching Health Center, as noted above.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a Critical Access Hospital (CAH) that is certified by the Centers for Medicare and Medicaid Services (CMS) as a CAH under section 1820 of the Social Security Act, the full-time service requirements are as follows: At least 16 of the minimum 40 hours per week must be spent providing patient care in the CAH-affiliated outpatient ambulatory care setting(s) specified in the NHSC's Customer Service Portal, during normally scheduled office hours. The remaining 24 hours of the minimum 40 hours per week must be spent providing patient care for patients at the CAH(s) or the CAH-affiliated outpatient ambulatory care setting specified in the Customer Service Portal, providing patient care in the CAH's skilled nursing facility or swing bed unit, or performing clinical-related administrative activities. Of the remaining 24 hours per week, no more than 8 hours can be spent on clinical-related administrative activities. Teaching activities at the approved service site(s) shall not exceed 8 of the minimum 16 hours per week providing patient care, unless the teaching takes place in a HRSA-funded Teaching Health Center (see Section 340H of the Public Health Service Act, 42 U.S.C Section 256h). Teaching activities in a HRSA-funded Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

*Half-Time Clinical Practice*

''Half-time clinical practice'' is defined as a minimum of 20 hours per week (not to exceed 39 hours per week), for at least 45 weeks per service year. The 20 hours per week may be compressed into no less than 2 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the half-time service obligation, except to the extent the provider is directly treating patients during that period.

For all health professionals, except as noted below, at least 16 of the minimum 20 hours per week must be spent providing patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 4 hours per week must be spent providing patient care for patients at the approved practice site(s), providing patient care in alternative settings as directed by the approved practice site(s), or performing clinical-related administrative activities. Teaching and clinical-related administrative activities shall not exceed a total of 4 hours of the minimum 20 hours per week.

For obstetrician/gynecologists, certified nurse midwives, family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, and pediatric dentists, at least 11 of the minimum 20 hours per week must be spent providing patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 9 hours per week must be spent providing patient care for patients at the approved practice site(s), providing patient care in alternative settings as directed by the approved practice site(s), or performing clinical-related administrative activities. Teaching and clinical-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

For physicians (including psychiatrists), physician assistants, nurse practitioners (including those specializing in psychiatry or mental health), and certified nurse midwives serving in a Critical Access Hospital (CAH), the half-time service requirements are as follows: At least 8 of the minimum 20 hours per week must be spent providing patient care in the CAH-affiliated outpatient ambulatory care setting(s) specified in the Customer Service Portal, during normally scheduled office hours. The remaining 12 hours of the minimum 20 hours per week must be spent providing patient care for patients at the CAH(s) or the CAH-affiliated outpatient

ambulatory care setting specified in the Practice Agreement, providing patient care in the CAH's skilled nursing facility or swing bed unit, or performing clinical-related administrative activities. Teaching and clinical-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week. Half-time clinical practice is not an option for scholars serving their obligation through the Private Practice Option.

In addition to utilizing NHSC scholars in accordance with their full-time or half-time service obligation (as defined above), NHSC service sites are expected to (1) report to the NHSC all absences through clinician in-service verifications every six months, including those in excess of the authorized number of days (up to 35 full-time days per service year in the case of full-time service and up to 35 half-time days per service year in the case of half-time service); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC scholars (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit the NHSC Site Data Tables, which replace the former Uniform Data System (UDS)/Site Survey reporting tool. The NHSC collects the Site Data Tables from sites at the time of application, recertification, and NHSC site visits. Providers fulfilling NHSC commitments are approved to serve at a specific site or, in some cases, more than one site.

**Evaluation and Selection Process**

In order for a site to be eligible for placement of NHSC scholars, it must be approved by the NHSC following the site's submission of a Site Application. Processing of site applications from solo or group practices will involve additional screening, including a site visit by NHSC representatives. The Site Application approval is good for a period of 3 years from the date of approval.

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services in a HPSA with the greatest shortage. For the program year October 1, 2016, through September 30, 2017, HPSAs of greatest shortage for determination of priority for assignment of NHSC scholarship-obligated Corps personnel will be defined as follows: (1) Primary medical care HPSAs with scores of 17 and above are authorized for the assignment of NHSC scholars who are primary care physicians, family nurse practitioners, physician assistants or certified nurse midwives; (2) mental health HPSAs with scores of 17 and above are authorized for the assignment of NHSC scholars who are psychiatrists or mental health nurse practitioners; and (3) dental HPSAs with scores of 17 and above are authorized for the assignment of NHSC scholars who are dentists. The NHSC has determined that a minimum HPSA score of 17 for all service-ready NHSC scholars will enable it to meet its statutory obligation to identify a number of entities eligible for NHSC scholar placement that is at least equal to, but not greater than, twice the number of NHSC scholars available to serve in the 2016–2017 placement cycle.

The number of new NHSC placements through the Scholarship Program allowed at any one site is limited to one (1) of the following provider types: Physician (MD/DO), nurse practitioner, physician assistant, certified nurse midwife, or dentist. The NHSC will consider requests for up to two (2) scholar placements at any one site on a case-by-case basis. Factors that are taken into consideration include community need, as measured by demand for services, patient outcomes and other similar factors. Sites wishing to request an additional scholar must complete an Additional Scholar Request form available at *http://nhsc.hrsa.gov/downloads/additionalrequestform.pdf.*

NHSC-approved sites that do not meet the authorized threshold HPSA score of 17 may post job openings on the NHSC Jobs Center; however, scholars seeking placement between October 1, 2016, and September 30, 2017, will be advised that they can only compete for open positions at sites that meet the threshold placement HPSA score of 17. While not eligible for scholar placements in the 2016–2017 cycle, vacancies in HPSAs scoring less than 17 will be used by the NHSC in evaluating the HPSA threshold score for the next scholarship placement cycle.

**Application Requests, Dates and Address**

The list of HPSAs and entities that are eligible to receive priority for the placement of NHSC scholars may be updated periodically. New entities may be added to the NHSC Jobs Center during a Site Application competition. Likewise, entities that no longer meet eligibility criteria, including those sites whose 3-year approval as an NHSC service site has lapsed or whose HPSA designation has been withdrawn or proposed for withdrawal, will be removed from the priority listing.

**Additional Information**

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of entities that would receive priority in assignment of NHSC Scholars, or in support of a higher priority determination, must do so in writing no later than June 6, 2016. This information should be submitted to: Beth Dillon, Director, Division of Regional Operations, Bureau of Health Workforce, 1961 Stout Street, Denver, Colorado 80294. This information will be considered in preparing the final list of entities that are receiving priority for the assignment of scholarship-obligated Corps personnel.

The program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 28, 2016.

**James Macrae,**

*Acting Administrator.*

[FR Doc. 2016–10527 Filed 5–4–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Providing Support for the Collaborative Improvement and Innovation Network (CoIIN) To Reduce Infant Mortality

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of a single-award deviation from competition requirements for providing support for the Collaborative Improvement and Innovation Network (CoIIN) to Reduce Infant Mortality.

**SUMMARY:** HRSA announces the award of an extension in the amount of $3,000,000 for the Providing Support for the Collaborative Improvement and Innovation Network (CoIIN) to Reduce Infant Mortality cooperative agreement. The purpose of the CoIIN is to develop and disseminate evidence-based interventions to reduce infant mortality across states in Regions I, II, III, VII, VIII, IX, and X by planning, implementing, and managing regional CoIINs; providing technical assistance to CoIIN teams to improve approaches to address infant mortality in their respective regions through the understanding of

quality improvement concepts, tools, and techniques; and assisting regional CoIIN participants and stakeholders in understanding the process for sustaining and continuing project strategies after the Federal period of support. The extension will permit the National Institute for Children's Health Quality, Inc. (NICHQ), the cooperative agreement awardee, during the budget period of 9/30/2016–9/29/2017, to complete activities.

**SUPPLEMENTARY INFORMATION:**

*Intended Recipient of the Award:* National Institute for Children's Health Quality, Inc.

*Amount of Non-Competitive Awards:* $3,000,000.

*Period of Supplemental Funding:* 9/30/2016–9/29/2017.

*CFDA Number:* 93.110.

**Authority:** Special Projects of Regional and National Significance (SPRANS); Social Security Act, Title V, § 501(a)(2–3); 42 U.S.C. 701 (a)(2–3).

*Justification:* The National Institute for Children's Health Quality, Inc. (NICHQ), as part of the cooperative agreement, oriented and trained CoIIN participants on quality improvement processes and related principles and practices; planned and conducted regularly scheduled learning sessions and monthly action period calls for each strategy team; provided technical assistance to state strategy teams on how to track progress of chosen quality improvement aims through the use of real-time data; and provided an internet-based collaborative workspace for monthly/quarterly/annual reporting of qualitative and quantitative topic-specific and common measures of progress. In project year 2, NICHQ received approval to add Regions IV, V, and VI to the scope of work. As such, NICHQ has developed a CoIIN to reduce infant mortality that includes all 59 states and jurisdictions and focuses on six common state-driven strategies (safe sleep, smoking cessation, preconception and interconception care, perinatal regionalization, prevention of pre/early term birth, and social determinants of health). NICHQ provides ongoing technical assistance to these six strategy teams dedicated to improving infant mortality by focusing on the strategy topics and to state personnel to implement CoIIN strategies. NICHQ has used the Institute for Healthcare Improvement's (IHI) Breakthrough Series Model for Improvement where strategy teams commit to working over a period of 12–18 months, alternating between learning sessions and action periods. During the entire collaborative cycle, teams are connected through a virtual, on-line community and are expected to upload and share their results (*i.e.,* data submission/reporting) as well as encouraged to conduct peer-to-peer sharing/mentoring.

The recipient continues to make significant progress. However, the project experienced significant delays due to factors beyond the grantee's control. Startup delays included developing state personnel and systems capacity to monitor and implement activities to improve infant mortality. Also, orientation to the CoIIN methodology/approach took longer than anticipated as states and jurisdictions reported competing priorities. Further, states needed additional technical assistance and capacity building related to data collection and submission as there were several state and/or local level barriers to obtaining the data needed for activity and outcome measures which required resolution at the state level. Though some states were able to begin collecting data in August 2015, some activity and/or outcome measures are unavailable until at least 6–8 weeks after the end of the data collection period due to state policies/procedures.

MCHB found similar delays in its CoIIN pilot that concluded one year after this CoIIN cooperative agreement began. An analysis of the pilot data showed that applying the IHI method to state public health systems rather than clinical settings required an additional 6–8 months to meet the quality improvement aims and show measurable improvements in infant mortality and birth outcomes. NICHQ must continue activities beyond the original project period (9/30/2013–9/29/2016) to achieve the additional months of state action and learning sessions with accompanying data submissions.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Lee, MPH, Division of Healthy Start and Perinatal Services, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18N84, Rockville, MD 20852, Phone: (301) 443–9992, Fax: (301) 594–0878, Email: *VLee1@hrsa.gov.*

Dated: April 29, 2016.

**James Macrae,**

*Acting Administrator.*

[FR Doc. 2016–10514 Filed 5–4–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Service Administration

### Advisory Committee on Interdisciplinary, Community-Based Linkages: Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

**NAME:** Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

**DATES AND TIMES:**

May 25, 2016 (Day 1—8:30 a.m.–5:00 p.m., EST)

May 26, 2016 (Day 2—8:30 a.m.–3:00 p.m., EST)

**PLACE:** In-Person Meeting with Webinar/Conference Call Component.

**STATUS:** The meeting will be open to the public.

*Purpose:* The ACICBL provides advice and recommendations to the Secretary of the Department of Health and Human Services (Secretary) concerning policy, program development, and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 750–759, Title VII, Part D of the Public Health Service Act, as amended by the Affordable Care Act. The purpose of the ACICBL meeting is to continue discussions on the next report on enhancing community-based clinical training. The Advisory Committee focuses on the targeted program areas and/or disciplines for Area Health Education Centers, geriatrics, allied health, chiropractic, podiatric medicine, social work, graduate psychology, and rural health.

*Agenda:* The ACICBL agenda will be available 2 days prior to the meeting on the HRSA Web site at *http://www.hrsa.gov/advisorycommittees/bhpradvisory/acicbl/index.html*

**SUPPLEMENTARY INFORMATION:** Requests to make oral comments or provide written comments to the ACICBL should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number below. Individuals who plan to participate on the conference call and webinar should notify Dr. Weiss at least 3 days prior to the meeting, using the address and phone number below. Members of the public will have the opportunity to provide comments. Interested parties should refer to the meeting subject as the HRSA Advisory Committee on Interdisciplinary, Community-Based Linkages.

• The conference call-in number is 1–800–619–2521. The passcode is: 9271697.

• The webinar link is *https://hrsa.connectsolutions.com/acicbl.*

**FOR FURTHER INFORMATION CONTACT:** Anyone requesting information regarding the ACICBL should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, Parklawn Building, Room 15N39, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov.*

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2016–10550 Filed 5–4–16; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

*Date:* June 9–10, 2016.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

*Contact Person:* Alicja L. Markowska, Ph.D., DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, BethesdA, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 29, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–10458 Filed 5–4–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Aging and Technology.

*Date:* June 1, 2016.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, DSC, Ph.D., Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 29, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–10457 Filed 5–4–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review: Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section, May 26, 2016, 08:00 a.m. to May 27, 2016, 05:00 p.m., Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA, 94133 which was published in the **Federal Register** on April 27, 2016, 81 Pg. 2483.

The meeting will be held on 5/26/2016. The meeting time and location remains the same. The meeting is closed to the public.

Dated: April 29, 2016.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–10466 Filed 5–4–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel Molecular Mechanisms of Ventilator-Induced Lung Injury.

*Date:* May 27, 2016.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 29, 2016.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–10456 Filed 5–4–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

*Date:* June 7, 2016

*Open:* 8:30 a.m. to 1:15 p.m.

*Agenda:* Discussion of program policies.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Conference Room 6, Bethesda, MD 20892.

*Closed:* 1:15 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Laura K. Moen, Ph.D., Director, Division of Extramural Research Activities, NIAMS/NIH, 6700 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 29, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–10459 Filed 5–4–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.

*Date:* June 2–3, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC 20001.

*Contact Person:* Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov.*

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

*Date:* June 2–3, 2016.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–OD–15–004—Tobacco Regulatory Science Small Grant Program for New Investigators (R03).

*Date:* June 3, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Academic Research Enhancement Award.

*Date:* June 3, 2016.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov.*

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

*Date:* June 6–7, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Historic Inns of Annapolis, 58 State Circle, Annapolis, MD 21401.

*Contact Person:* Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3224, MSC 7808, Bethesda, MD 20892, (301) 435–0677, *mannl@csr.nih.gov.*

*Name of Committee:* Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section..

*Date:* June 6–7, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC, 20037.

*Contact Person:* Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

*Date:* June 6–7, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.

*Contact Person:* Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section..

*Date:* June 6–7, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Inese Z Beitins, MD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Learning, Memory, Language, Communication and Related Neurosciences.

*Date:* June 6, 2016.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Mary G Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov.*

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.

*Date:* June 6–7, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201.

*Contact Person:* Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 29, 2016.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–10465 Filed 5–4–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Announcement of National Customs Automation Program (NCAP) Test Concerning the Submission Through the Automated Commercial Environment (ACE) of Certain Import Data and Documents Required by the U.S. Fish and Wildlife Service

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces U.S. Customs and Border Protection's (CBP) plan, developed in consultation with the U.S. Fish and Wildlife Service (FWS), to conduct a National Customs Automation Program (NCAP) test concerning the electronic transmission of certain import data and documents for commodities regulated by FWS. Under this test, the data or documents will be transmitted electronically through CBP's Document Image System (DIS) or CBP's Automated Broker Interface (ABI) system using the Partner Government Agency (PGA) Message Set, for processing in CBP's Automated Commercial Environment (ACE).

**DATES:** The FWS PGA Message Set test will begin no earlier than May 1, 2016. This test will continue until concluded by way of announcement in the **Federal Register**. Public comments are invited and will be accepted through the duration of the test pilot.

**ADDRESSES:** Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, ACE Business Office (ABO), Office of International Trade, at *josephine.baiamonte@cbp.dhs.gov.* In the subject line of your email, please indicate, ''*Comment on FWS PGA Message Set Test FRN.''*

**FOR FUTHER INFORMATION CONTACT:** For PGA-related questions, contact Elizabeth McQueen at *elizabeth.mcqueen@cbp.dhs.gov.* For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov* with the subject heading ''*PGA Message Set FWS Test FRN-Request to Participate.''* For FWS-related questions, contact Tamesha Woulard, Senior Wildlife Inspector, Office of Law Enforcement (Headquarters), U.S. Fish and Wildlife Service, at *Tamesha_Woulard@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization (''Customs Modernization Act''), in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8. 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization has been on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor Electronic Data Interchange (EDI) system to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data. ACE is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. The Automated Broker Interface (ABI) is the EDI that enables members of the trade community to file electronically required import data with CBP and transfer that data to ACE.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XV, entitled, ''Development of ACE Prototypes.'' The procedures and criteria related to participation in the prior ACE test pilots remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

#### II. Authorization for the Test

The Customs Modernization Act provisions provide the Commissioner of

CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21, 60 FR 14211 (March 16, 1995).

**III. International Trade Data System (ITDS) and ACE**

This test is in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 (''SAFE Port Act'')(Sec. 405, Pub. L. 109–347, 120 Stat. 1884, Oct. 13, 2006) (19 U.S.C. 1411(d)), to achieve the vision of ACE as the ''single window'' for the U.S. government and trade community. The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the ''single window'' for the trade community to transmit electronically all required information related to the merchandise that is imported or exported and to comply with the ITDS requirement established by the SAFE Port Act. On October 13, 2015, CBP promulgated regulations providing that, as of November 1, 2015, ACE is a CBP authorized EDI system which may be used for the filing of entries and entry summaries. *See* 80 FR 61278 (October 13, 2015).

Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses,* 79 FR 10657 (February 25, 2014), requires that by December 31, 2016, ACE, as the ITDS ''single window,'' have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from most paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

**IV. Partner Government Agency (PGA) Message Set and Document Image System (DIS)**

On December 13, 2013, CBP published in the **Federal Register** a notice announcing an NCAP test called the Partner Government Agency (PGA) Message Set test. *See* 78 FR 75931 (December 13, 2013). The PGA Message Set is the data needed to satisfy the PGA reporting requirements. ACE enables the message set by acting as the ''single window'' for the electronic transmission to CBP of trade-related data required by the PGAs. After validation, the data will be made available to the relevant PGAs involved in regulating the importation of the merchandise. The data will be used to fulfill merchandise entry requirements and may allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of most paper documents.

On April 6, 2012, CBP announced the Document Image System (DIS) test (77 FR 20835) allowing any party who files an ACE entry/cargo release or ACE Entry Summary certified for cargo release to submit electronically digital copies of specified CBP and PGA forms and documents via a CBP-approved EDI (ABI). On October 15, 2015, CBP announced it would permit any DIS-eligible form or document to be submitted as an attachment to an email. *See* 80 FR 62082. As CBP frequently updates the list of forms and documents eligible to be transmitted using DIS, the complete list will be maintained on the CBP Web site, at the following address: *http://www.cbp.gov/trade/ace/features* under the DIS tab. Only eligible documents and forms required for the release of merchandise or requested by CBP should be transmitted using DIS. Forms and documents transmitted using DIS may be transmitted without a prior request from CBP or the relevant PGA. ACE will automatically acknowledge every successful DIS transmission. This automated acknowledgement of successful transmission does not mean the correct or required form or document was transmitted as it occurs prior to any review of the transmitted form or document. Any form or document submitted via DIS is an electronic copy of an original document or form and both the original and the imaged copy are subject to the recordkeeping requirements of 19 CFR part 163 and any other applicable PGA recordkeeping requirements. Every form or document transmitted through DIS must be legible and must be a complete, accurate, and unaltered copy of the original document. For more information and the rules, procedures, technical requirements and terms and conditions applicable to the DIS, please see the DIS **Federal Register** notice at 80 FR 62082 (October 15, 2015).

**V. The U.S. Fish and Wildlife Service PGA Message Set and DIS Test**

The U.S. Fish and Wildlife Service (FWS) is authorized by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*), to regulate and collect information on the importation and exportation of wildlife. Under the applicable FWS regulations, the importation of wildlife and commodities containing wildlife into the customs territory of the United States typically requires the submission of a ''Declaration for Importation or Exportation of Fish or Wildlife'' (''Declaration'') (FWS Form 3–177), as well as any required original permits or certificates and copies of any other documents required under the FWS regulations (*see* 50 CFR part 14).

This notice announces CBP's plan to conduct a test concerning the electronic transmission of the data contained in the Declaration to ACE using the PGA Message Set and the transmission of documents via DIS. FWS currently uses its own Internet-based filing system for the electronic submission of the Declaration and accompanying documents. This system is known as ''eDecs.'' Under this test, ACE will replace eDecs for those test participants filing entries under the auspices of this test. As part of the test, ACE will be used to receive the data contained in the Declaration using the PGA Message Set and DIS will be used for the accompanying documents. ACE will send the data and electronic documents to FWS for processing. Consequently, test participants must use ACE rather than eDecs to electronically transmit the data in the Declaration and any documents normally transmitted through eDecs.

This new FWS PGA Message Set and DIS capability will satisfy the FWS data and electronic document requirements for any CBP entry filed electronically in ACE, except original ''Convention on International Trade in Endangered Species of Wild Fauna and Fauna'' (''CITES'') and foreign-law paper documents, which will continue to be submitted directly to the FWS office at the applicable port. This new capability will also enable the trade community to have a CBP-managed ''single window'' for the submission of data and electronic documents required by the

FWS during the cargo importation and review process. The technical requirements for submitting FWS data elements are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for the FWS. These technical requirements, including the ACE CATAIR chapter, may be found at the following link: *http://www.cbp.gov/trade/ace/catair.*

The list of forms and documents, including FWS documents, which may be transmitted using DIS may be found at *http://www.cbp.gov/trade/ace/features* under the DIS tab. The FWS documents eligible to be transmitted using DIS include the documents associated with commodities regulated by FWS (*e.g.,* invoices, packing lists, and bills of lading); commodity specific documents (*i.e.,* health certificates, wildlife inventories, skin tag or tattoo lists, and caviar labeling information); transportation-related documents; and copies of other agency documents that are currently uploaded directly into eDecs.

For the test participants, this test will apply to all entries filed in ACE. Entries filed in ACE with the PGA Message Set must be transmitted using a software program that has completed ACE certification testing. This test will apply to all commodities and articles regulated by FWS that require a CBP entry for consumption. Test participants may not use this test for FWS-regulated commodities that do not require a CBP entry for consumption, such as goods admitted into a foreign trade zone or other areas of U.S. jurisdiction considered outside the customs territory of the United States for tariff and entry purposes; international mail; or articles in the possession of passengers arriving into the United States. Participants should continue to file directly with the FWS for such shipments of FWS-regulated commodities. This test applies to all modes of cargo transportation, and it is limited to the ports of entry where FWS-regulated commodities may be imported. A list of the ports that may be used to enter FWS-regulated commodities under this test may be found at the following link: *http://www.fws.gov/le/inspection-offices.html.* FWS port requirements still apply during this test, including the requirement for prior authorization to use a port other than a designated FWS port.

## VI. Test Participant Responsibilities

Test participants will be required to:

(1) Transmit the Declaration data electronically to ACE, when filing an entry in ACE, using the PGA Message Set data procedures, at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States;

(2) Refrain from filing the Declaration data or documents in eDecs when transmitting it to ACE;

(3) Transmit required permits or documents using DIS;

(4) Submit original CITES and foreign-law paper documents directly to the FWS office at the applicable port;

(5) Use a software program that has completed ACE certification testing for the PGA Message Set; and

(6) Take part in a CBP–FWS evaluation of this test.

## VII. Waiver of Regulation Under the Test

For purposes of this test, those provisions of 19 CFR parts 10 and 12 that are inconsistent with the terms of this test are waived for test participants only. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the ''(a)(1)(A) list''). This test also does not waive any FWS requirements under 50 CFR part 14.

## VIII. Test Participation and Selection Criteria

To be eligible to apply for this test, the applicant must:

(1) Be a self-filing importer who has the ability to file ACE entry/cargo release and ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE entry/cargo release and ACE Entry Summaries certified for cargo release;

(2) File Declarations for FWS-regulated commodities; and

(3) Have an FWS eDecs filer account that contains the CBP filer code.

Test participants must meet all the eligibility criteria described in this document in order to participate in the test program.

## IX. Application Process

Any party seeking to participate in the FWS PGA Message Set and DIS test should email its CBP Client Representative, ACE Business Office (ABO), Office of International Trade with the subject heading ''Request to Participate in the FWS PGA Message Test.'' Interested parties without an assigned client representative should submit an email message to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov* with the subject heading ''*PGA Message Set FWS Test FRN—Request to Participate.''*

Email messages sent to the CBP client representative or Steven Zaccaro must include the applicant's filer code; the commodities the applicant intends to import; and the intended ports of arrival. Client representatives will work with test participants to provide information regarding the transmission of this data.

CBP will begin to accept applications upon the date of publication of this notice and will continue to accept applications throughout the duration of the test. CBP will notify the selected applicants by an email message of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by an email message and given the opportunity to resubmit its application. There is no limit on the number of participants.

## X. Test Duration

The initial phase of the pilot test will begin no earlier than May 1, 2016. At the conclusion of the test pilot, an evaluation will be conducted to assess the effect that the FWS PGA Message Set has on expediting the submission of FWS importation-related data elements and the processing of FWS-related entries. The final results of the evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by § 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)). Any modification of this test or future expansion of ACE will be announced via a separate **Federal Register** notice.

## XI. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

## XII. Paperwork Reduction Act

The collection of information contained in this FWS PGA Message Set test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1018–0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**XIII. Confidentiality**

All data submitted and entered into ACE may be subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential by CBP, except to the extent as otherwise provided by law. The Electronic Export Information (EEI) is also subject to the confidentiality provisions of 15 CFR 30.60. As stated in previous notices, participation in these or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

**XIV. Misconduct Under the Test**

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in this test for any of the following:

(1) Failure to follow the terms and conditions of this test;

(2) Failure to exercise reasonable care in the execution of participant obligations;

(3) Failure to abide by applicable laws and regulations that have not been waived; or

(4) Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within ten (10) calendar days of receipt of the written notice. The appeal must be submitted to Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov.*

The Executive Director will issue a decision in writing on the proposed action within thirty (30) working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In instances of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within ten (10) calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov.* The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within fifteen (15) working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

**XV. Developments of ACE Prototypes**

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004): 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial

Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- ACE Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- ACE Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Automated Commercial Environment (ACE) Fillings for Electronic Entry/Entry Summary (Cargo Release and Related Entry): 80 FR 61278 (October 13, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release Test for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Account Test to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Customs Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding the Toxic Substances Control Act (TSCA) Certification Required by the Environmental Protection Agency (EPA): 81 FR 7133 (February 10, 2016).
- Modification of the National Customs Automation Program (NCAP); Test Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA): 81 FR 13399 (March 14, 2016).

Dated: April 29, 2016.

**Cynthia F. Whittenburg,**

*Acting Deputy Executive Assistant Commissioner, Office of Trade.*

[FR Doc. 2016–10522 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1998–DR; Docket ID FEMA–2016–0001]**

### Iowa; 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 for the State of Iowa (FEMA–1998–DR), dated June 27, 2011, and related determinations.

**DATES:** Effective April 19, 2016.

**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 April 19, 2016, 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 W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in the Omaha Indian Reservation resulting from flooding during the period of May 25 to August 1, 2011, 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 June 27, 2011, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs for the Omaha Tribe of Nebraska and Iowa.

This adjustment to 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.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10490 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4269–DR; Docket ID FEMA–2016–0001]**

### Texas; 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 State of Texas (FEMA–4269–DR), dated April 25, 2016, and related determinations.

**DATES:** *Effective Date:* April 25, 2016.

**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 April 25, 2016, 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 State of Texas resulting from severe storms and flooding during the period of April 17–24, 2016, 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 State of Texas.

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 in the designated areas and Hazard Mitigation throughout the State. 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.

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, Kevin L. Hannes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Fayette, Grimes, Harris, and Parker Counties for Individual Assistance.

All areas within the State of Texas 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.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10487 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4268–DR; Docket ID FEMA–2016–0001]**

### Mississippi; 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 Mississippi (FEMA–4268–DR), dated March 25, 2016, and related determinations.

**DATES:** *Effective Date:* April 19, 2016.

**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 Mississippi is hereby amended to include the Public Assistance program for 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 March 25, 2016.

Bolivar, Clarke, Coahoma, Forrest, Greene, Jones, Marion, Panola, Pearl River, Perry, Quitman, Sunflower, Tallahatchie, Tunica, Washington, and Wayne Counties for Public Assistance (already designated for Individual Assistance).

Claiborne, Covington, Holmes, Jefferson Davis, Lamar, Leake, Leflore, Lincoln, Tate, and Walthall Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10494 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2016–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The effective date of September 2, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.* The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 12, 2016.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

I. Watershed-based studies:

| Community | Community map repository address |
|---|---|
| **Deschutes Watershed** | |
| **Thurston County, Washington, and Incorporated Areas Docket No.: FEMA–B–1511** | |
| City of Lacey | City Hall—Community Development Department, 420 College Street Southeast, Lacey, WA 98503. |
| City of Olympia | City Hall, 601 4th Avenue East, Olympia, WA 98501. |
| City of Rainier | City Hall, 102 Rochester Street, Rainier, WA 98576. |
| City of Tumwater | City Hall, 555 Israel Road Southwest, Tumwater, WA 98501. |
| Unincorporated Areas of Thurston County | Thurston County Courthouse, 2000 Lakeridge Drive Southwest, Olympia, WA 98502. |
| **Tug Fork Watershed** | |
| **Wayne County, West Virginia, and Incorporated Areas Docket No.: FEMA–B–1523** | |
| City of Kenova | Municipal Building, 1501 Pine Street, Kenova, WV 25530. |
| Town of Ceredo | Town Hall, 700 B Street, Ceredo, WV 25507. |
| Town of Fort Gay | Town Hall, 3407 Wayne Street, Fort Gay, WV 25514. |
| Unincorporated Areas of Wayne County | County Courthouse, 700 Hendricks Street, Wayne, WV 25570. |

II. Non-watershed-based studies:

| Community | Community map repository address |
|---|---|
| **San Bernardino County, California, and Incorporated Areas Docket No.: FEMA–B–1502** | |
| City of Barstow | Engineering Department, 220 East Mountain View Street, Suite A, Barstow, CA 92311. |

| Community | Community map repository address |
|---|---|
| City of Colton | Public Works Department, 160 South Tenth Street, Colton, CA 92324. |
| City of Grand Terrace | City Hall, 22795 Barton Road, Grand Terrace, CA 92313. |
| City of Hesperia | City Hall, 9700 Seventh Avenue, Hesperia, CA 92345. |
| City of Highland | City Hall, 27215 Base Line Street, Highland, CA 92346. |
| City of Needles | City Hall, Engineering Department, 817 Third Street, Needles, CA 92363. |
| City of Ontario | City Hall, Engineering Department Public Counter, 303 East B Street, Ontario, CA 91764. |
| City of Rancho Cucamonga | City Hall, Engineering Department Plaza Level, 10500 Civic Center Drive, Rancho Cucamonga, CA 91730. |
| City of Redlands | City Hall, 35 Cajon Street, Redlands, CA 92373. |
| City of Rialto | City Hall, 150 South Palm Avenue, Rialto, CA 92376. |
| City of San Bernardino | City Hall, Water Department, 300 North D Street, San Bernardino, CA 92418. |
| City of Twentynine Palms | City Hall, 6136 Adobe Road, Twentynine Palms, CA 92277. |
| City of Upland | City Hall, 460 North Euclid Avenue, Upland, CA 91786. |
| City of Victorville | City Hall, Planning Department, 14343 Civic Drive, Victorville, CA 92393. |
| Town of Apple Valley | Town Hall, 14955 Dale Evans Parkway, Apple Valley, CA 92307. |
| Unincorporated Areas of San Bernardino County | Public Works Department, Water Resources Department, 825 East Third Street, San Bernardino, CA 92415. |

[FR Doc. 2016–10486 Filed 5–4–16; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4268–DR; Docket ID FEMA–2016–0001]**

### Mississippi; 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 Mississippi (FEMA–4268–DR), dated March 25, 2016, and related determinations.

**DATES:** *Effective Date:* April 15, 2016.

**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 Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 25, 2016.

Tallahatchie County for Individual 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.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10495 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2016–0002]**

### Final Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The effective date of June 16, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these

changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 12, 2016.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

| Community | Community map repository address |
|---|---|
| **Grant Parish, Louisiana, and Incorporated Areas Docket No.: FEMA–B–1451** | |
| Town of Montgomery | Town Hall, 625 Woodland Street, Montgomery, LA 71454. |
| Town of Pollock | Municipal Building, 3911 Highway 8 West, Pollock, LA 71467. |
| Unincorporated Areas of Grant Parish | Grant Parish Consolidated Gas Utility District Building, 506 Main Street, Colfax, LA 71417. |
| Village of Creola | Creola Village Hall, 241 Grays Creek Road, Dry Prong, LA 71423. |
| Village of Georgetown | Village Hall, 4418 Highway 500, Georgetown, LA 71432. |

[FR Doc. 2016–10482 Filed 5–4–16; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4268–DR; Docket ID FEMA–2016–0001]**

### Mississippi; 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 Mississippi (FEMA–4268–DR), dated March 25, 2016, and related determinations.

**DATES:** *Effective Date:* March 29, 2016.

**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 March 29, 2016.

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.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10497 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4013–DR; Docket ID FEMA–2016–0001]**

### Nebraska; 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 for the State of Nebraska (FEMA–4013–DR), dated August 12, 2011, and related determinations.

**DATES:** *Effective Date:* April 19, 2016.

**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 April 19, 2016, 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 W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in the Omaha Indian Reservation resulting from flooding during the period of May 24 to August 1, 2011, 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 August 12, 2011, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs for the Omaha Tribe of Nebraska and Iowa.

This adjustment to 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.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10488 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4263–DR; Docket ID FEMA–2016–0001]**

### Louisiana; 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 Louisiana (FEMA–4263–DR), dated March 13, 2016, and related determinations.

**DATES:** Effective April 20, 2016.

**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 Louisiana 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 March 13, 2016.

Lafourche Parish for Public Assistance, including direct federal assistance. Allen, Ascension, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Claiborne, De Soto, East Carroll, Franklin, Grant, Jackson, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Helena, St. Tammany, Tangipahoa, Union, Vernon, Washington, Webster, West Carroll, and Winn Parishes 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.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10491 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1604]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency; DHS.

**ACTION:** Notice; correction.

**SUMMARY:** On April 4, 2016, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained two erroneous tables. This notice provides corrections to those tables, to be used in lieu of the information published at 81 FR 19231–19232. The tables provided here represents the proposed flood hazard determinations and communities affected for San Mateo County, California, and Incorporated Areas.

**DATES:** Comments are to be submitted on or before August 3, 2016.

**ADDRESSES:** The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1604, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments

unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

**Correction**

In the proposed flood hazard determination notice published at 81 FR 19231–19232 in the April 4, 2016, issue of the **Federal Register**, FEMA published two tables titled ''San Mateo County, California, and Incorporated Areas''. These tables contained inaccurate information as to the preliminary dates featured in the tables.

In this document, FEMA is publishing tables containing the accurate information. The information provided below should be used in lieu of that previously published for San Mateo County, California, and Incorporated Areas.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 12, 2016.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

I. Non-watershed-based studies:

| Community | Community map repository address |
|---|---|
| **San Mateo County, California, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| **Project: 11–09–0852S Preliminary Date: September 14, 2015** | |
| City of Daly City | Public Works, Engineering Division, 333 90th Street, Daly City, CA 94015. |
| City of Half Moon Bay | City Hall, 501 Main Street, Half Moon Bay, CA 94019. |
| City of Pacifica | Engineering Division, 151 Milagra Drive, Pacifica, CA 94044. |
| Unincorporated Areas of San Mateo County | Planning and Building Department, 455 County Center, Redwood City, CA 94063. |
| **San Mateo County, California, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata* | |
| **Project: 11–09–1227S Preliminary Date: August 13, 2015** | |
| City of Belmont | Public Works Department, One Twin Pines Lane, Belmont, CA 94002. |
| City of Brisbane | Public Works, 50 Park Place, Brisbane, CA 94005. |
| City of Burlingame | City Hall, 501 Primrose Road, Burlingame, CA 94010. |
| City of East Palo Alto | Community and Economic Development Department, 1960 Tate Street, East Palo Alto, CA 94303. |
| City of Foster City | Public Works, 610 Foster City Boulevard, Foster City, CA 94404. |
| City of Menlo Park | City Hall, 701 Laurel Street, Menlo Park, CA 94025. |
| City of Millbrae | City Hall, 621 Magnolia Avenue, Millbrae, CA 94030. |
| City of Redwood City | City Hall, 1017 Middlefield Road, Redwood City, CA 94063. |
| City of San Bruno | Public Works, 567 El Camino Real, San Bruno, CA 94066. |
| City of San Carlos | Building Division, 600 Elm Street, San Carlos, CA 94070. |
| City of San Mateo | Public Works Department, 330 West 20th Avenue, San Mateo, CA 94403. |
| City of South San Francisco | City Hall, 400 Grand Avenue, South San Francisco, CA 94080. |
| Unincorporated Areas of San Mateo County | Planning and Building Department, 455 County Center, Redwood City, CA 94063. |

[FR Doc. 2016–10484 Filed 5–4–16; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2016–0008]**

### Assistance to Firefighters Grant Program; Fire Prevention and Safety Grants

**AGENCY:** Federal Emergency Management Agency, DHS

**ACTION:** Notice of guidance.

**SUMMARY:** This Notice provides guidelines that describe the application process for grants and the criteria for awarding Fire Prevention and Safety (FP&S) grants in the fiscal year (FY) 2015 Assistance to Firefighters Grant (AFG) Program year. It explains the differences, if any, between these guidelines and those recommended by representatives of the Nation's fire service leadership during the annual Criteria Development meeting, which was held October 27–28, 2014. The application period for the FY 2015 FP&S Grant Program year will be held April 4–May 6, 2016, and will be announced on the AFG Web site (*www.fema.gov/firegrants*), *www.grants.gov,* and U.S. Fire Administration Web site (*www.usfa.fema.gov*).

*Authority:* 15 U.S.C. 2229.

**DATES:** Grant applications for the FP&S Grant Program will be accepted electronically at *https://portal.fema.gov,* from April 4–May 6, 2016.

**ADDRESSES:** Assistance to Firefighters Grants Branch, Stop 3620, DHS/FEMA, 400 C Street SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Catherine Patterson, Chief, Assistance to Firefighters Grants Branch, 1–866–274–0960.

**SUPPLEMENTARY INFORMATION:** The purpose of the AFG Program is to enhance the safety of the public and firefighters with respect to fire and fire-related hazards. The FEMA Grant Programs Directorate administers the FP&S Grant Program as part of the AFG Program.

FP&S Grants are offered to support projects in two activities:

1. Activities designed to reach high-risk target groups and mitigate the incidence of death and injuries caused by fire and fire-related hazards (''FP&S Activity'').

2. Projects aimed at improving firefighter safety, health and wellness through research and development that reduces firefighter fatalities and injuries (''R&D Activity'').

The grant program's authorizing statute requires that each year DHS publish in the **Federal Register** the guidelines that describe the application process and the criteria for grant awards. Approximately 1,000 applications for FP&S Grant Program funding are anticipated to be submitted electronically, using the application submission form and process available at the AFG e-Grant application portal: *https://portal.fema.gov.* Specific information about the submission of grant applications can be found in the ''FY 2015 Fire Prevention and Safety Program Notice of Funding Opportunity,'' which will be available for download at *www.fema.gov/firegrants* and at *www.regulations.gov* under Docket ID FEMA–2016–0008.

**Appropriations**

Congress appropriated $340,000,000 for AFG in FY 2015 pursuant to the *Department of Homeland Security Appropriations Act,* 2015, Public Law 114–4. From this amount, $34,000,000 will be made available for FP&S Grant awards, pursuant to 15 U.S.C. 2229(h)(5), which states that not less than 10 percent of available grant funds each year are awarded under the FP&S Grant Program. Funds appropriated for all FY 2015 AFG awards, pursuant to Public Law 114–4, will be available for obligation and award until September 30, 2016.

From the approximately 1,000 applications that will be requesting assistance, FEMA anticipates that it will award approximately 100 FP&S Grants from available grant funding.

**Background of the AFG Program**

DHS awards grants on a competitive basis to the applicants that best address the FP&S Grant Program's priorities and provide the most compelling justification. Applications that best address the Program's priorities will be reviewed by a panel composed of fire service personnel.

**Award Criteria**

All applications for grants will be prepared and submitted through the AFG e-Grant application portal (*https://portal.fema.gov*).

The FP&S Grant Program panels will review the applications and score them using the following criteria areas:

- Vulnerability
- Implementation
- Evaluation Plan
- Cost Benefit
- Financial Need
- Funding Priorities
- Experience and Expertise

The applications submitted under the R&D Activity will be reviewed first by a panel of fire service members to identify those applications most relevant to the fire service. The following evaluation criteria will be used for this review:

- Purpose
- Potential Impact
- Implementation by the fire service
- Partners
- Barriers

The applications that are determined most likely to be implemented to enable improvement in firefighter safety, health, or wellness will be deemed to be in the ''competitive range'' and will be forwarded to the second level of application review, which is the scientific panel review process. This panel will be comprised of scientists and technology experts who have expertise pertaining to the subject matter of the proposal.

The Scientific Technical Evaluation Panel for the R&D Activity will review the application and evaluate it using the following criteria:

- Project purpose(s), goals and objectives, and specific aims
- Literature Review
- Project Methods
- Project Measurements
- Project Analysis
- Dissemination and Implementation
- Cost vs. Benefit (additional consideration)
- Financial Need (additional consideration)

*Eligible Applicants*

The following entities are eligible to apply directly to FEMA under this solicitation:

*1. Fire Prevention and Safety (FP &S) Activity:* Eligible applicants for this activity include fire departments, national, regional, state, local, tribal, and nonprofit organizations that are recognized for their experience and expertise in fire prevention and safety programs and activities. Both private and public non-profit organizations are eligible to apply for funding in this activity. For-profit organizations, federal agencies, and individuals are not eligible to receive a FP &S Grant Award under the FP &S Activity.

*2. Firefighter Safety Research and Development (R&D) Activity:* Eligible applicants for this activity include national, state, local, tribal, and nonprofit organizations, such as academic (*e.g.,* universities), public health, occupational health, and injury prevention institutions. Both private and public non-profit organizations are eligible to apply for funding in this activity.

The aforementioned entities are encouraged to apply, especially those that are recognized for their experience and expertise in firefighter safety, health, and wellness research and development activities. Fire departments are not eligible to apply for funding in the R &D activity. Additionally, for-profit organizations, federal agencies, and individuals are not eligible to receive a grant award under the R &D Activity.

**Statutory Limits to Funding**

Applications and awards are limited to a maximum federal share of $1.5 million dollars, regardless of applicant type.

**Cost Sharing**

Grant recipients must share in the costs of the projects funded under this grant program as required by 15 U.S.C. 2229(k)(1) and in accordance with 2 CFR 200.101(b)(1), but they are not required to have the cost-share at the time of application nor at the time of award. However, before a grant is awarded, FEMA will contact potential awardees to determine whether the grant recipient has the funding in hand or if the grant recipient has a viable plan to obtain the funding necessary to fulfill the cost-sharing requirement.

In general, an eligible applicant seeking an FP&S grant to carry out an activity shall agree to make available non-federal funds to carry out such activity in an amount equal to, and not less than, five percent of the grant awarded. Cash match and in-kind matches are both allowable in the FP &S Grant Program. Cash (hard) matches include non-federal cash spent for project-related costs. In-kind (soft) matches include, but are not limited to, the valuation of in-kind services. In-kind is the value of something received or provided that does not have a cost associated with it. For example, where an in-kind match (other than cash payments) is permitted, then the value of donated services could be used to comply with the match requirement. Also, third party in-kind contributions may count toward satisfying match requirements provided the grant recipient receiving the contributions expends them as allowable costs in

compliance with provisions listed above.

Grant recipients under this grant program must also agree to a maintenance of effort requirement as required by 15 U.S.C. 2229(k)(3) (referred to as a ''maintenance of expenditure'' requirement in that statute). Per this requirement, a grant recipient shall agree to maintain during the term of the grant, the grant recipient's aggregate expenditures relating to the activities allowable under the FP&S Funding Opportunity Announcement at not less than 80 percent (80%) of the average amount of such expenditures in the two (2) fiscal years preceding the fiscal year in which the grant amounts are received.

In cases of demonstrated economic hardship, and on the application of the grant recipient, the Administrator of FEMA may waive or reduce certain grant recipient's cost share or maintenance of expenditure requirements. This policy applies to FP &S per § 33 of the **Federal Fire Prevention and Control Act of 1974** (Pub. L. 93–498, as amended) (15 U.S.C 2229). For complete requirements concerning these waivers, including a description of how a grant recipient may demonstrate economic hardship and apply for a waiver, please refer to FEMA Policy FP 207–088–01, dated April 8, 2014, at: *http://www.fema.gov/media-library-data/1398109239435-ec23997d8351382710896fa77d02bc7d/AFG+Economic+Hardship+Waiver+Policy.pdf.* Per 15 U.S.C. 2229(k)(4)(C), FP&S grant recipientsthat are not fire departments are not eligible to receive a waiver of their cost share or economic hardship requirements.

**System for Award Management (SAM)**

On July 29, 2010, the Central Contractor Registration (CCR) was moved into the System for Award Management (SAM). The Office of Management and Budget (OMB) issued guidance to federal agencies requiring all prime recipients of federal grants to register in SAM. SAM is the primary vendor database for the Federal Government to collect, validate, store, and disseminate data from a secure centralized system. SAM consolidated the capabilities found in CCR and other federal procurement systems into one new system.

There is no charge to register in *SAM.gov.* Registrations must be completed on-line at *https://www.sam.gov/portal/public/SAM/.* The applicant organization is responsibile for having a valid Dun and Bradstreet (DUNS) number at the time of registration. Organizations with an active record in CCR have an active record in SAM, but may need to validate their information. For registration, go to *https://www.sam.gov/portal/public/SAM/.*

**Application Process**

Applicants may only submit one (1) application, but may submit for up to three (3) projects under each activity (FP&S and R&D). Any applicant that submits more than one (1) application may have *all* applications for any duplicated request(s) deemed ineligible.

Under the FP &S Activity, applicants may apply under the following categories:

- General Education/Awareness
- Fire & Arson Investigation
- Code Enforcement/Awareness
- National/State/Regional Programs and Studies

Under the R&D Activity, applicants may apply under the following categories:

- Clinical Studies
- Technology and Product Development
- Database System Development
- Dissemination and Implementation Research
- Preliminary Studies

Prior to the start of the FY 2015 FP&S Grant Program application period, FEMA will provide applicants with technical assistance tools (available at the AFG Web site: *www.fema.gov/firegrants*) and other online information to help them prepare quality grant applications. AFG will also staff a Help Desk throughout the application period to assist applicants with navigation through the automated application as well as assistance with any questions they have. Applicants can reach the AFG Help Desk through a toll-free telephone number (1–866–274–0960) or electronic mail (*firegrants@dhs.gov*).

Applicants are advised to access the application electronically at *https://portal.fema.gov.* The application also will be accessible from the grants.gov Web site (*http://www.grants.gov*). New applicants are required to register and establish a username and password for secure access to their application. Applicants that applied to any previous AFG or Staffing for Adequate Fire and Emergency Response (SAFER) funding opportunities were required to use their previously established usernames and passwords.

In completing an application under this funding opportunity, applicants will be asked to provide relevant information on their organization's characteristics and existing capabilities. Those applicants are asked to answer questions about their grant request that reflect the funding priorities, described below. In addition, each applicant will complete narratives for each project or grant activity requested.

The following are the funding priorities for each category under the FP&S Activity:

- *General Education/Awareness*—Under the General Education/Awareness category there are two funding priorities:
  - The first priority will be given to programs that target high risk population to conduct both door-to-door smoke alarm installations and provide home safety inspections (including sprinkler awareness), as part of a comprehensive home fire safety campaign.
  - The second priority will be given to programs that include sprinkler awareness that affect the entire community, such as educating the public about residential sprinklers, promoting residential sprinklers, and demonstrating working models of residential sprinklers.
- *Code Enforcement/Awareness*—projects that focus on first time or reinstatement of code adoption and code enforcement.
- *Fire & Arson Investigation*—projects that aim to aggressively investigate every fire.
- *National/State/Regional Programs and Studies*—projects that focus on residential fire issues and/or firefighter behavior and decision-making.

Under the R&D Activity, in order to identify and address the most important elements of firefighter safety, FEMA looked to the fire service for its input and recommendations. In June 2005, the National Fallen Firefighters' Foundation (NFFF) hosted a working group to facilitate the development of an agenda for the nation's fire service, and in particular for firefighter safety. In November 2015, the NFFF hosted their third working group to update the agenda with current priorities. A copy of the research agenda is available on the NFFF Web site at *http://www.everyonegoeshome.com/resources/research-symposium-reports/.*

Projects that meet the intent of this research agenda with respect to firefighter health and safety, as identified by the NFFF working group, will be given consideration under the R&D Activity. However, the applicant is not limited to these specific projects. All proposed projects, regardless of whether they have been identified by this working group, will be evaluated on their relevance to firefighter health and safety, and scientific rigor.

The electronic application process will permit the applicant to enter and

save the application data. The system does not permit the submission of incomplete applications. Except for the narrative textboxes, the application will use a ''point-and-click'' selection process or require the entry of data (*e.g.,* name and address). Applicants will be encouraged to read the FP&S Funding Opportunity Announcement for more details.

**Criteria Development Process**

Each year, DHS convenes a panel of fire service professionals to develop the funding priorities and other implementation criteria for AFG. The Criteria Development Panel is comprised of representatives from nine major fire service organizations who are charged with making recommendations to FEMA regarding the creation of new funding priorities, the modification of existing funding priorities, and the development of criteria for awarding grants. The nine major fire service organizations represented on the panel are:

- Congressional Fire Services Institute (CFSI)
- International Association of Arson Investigators (IAAI)
- International Association of Fire Chiefs (IAFC)
- International Association of Fire Fighters (IAFF)
- International Society of Fire Service Instructors (ISFSI)
- National Association of State Fire Marshals (NASFM)
- National Fire Protection Association (NFPA)
- National Volunteer Fire Council (NVFC)
- North American Fire Training Directors (NAFTD)

The FY 2015 criteria development panel meeting occurred January 8–9, 2014. The content of the FY 2015 FP&S Funding Opportunity Announcement reflects the implementation of the Criteria Development Panel's recommendations with respect to the priorities, direction, and criteria for awards. All of the funding priorities for the FY 2015 FP&S Grant Program are designed to address the following:

- First responder safety
- Enhancing national capabilities
- Risk
- Interoperability

**Changes for FY 2015**

*FY 2015 FP&S Notice of Funding Opportunity Announcement.*

(1) The ''Guidance and Application Kit'' has been reformatted from the Funding Opportunity (FOA) Announcement template to match the DHS Notice of Funding Opportunity (NOFO) Announcement template.

(2) Sustainability is no longer a scored evaluation criteria under the Fire Prevention and Safety Activity, thus the evaluation criteria weights have changed for the other criteria components.

(3) The Narrative Statement for the R&D Activity increased in page limitation from 20 pages to 25 pages per project.

(4) Micro Grants are now eligible for the Fire Prevention and Safety Activity. The cumulative Federal total of the request must be $25,000 or less.

**Application Review Process and Considerations**

The program's authorizing statute requires that each year DHS publish in the **Federal Register** a description of the grant application process and the criteria for grant awards. This information is provided below.

DHS will review and evaluate all FP&S applications submitted using the funding priorities and evaluation criteria described in this document, which are based on recommendations from the AFG Criteria Development Panel.

**Peer Review Process**

*Technical Evaluation Process—Fire Prevention and Safety Activity*

All eligible applications will be evaluated by a Technical Evaluation Panel (TEP). The TEP is comprised of a panel of Peer Reviewers. The TEP will assess each application's merits with respect to the detail provided in the Narrative Statement on the activity, including the evaluation elements listed in the Evaluation Criteria identified above.

The panel of Peer Reviewers will independently score each project within the application, discuss the merits and/or shortcomings of the application, and document the findings. A consensus is not required. The highest ranked applications will receive further technical review to assess strengths and weaknesses, how readily weaknesses may be resolved, and the likely impact of the proposed activities on the safety of the target audience.

*Technical Evaluation Process—Research and Development Activity*

R&D applications will go through a two-phase review process. First, all applications will be reviewed by a panel of fire service experts to assess relevance, meaning the likely impact of the proposed R&D application to enable improvement in firefighter safety, health, or wellness. They will also assess the need for the research results and the likelihood that the results would be implemented by the fire service in the U.S. Applications that are deemed likely to be implemented to enable improvement in firefighter safety, health, or wellness will then receive further consideration by a science review panel. This panel will be comprised of scientists and technology experts who have expertise pertaining to the subject matter of the proposal.

Reviewers will independently score applications and, if necessary, discuss the merits or shortcomings of the application in order to reconcile any major discrepancies identified by the reviewers. A consensus is not required.

With input from these panels, for the highest ranked applications, FEMA will review each application's strengths and weaknesses, how best the strengths fit the priorities of the FP&S Program, and how readily the weaknesses may be resolved to support likely impact of the project to improve firefighter safety, heath, or wellness.

**Technical Review Process**

Projects receiving the highest scores then will undergo a technical review by a subject matter specialist to assess the technical feasibility of the project and a programmatic review to assess eligibility and other factors.

After the completion of the technical reviews, DHS will select a sufficient number of awardees from this application period to obligate all of the available grant funding. It will evaluate and act on applications within 90 days following the close of the application period. Award announcements will be made on a rolling basis until all available grant funds have been committed. Awards will not be made in any specified order. DHS will notify unsuccessful applicants as soon as it is feasible.

*Evaluation Criteria for Projects—Fire Prevention and Safety Activity*

Funding decisions will be informed by an assessment of how well the application addresses the criteria and considerations listed below. Applications will be reviewed by the TEP using weighted evaluation criteria to score the project. These scores will impact the ranking of a project for funding.

The relative weight of the evaluation criteria in the determination of the grant award is listed below.

- Financial Need (10%): Applicants should provide details on the need for financial assistance to carry out the proposed project(s). Included in the

description might be other unsuccessful attempts to acquire financial assistance or specific examples of the applicant's operational budget.

- Vulnerability Statement (25%): The assessment of fire risk is essential in the development of an effective project goal, as well as meeting FEMA's goal to reduce risk by conducting a risk analysis as a basis for action. Vulnerability is a ''weak link'' demonstrating high risk behavior, living conditions or any type of high risk situation or behavior. The Vulnerability Statement should include a description of the steps taken to determine the vulnerability (weak link) and identify the target audience. The methodology for determination of vulnerability (how you found the weak link) should be discussed in-depth in the application's Narrative Statement.
  - The specific vulnerability (weak link) that will be addressed with the proposed project can be established through a formal or informal risk assessment. FEMA encourages the use of local statistics, rather than national statistics, when discussing the vulnerability.
  - The applicant should summarize the vulnerability (weakness) the project will address in a clear, to-the-point statement that addresses who is at risk, what the risks are, where the risks are, and how the risks can be prevented.
  - For the purpose of the FY 2015 FP&S NOFO, formal risk assessments consist of the use of software programs or recognized expert analysis that assess risk trends.
  - Informal risk assessments could include an in-house review of available data (*e.g.,* National Fire Incident Reporting System) to determine fire loss, burn injuries or loss of life over a period of time, and the factors that are the cause and origin for each occurrence.
- *Implementation Plan (25%):* Projects should provide details on the implementation plan which discusses the proposed project's goals and objectives. The following information should be included to support the implementation plan:
  - Goals and objectives.
  - Details regarding the methods and specific steps that will be used to achieve the goals and objectives.
  - Timelines.
  - Where applicable, examples of marketing efforts to promote the project, who will deliver the project (*e.g.,* effective partnerships), and the manner in which materials or deliverables will be distributed.
  - Requests for props (*i.e.,* tools used in educational or awareness demonstrations), including specific goals, measurable results, and details on the frequency for which the prop will be utilized as part of the implementation plan. Applicants should include information describing the efforts that will be used to reach the high risk audience and/or the number of people reached through the proposed project.
- *Evaluation Plan (25%):* Projects should include an evaluation of effectiveness and should identify measurable goals. Applicants seeking to carry out awareness and educational projects, for example, should identify how they intend to determine that there has been an increase in knowledge about fire hazards, or measure a change in the safety behaviors of the audience. Applicants should demonstrate how they will measure risk at the outset of the project in comparison to how much the risk decreased after the project is finished. There are various ways to measure the knowledge gained including the use of surveys, pre- and post-tests or documented observations.
- *Cost-Benefit (10%):* Projects will be evaluated based on how well the applicant addresses the fire prevention needs of the department or organization in an economic and efficient manner. It should show how to maximize the level of funding that goes directly into the delivery of the project. The costs associated with the project must also be reasonable for the target audience that will be reached, and a description of how the anticipated benefit(s) of their projects outweighs the cost(s) of the requested item(s) should be included. Providing justification for costs assists the Technical Evaluation Panel with this review.
- *Funding Priorities (5%):* Applicants will be evaluated on whether or not the proposed project meets the stated funding priority (listed below) for the applicable category.
  - *General Education/Awareness Priority:* Comprehensive home fire safety campaign with door-to-door smoke alarm installations or residential sprinkler awareness projects/activities.
  - *Fire/Arson Investigation Priority:* Projects that aim to aggressively investigate every fire.
  - *Code Enforcement/Awareness Priority:* Projects that focus on first time or reinstatement of code adoption and code enforcement.
  - *National/State/Regional Programs and Studies Priority:* Projects that focus on residential fire issues, and/or firefighter safety projects or strategies that are designed to measureably change firefighter behavior and decision-making.
- *Experience and Expertise (additional consideration):* Applicants that demonstrate their experience and ability to conduct fire prevention and safety activities, and to execute the proposed or similar project(s), will receive additional consideration.

*Evaluation Criteria for Projects—Firefighter Safety Research and Development Activity*

Funding decisions will be informed by an assessment of how well the application addresses the criteria and considerations listed below.

All applications will reviewed by a fire service expert panel using weighted evaluation criteria, and those applications deemed to be in the ''competitive range'' will then be reviewed by a scientific peer review panel evaluation using weighted evaluation criteria to score the project. Scientific evaluations will impact the ranking of the project for funding.

In addition, other Science Panel considerations are indicated in the list below:

Fire Service Evaluation Criteria

- *Purpose (25%):* Applicants should clearly identify the benefits of the proposed research project to improve firefighter safety, health, or wellness, and identify specific gaps in knowledge that will be addressed.
- *Implementation by Fire Service (25%):* Applicants should discuss how the outcomes/products of this research, if successful, are likely to be widely/nationally adopted and accepted by the fire service as changes that enhance firefighter safety, health, or wellness.
- *Potential Impact (15%):* Applicants should discuss the potential impact of the research outcome/product on firefighter safety by quantifying the possible reduction in the number of fatal or non-fatal injuries, or on wellness by significantly improving the overall health of firefighters.
- *Barriers (15%):* Applicants should recognize that all research contains some level of risk and that the proposed outcomes may not be realized. The applicant needs to identify and discuss potential fire service and other barriers to successfully complete the study on schedule, including contingencies and strategies to deal with barriers if they materialize. This may include barriers that could inhibit the proposed fire service participation in the study or the adoption of successful results by the fire service when the project is completed.
- *Partners (20%):* Applicants should recognize that participation of the fire service as a partner in the research, from development to dissemination, is

regarded as an essential part of all projects. Applicants should describe the fire service partners and contractors that will support the project to accomplish the objectives of the study. The specific roles and contributions of the partners should be described. Partnerships may be formed with local and regional fire departments, and also with national fire-related organizations. Letters of support and letters of commitment to actively participate in the project should be included in the appendix of the application. Generally, participants of a diverse population, including both career and volunteer firefighters, are expected to facilitate acceptance of results nationally. In cases where this is not practical, due to the nature of the study or other limitations, these circumstances should clearly be explained.

Science Panel Evaluation Criteria

- *Project goals, objectives, and specific aims (15%):* Applicants should address how the purpose, goals, objectives, and aims of the proposal will lead to results that will improve firefighter safety, health, or wellness. For multi-year projects, greater detail should be given for the first year.
- *Literature Review (10%):* Applicants should provide a literature review that is relevant to the project's goals, objectives, and specific aims. The citations should be placed in the text of the narrative statement, with references listed at the end of the Narrative Statement (and not in the Appendix) of the application. The review should be in sufficient depth to make it clear that the proposed project is necessary, adds to an existing body of knowledge, is different from current and previous studies, and offers a unique contribution.
- *Project Methods (20%):* Applicants should provide a description of how the project will be carried out, including demonstration of the overall scientific and technical rigor and merit of the project. This includes the operations to accomplish the purpose, goals and objectives, and the specific aims of the project. Plans to recruit and retain human subjects, where applicable, should be described. Where human subjects are involved in the project, the applicant should describe plans for submission to the Institutional Review Board (IRB) (for further guidance and requirements, see Appendix B—Programmatic Information and Priorities, Section IV. Other Eligible Project and Ineligible Projects and Costs, Section B. Research and Development Project Eligibility Information, Section i. Human Subject Research).
- *Project Measurements (20%):* Applicants should provide evidence of the technical rigor and merit of the project, such as data pertaining to validity, reliability, and sensitivity (where established) of the facilities, equipment, instruments, standards, and procedures that will be used to carry out the research. The applicant should discuss the data to be collected to evaluate the performance methods, technologies, and products proposed to enhance firefighter safety, health, or wellness. The applicant should demonstrate that the measurement methods and equipment selected for use are appropriate and sufficient to successfully deliver the proposed project objectives.
- *Project Analysis (20%):* The applicant should indicate the planned approach for analysis of the data obtained from measurements, questionnaires, or computations. The applicant should specify within the plan what will be analyzed, the statistical methods that will be used, the sequence of steps, and interactions as appropriate. It should be clear that the Principal Investigator (PI) and research team have the expertise to perform the planned analysis and defend the results in a peer review process.
- *Dissemination and Implementation (15%):* Applicants should indicate dissemination plans for scientific audiences (such as plans for submissions to specific peer review publications) and for firefighter audiences (such as Web sites, magazines, and conferences). Also, assuming positive results, the applicant should indicate future steps that would support dissemination and implementation throughout the fire service, where applicable. These steps are likely to be beyond the current study, so those features of the research activity that will facilitate future dissemination and implementation should be discussed. All applicants should specify how the results of the project, if successful, might be disseminated and implemented in the fire service to improve firefighter safety, health, or wellness. It is expected that successful R&D Activity Projects may give rise to future programs including FP&S Activity Projects.
- *Cost vs. Benefit (additional consideration):* Cost vs. benefit in this evaluation element refers to the costs of the grant for the research and development project as it relates to the benefits that are projected for firefighters who would have improved safety, health, or wellness. Applicants should demonstrate a high benefit for the cost incurred, and effective utilization of federal funds for research activities.
- *Financial Need (additional consideration):* In the Applicant Information section of the application, applicants should provide details on the need for federal financial assistance to carry out the proposed project(s). Applicants may include a description of unsuccessful attempts to acquire financial assistance. Applicants should provide detail about the organization's operating budget, including a high-level breakdown of the budget; describe the department's inability to address financial needs without federal assistance; and discuss other actions the department has taken to meet their staffing needs (*e.g.,* state assistance programs, other grant programs, etc.).

**Other Selection Information**

Awards will be made using the results of peer-reviewed applications as the primary basis for decisions, regardless of activity. However, there are some exceptions to strictly using the peer review results. The applicant's prior AFG, SAFER, and FP&S grant management performance will also be taken into consideration when making recommendations for award. All final funding determinations will be made by the Administrator of FEMA, or the Administrator's delegate.

Fire departments and other eligible applicants that have received funding under the FP&S program in previous years are eligible to apply for funding in the current year. However, DHS may take into account an applicant's performance on prior grants when making funding decisions on current applications.

Once every application in the competitive range has been through the technical evaluation phase, the applications will be ranked according to the average score awarded by the panel.

The ranking will be summarized in a Technical Report prepared by the AFG Program Office. A Grants Management Specialist will contact the applicant to discuss and/or negotiate the content of the application and SAM.gov registration before making final award decisions.

Dated: April 5, 2016.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10481 Filed 5–4–16; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4266–DR; Docket ID FEMA–2016–0001]**

### Texas; 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 Texas (FEMA–4266–DR), dated March 19, 2016, and related determinations.

**DATES:** *Effective Date:* April 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 19, 2016.

Angelina, Cass, Lamar, Madison, Red River, Sabine, San Augustine, and Walker Counties for Public Assistance, including direct federal assistance.

Erath, Gregg, Harrison, Henderson, Jasper, Marion, Newton, Orange, Parker, Shelby, and Tyler 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.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–10493 Filed 5–4–16; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5945–N–01]**

### Housing Trust Fund Federal Register Allocation Notice

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of Fiscal Year 2016 Funding Awards.

**SUMMARY:** The Housing and Economic Recovery Act of 2008 (HERA) established the Housing Trust Fund (HTF) to be administered by HUD. Pursuant to the Federal Housing Enterprises Financial Security and Soundness Act of 1992 (the Act), as amended by HERA, Division A, eligible HTF grantees are the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands. In accordance with Section 1338 (c)(4)(A) of the Act, this notice announces the formula allocation amount for each eligible HTF grantee.

**FOR FURTHER INFORMATION CONTACT:** Virginia Sardone, Director, Office of Affordable Housing Programs, Room 7164, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000; telephone (202) 708–2684. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 800–877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** Section 1131 of HERA Division A amended the Act to add a new section 1337 entitled ''Affordable Housing Allocations'' and a new section 1338 entitled ''Housing Trust Fund.'' HUD's implementing regulations are codified at 24 CFR part 93.

Congress authorized the HTF with the stated purpose of: (1) Increasing and preserving the supply of rental housing for extremely low-income families with incomes between 0 and 30 percent of area median income and very low-income families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for extremely low-income and very low-income families.

Section 1337 of the Act provides for the HTF (and other programs) to be funded with an affordable housing set aside by Fannie Mae and Freddie Mac. The total set-aside amount is equal to 4.2 basis points (.042 percent) of Fannie Mae and Freddie Mac's new mortgage purchases, a portion of which is for the HTF.

Section 1338 of the Act directs HUD to establish, through regulation, the formula for distribution of amounts made available for the HTF. The statute specifies the factors to be used for the formula and priority for certain factors. The factors and methodology HUD uses to allocate HTF funds among eligible grantees are established in the HTF regulation. The funding announced for Fiscal Year 2016 through this notice is $173,591,160. Appendix A to this notice provides the names and the amounts of the awards.

Dated: April 22, 2016.

**Clifford Taffet,**

*General Deputy Assistant Secretary for Community Planning and Development.*

### Appendix A: FY 2016 Housing Trust Fund Allocation Amounts

| Grantee | FY 2016 Allocation |
|---|---|
| Alabama | $3,000,000 |
| Alaska | 3,000,000 |
| Arizona | 3,000,000 |
| Arkansas | 3,000,000 |
| California | 10,128,143 |
| Colorado | 3,000,000 |
| Connecticut | 3,000,000 |
| Delaware | 3,000,000 |
| District of Columbia | 3,000,000 |
| Florida | 4,598,821 |
| Georgia | 3,314,612 |
| Hawaii | 3,000,000 |
| Idaho | 3,000,000 |
| Illinois | 4,302,012 |
| Indiana | 3,000,000 |
| Iowa | 3,000,000 |
| Kansas | 3,000,000 |
| Kentucky | 3,000,000 |
| Louisiana | 3,000,000 |
| Maine | 3,000,000 |
| Maryland | 3,000,000 |
| Massachusetts | 3,419,569 |
| Michigan | 3,522,622 |
| Minnesota | 3,000,000 |
| Mississippi | 3,000,000 |
| Missouri | 3,000,000 |
| Montana | 3,000,000 |
| Nebraska | 3,000,000 |
| Nevada | 3,000,000 |
| New Hampshire | 3,000,000 |
| New Jersey | 3,733,566 |
| New Mexico | 3,000,000 |
| New York | 7,013,963 |
| North Carolina | 3,280,235 |
| North Dakota | 3,000,000 |
| Ohio | 3,740,578 |
| Oklahoma | 3,000,000 |
| Oregon | 3,000,000 |
| Pennsylvania | 3,862,285 |
| Rhode Island | 3,000,000 |
| South Carolina | 3,000,000 |
| South Dakota | 3,000,000 |
| Tennessee | 3,000,000 |
| Texas | 4,778,364 |
| Utah | 3,000,000 |

| Grantee | FY 2016 Allocation |
|---|---|
| Vermont | 3,000,000 |
| Virginia | 3,139,830 |
| Washington | 3,243,721 |
| West Virginia | 3,000,000 |
| Wisconsin | 3,004,558 |
| Wyoming | 3,000,000 |
| American Samoa | 12,321 |
| Guam | 77,609 |
| N. Mariana Islands | 35,735 |
| Puerto Rico | 326,054 |
| Virgin Islands | 56,562 |
| Total | 173,591,160 |

[FR Doc. 2016–10508 Filed 5–4–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2016–N005; 60120–1113–0000–C2]**

### Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Winkler Cactus and San Rafael Cactus

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability for review and comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft recovery plan for Winkler cactus (*Pediocactus winkleri*) and San Rafael cactus (*Pediocactus despainii*). Winkler cactus is federally listed as threatened, and San Rafael cactus is federally listed as endangered under the Endangered Species Act of 1973, as amended (ESA). We are soliciting review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before July 5, 2016.

**ADDRESSES:** Copies of the draft recovery plan are available by request from the Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119; telephone 801–975–3330. Submit comments on the draft recovery plan to the Field Supervisor at this same address. Comments may also be submitted at: *utahfieldoffice_esa@fws.gov.*

An electronic copy of the draft recovery plan is available at: *http://www.fws.gov/endangered/species/recovery-plans.html.*

**FOR FURTHER INFORMATION CONTACT:** Larry Crist, Field Supervisor, Utah Ecological Services Field Office, at the above address, or telephone 801–975–3330.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide recovery efforts, we prepare recovery plans to promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species; establish objective, measurable criteria that, when met, would result in a determination that the species no longer needs the protection of the ESA (16 U.S.C. 1531 *et seq.*); and provide estimates of the time and cost for implementing the needed recovery measures.

The ESA requires recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. On September 27, 1995, we published a document in the **Federal Register** (60 FR 49855) that made available a draft recovery plan for Winkler cactus and San Rafael cactus. That recovery plan was never finalized and is now out of date. At this time, we are making available a more comprehensive draft recovery plan for public review and comment. We will consider all information we receive during a public comment period when preparing the recovery plan for approval. The Service and other Federal agencies also will take these comments into consideration in the course of implementing an approved recovery plan.

It is our policy to request peer review of recovery plans. We will summarize and respond to the issues raised by the public and peer reviewers in an appendix to the approved recovery plan.

#### Species Information

*Winkler Cactus*

Winkler cactus is a small, peach- to pink-flowered cactus that often retracts entirely into the ground during the winter and dry seasons. It is endemic to Wayne County and southeast Sevier County of south-central Utah and is generally found at elevations of 1,500–2,130 meters (m) (4,900–7,000 feet (ft)).

Winkler cactus was listed as a threatened species under the ESA, effective September 21, 1998 (63 FR 44587; August 20, 1998). Factors of concern affecting the species include illegal collection, habitat disturbances (mining, recreation, off-highway vehicle (OHV) use, livestock grazing, road and utility corridor development, general construction, and livestock grazing), invasive plant species, small mammal and insect predation, native ungulate disturbance, inadequacy of existing regulatory mechanisms, and climate change.

*San Rafael Cactus*

San Rafael cactus is a small, yellow- to peach-flowered cactus that often retracts entirely into the ground during the winter and dry seasons. It is endemic to Emery County of central Utah and most commonly occurs on sites with a south exposure at elevations of 1,450–2,080 m (4,760–6,820 ft).

San Rafael cactus was listed as an endangered species under the ESA, effective October 16, 1987 (52 FR 34914; September 16, 1987). Factors of concern affecting the species include illegal collection, habitat disturbances (mining, recreation, off-highway vehicle (OHV) use, livestock grazing, road and utility corridor development, general construction, and livestock grazing), invasive plant species, small mammal and insect predation, native ungulate disturbance, inadequacy of existing regulatory mechanisms, wild horse disturbance, paleontological exploration, and climate change.

#### Recovery Strategies

Our recovery strategies for Winkler cactus and San Rafael cactus are based on the assumption that if specific criteria are met for the existing populations, the species can be recovered. Broadly, these criteria require that the population trends for both species be stable or improving over the long term, the available habitat base for each population be adequate for long-term health and sustainability, the populations and habitats are secure from decline, and long-term management plans for the populations and their habitats are in place that address those threats.

#### Request for Public Comments

The Service solicits public comments on the draft recovery plan. All comments we receive by the date specified in **DATES** will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Field Supervisor (see **ADDRESSES**). Comments may also be submitted at: *utahfieldoffice_esa@fws.gov.* Comments and materials received will be available,

by appointment, for public inspection during normal business hours at the Utah Ecological Services Field Office (see **ADDRESSES**).

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 29, 2016.

**Matt Hogan,**

*Deputy Regional Director, Denver, Colorado.*

[FR Doc. 2016–10517 Filed 5–4–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2016–N077; FXES11130300000–167–FF03E00000]**

### Endangered and Threatened Wildlife and Plants; Permit Applications; Correction

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of permit applications; request for comments; correction.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, correct errors in a recently published notice that announced the availability of permit applications for public comment. The notice did not accurately describe all of the applications. However, if you requested documents for review, you need not request them again, because the errors were not in the application materials themselves, but only in our previous **Federal Register** notice. Therefore, if you submitted comments, you need not resubmit them.

**DATES:** To ensure consideration, written comments must be received on or before May 13, 2016.

**ADDRESSES:** Send written comments by U.S. mail to the Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Carlita Payne, (612) 713–5343.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 13, 2016 (81 FR 21892), we published a notice inviting public comment on permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR part 17. The notice did not accurately describe all of the applications. The errors were not in the application materials themselves, but only in our previous **Federal Register** notice. If you requested documents for review, you need not request them again. If you submitted comments, you need not resubmit them.

### Corrections

We make the following corrections to the following permit descriptions in the Permit Applications section of the original April 13, 2016, notice:

*Permit TE206781* (applicant: Ecological Specialists, Inc., O'Fallon, MO): On page 21892, column 3, add Texas to the list of States.

*Permit TE38821A* (applicant: Stantec Consulting Services, Louisville, KY): On page 21893, add ''Elktoe, Cumberland . . . . *Alasmidonta atropurpurea''* to the list of species in the second table, and add Colorado and Wyoming to the list of States in column 3.

*Permit TE06873B* (applicant Andrew Carson, Cincinnati, OH): On page 21894, column 3, remove Texas from the list of States, and add Louisiana and Mississippi to the list of States.

*Permit TE85232B* (applicant: Zachary Kaiser, Ethridge, MT; page 21895, column 1), *Permit TE 85227B* (applicant: Jacquelyn Dearborn, Columbia, MO; page 21895, column 1), and *Permit TE85228B* (applicant: Eric Schroder, Fairmont, WV; page 21985, column 2): In each of these three entries, we remove the word ''amendment''. These are applications for first-time permits.

*Permit TE02373A* (applicant: Environmental Solutions and Innovations, Inc., Cincinnati, OH): On page 21897, column 1, add 27 States to the list of areas covered by the proposed permit.

*Permit TE08603A* (applicant: Michelle Malcosky, Hudson, OH): On page 21897, column 2, add Ohio to the list of States.

The corrected descriptions of the permit applications read as follows:

*Permit Application Number: TE206781*

Applicant: Ecological Specialists, Inc., O'Fallon, MO

The applicant requests a permit renewal, with amendment to take (capture and release, capture and relocate) federally listed mussels throughout the States of Arkansas, Iowa, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Pennsylvania, Oklahoma, Ohio, South Dakota, Texas, Tennessee, Virginia, Wisconsin, and West Virginia. The following mussel species are included:

Pocketbook, Ouachita rock, *Arkansia wheeleri*
Bean, rayed, *Villosa fabalis*
Catspaw, white (pearlymussel), *Epioblasma obliquata perobliqua*
Higgins eye (pearlymussel), *Lampsilis higginsii*
Mapleleaf, winged, *Quadrula fragosa*
Mussel, scaleshell, *Leptodea leptodon*
Mussel, sheepnose, *Plethobasus cyphyus*
Mussel, snuffbox, *Epioblasma triquetra*
Pearlymussel, Curtis, *Epioblasma florentina curtisii*
Pearlymussel, purple cat's paw, *Epioblasma obliquata obliquata*
Spectaclecase (mussel), *Cumberlandia monodonta*
Acornshell, southern, *Epioblasma othcaloogensis*
Bean, Cumberland (pearlymussel), *Villosa trabalis*
Blossom, green (pearlymussel), *Epioblasma torulosa gubernaculum*
Blossom, tubercled (pearlymussel), *Epioblasma torulosa torulosa*
Blossom, turgid (pearlymussel), *Epioblasma turgidula*
Blossom, yellow (pearlymussel), *Epioblasma florentina florentina*
Combshell, Cumberlandian, *Epioblasma brevidens*
Combshell, upland, *Epioblasma metastriata*
Elktoe, Appalachian, *Alasmidonta raveneliana*
Elktoe, Cumberland, *Alasmidonta atropurpurea*
Fanshell, *Cyprogenia stegaria*
Fatmucket, Arkansas, *Lampsilis powellii*
Kidneyshell, triangular, *Ptychobranchus greenii*
Lampmussel, Alabama, *Lampsilis virescens*
Lilliput, pale (pearlymussel), *Toxolasma cylindrellus*
Moccasinshell, Coosa, *Medionidus parvulus*
Monkeyface, Cumberland (pearlymussel), *Quadrula intermedia*
Mucket, pink (pearlymussel), *Lampsilis abrupta*
Mussel, oyster, *Epioblasma capsaeformis*
Pearlymussel, birdwing, *Lemiox rimosus*
Pearlymussel, cracking, *Hemistena lata*
Pearlymussel, dromedary, *Dromus dromas*
Pearlymussel, littlewing, *Pegias fabula*
Pigtoe, Cumberland, *Pleurobema gibberum*
Pigtoe, finerayed, *Fusconaia cuneolus*
Pigtoe, Georgia, *Pleurobema hanleyianum*
Pigtoe, rough, *Pleurobema plenum*
Pigtoe, shiny, *Fusconaia cor*
Pigtoe, southern, *Pleurobema georgianum*
Pimpleback, orangefoot (pearlymussel), *Plethobasus cooperianus*
Pocketbook, fat, *Potamilus capax*
Pocketbook, fine-lined, *Lampsilis altilis*
Pocketbook, speckled, *Lampsilis streckeri*
Riffleshell, tan, *Epioblasma florentina walkeri (=E. walkeri)*
Ring pink (mussel), *Obovaria retusa*
Wartyback, white (pearlymussel), *Plethobasus cicatricosus*
Bean, purple, *Villosa perpurpurea*
Clubshell, *Pleurobema clava*
Monkeyface, Appalachian (pearlymussel), *Quadrula sparsa*
Rabbitsfoot, rough, *Quadrula cylindrica strigillata*
Riffleshell, northern, *Epioblasma torulosa rangiana*

Spinymussel, James, *Pleurobema collina*
Wedgemussel, dwarf, *Alasmidonta heterodon*
Kidneyshell, fluted, *Ptychobranchus subtentum*
Mucket, Neosho, *Lampsilis rafinesqueana*
Pearlymussel, slabside, *Pleuronaia dolabelloides*
Rabbitsfoot, *Quadrula cylindrica cylindrica*

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE38821A*

Applicant: Stantec Consulting Services, Louisville, KY

The applicant requests a permit renewal, with amendment to take (capture and release) Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), copperbelly watersnake (*Nerodia erythrogaster neglecta*), and federally listed mussels and fish in the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. The following mussel and fish species are included:

Bean, rayed, *Villosa fabalis*
Higgins eye (pearlymussel), *Lampsilis higginsii*
Mussel, sheepnose, *Plethobasus cyphyus*
Mussel, snuffbox, *Epioblasma triquetra*
Purple cat's paw pearlymussel, *Epioblasma obliquata obliquata*
Spectaclecase (mussel), *Cumberlandia monodonta*
Bean, Cumberland (pearlymussel), *Villosa trabalis*
Elktoe, Cumberland, *Alasmidonta atropurpurea*
Combshell, Cumberlandian, *Epioblasma brevidens*
Fanshell, *Cyprogenia stegaria*
Mucket, pink (pearlymussel), *Lampsilis abrupta*
Mussel, oyster, *Epioblasma capsaeformis*
Pearlymussel, birdwing, *Lemiox rimosus*
Pearlymussel, cracking, *Hemistena lata*
Pearlymussel, dromedary, *Dromus dromas*
Pearlymussel, littlewing, *Pegias fabula*
Pigtoe, finerayed, *Fusconaia cuneolus*
Pigtoe, rough, *Pleurobema plenum*
Pigtoe, shiny, *Fusconaia cor*
Pimpleback, orangefoot (pearlymussel), *Plethobasus cooperianus*
Pocketbook, fat, *Potamilus capax*
Riffleshell, tan, *Epioblasma florentina walkeri (=E. walkeri)*
Ring pink (mussel), *Obovaria retusa*
Wartyback, white (pearlymussel), *Plethobasus cicatricosus*
Bean, purple, *Villosa perpurpurea*
Clubshell, *Pleurobema clava*
Rabbitsfoot, rough, *Quadrula cylindrica strigillata*
Riffleshell, northern, *Epioblasma torulosa rangiana*
Kidneyshell, fluted, *Ptychobranchus subtentum*
Pearlymussel, slabside, *Pleuronaia dolabelloides*
Rabbitsfoot, *Quadrula cylindrica cylindrica*
Dace, blackside, *Phoxinus cumberlandensis*
Darter, duskytail, *Etheostoma percnurum*
Darter, Kentucky arrow, *Etheostoma spilotum*
Darter, relict, *Etheostoma chienense*
Shiner, palezone, *Notropis albizonatus*
Sturgeon, pallid, *Scaphirhynchus albus*

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE06873B*

Applicant: Andrew Carson, Cincinnati, OH

The applicant requests a permit renewal, with amendment to take (capture and release) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*) in the District of Columbia and in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE85232B*

Applicant: Zachary Kaiser, Ethridge, MT

The applicant requests a permit to take (capture and release, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), and northern long-eared bat (*Myotis septentrionalis*) in the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE85227B*

Applicant: Jacquelyn Dearborn, Columbia, MO

The applicant requests a permit to take (capture and release, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*) in the States of Illinois and Missouri. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE85228B*

Applicant: Eric Schroder, Fairmont, WV

The applicant requests a permit to take (capture and release, trap, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), and northern long-eared bat (*Myotis septentrionalis*) in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE02373A*

Applicant: Environmental Solutions and Innovations, Inc., Cincinnati, OH

The applicant requests a permit renewal, with amendment to take (capture and release) American burying beetle (*Nicrophorus americanus*); take (capture and release, handle, and radio-tag) Indiana bat (*Myotis sodalis*), gray bat (*Myotis griescens*), northern long-eared bat (*Myotis septentrionalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*); take (survey and identify) running buffalo clover (*Trifolium stoloniferum*) and northeastern bulrush (*Scirpus ancistrochaetus*); and take (capture and release) 56 federally listed mussel species and 5 federally listed fish species in the territories of Puerto Rico and the U.S. Virgin Islands, and in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE08603A*

Applicant: Michelle Malcosky, Hudson, OH

The applicant requests a permit renewal, with amendment to take (capture and release, handle, band, and radio-tag) Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*) in the States of Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, and West Virginia. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

Dated: April 29, 2016.

**Lynn M. Lewis,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2016–10528 Filed 5–4–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–HQ–IA–2016–0066; FXIA16710900000–156–FF09A30000]**

## Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

**DATES:** We must receive comments or requests for documents on or before June 6, 2016.

**ADDRESSES:** *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0066.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0066; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

### I. Public Comment Procedures

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

### III. Permit Applications

*Endangered Species*

Applicant: Nashville Zoo, Nashville, TN; PRT–85554B

The applicant requests a permit to export one female and one male clouded captive-born leopard (*Neofelis nebulosi*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Kootenai Tribe of Idaho, Bonner Ferry, ID; PRT–011646

The applicant requests a permit to export White sturgeon (*Acipenser transmontanus*) (300,000 live fertilized eggs) and live juvenile sturgeon of the Kootenai population for the purpose of enhancement of the survival of the species through re-introduction. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Daniel Sterantino, Castleton, NY; PRT–90881B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: radiated tortoise (*Astrochelys radiata*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Gerard Siatkowski, Miami, FL; PRT–24006B

The applicant requests to amend a current captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Bolson tortoise (*Gopherus flavomarginatus*), aquatic box turtle (*Terrapene coahuila*), river terrapin (*Batagur baska*), red-crowned roof turtle (*Batagur kachuga*), Cuban ground iguana (*Cyclura nubila nubila*), Grand Cayman blue iguana (*Cyclura lewisi*), Cayman Brac ground iguana (*Cyclura nubila caymanensis*), and San

Esteban Island chuckwalla (*Sauromalus varius*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Nick Silbaugh, Platterville, CO; PRT–90067B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2016–10519 Filed 5–4–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–HQ–IA–2016–0065; FXIA16710900000–156–FF09A30000]**

### Endangered Species; Marine Mammals; Emergency Exemption; Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance/emergency 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 Marine Mammal Protection Act (MMPA).

**ADDRESSES:** Brenda Tapia, 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.

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), 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.

**A. Endangered Species**

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 68465B | Tanganyika Wildlife Park | 80 FR 73207; November 24, 2015 | April 5, 2016. |
| 10836A | University of Michigan | 81 FR 791; January 7, 2016 | March 21, 2016. |
| 80482B | Duke Lemur Center | 81 FR 2899; January 19, 2016 | April 19, 2016. |
| 79093B | Kinsey Robinson | 81 FR 5778; February 03, 2016 | March 22, 2016. |
| 81613B | William Parks | 81 FR 5778; February 03, 2016 | March 22, 2016. |
| 85776B | Scott Linter | 81 FR 5778; February 03, 2016 | March 22, 2016. |
| 82278B | William Perrine | 81 FR 5778; February 03, 2016 | March 28, 2016. |
| 82246B | Santa Barbara Zoo | 81 FR 5778; February 03, 2016 | April 18, 2016. |
| 83947B | Harry Peterson | 81 FR 8093; February 17, 2016 | March 21, 2016. |
| 86982B | Cynthia Lagueux, University of Florida | 81 FR 8093; February 17, 2016 | March 28, 2016. |
| 69024B | Yerkes National Primate Research Center | 80 FR 62089, October 15, 2015; 81 FR 3452, January 21, 2016. | May 2, 2016. |

**B. Marine Mammals**

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 186914 | Monterey Bay Aquarium | 80 FR 62089; October 15, 2015 | April 18, 2016. |
| 81843B | Indianapolis Zoological Society | 81 FR 8093; February 17, 2016 | April 18, 2016. |

**C. Emergency Exemption**

On May 2, 2016, the Service issued a permit (PRT–94614B) to the U.S. Fish and Wildlife Service, Austwell, Texas, to import four viable eggs from captive-bred whooping crane (*Grus americana*) for the purpose of enhancement of the survival of the species. This action was authorized under Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service determined that an emergency affecting the health and viability of the whooping crane eggs existed, and that no reasonable alternative was available to the applicant for the following reason:

The Service's Whooping Crane Coordinator requested a permit to import these fertile eggs from the Calgary Zoo in Alberta, Canada, due to the ongoing 30-day comment period that their existing import permit (PRT–

013808) was undergoing. Not being able to import these eggs by early May 2016 under their existing permit would cause undue hardship on the species recovery program, forcing Calgary Zoo to consider culling the eggs. If shipped, the eggs will be hatched and the chicks will be raised at the Patuxent Wildlife Research Center in Laurel, Maryland, with the chicks ultimately being reintroduced into Southwest Louisiana as part of an ongoing recovery project.

**Availability of Documents**

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: 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.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2016–10520 Filed 5–4–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[16XD4523WC DWCFSC000.4A0000 DS68664000 DP.BCQSO.16DOIC4A]**

### Proposed Renewal of Information Collection: OMB Control Number 1084–0033, Private Rental Survey

**AGENCY:** Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Acquisition and Property Management, Office of the Secretary, Department of the Interior announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

**DATES:** Consideration will be given to all comments received by July 5, 2016.

**ADDRESSES:** Send your written comments to: Laura Walters, Quarters Rental Program Manager, 7301 W. Mansfield Ave., MS D–2910, Denver, CO 80235, or fax: 303–969–6634, or by email to *laura_a_walters@ibc.doi.gov.* Individuals providing comments should reference OMB control number 1084–0033, ''Private Rental Survey''.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, any explanatory information and related forms, contact Laura Walters, Quarters Rental Program Manager, 7301 W. Mansfield Ave., MS D–2910, Denver, CO 80235, or fax: 303–969–6634, or by email to *laura_a_walters@ibc.doi.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This notice is for renewal of information collection.

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)).

5 U.S.C. 5911 authorizes Federal agencies to provide housing for Government employees under specified circumstances. In compliance with OMB Circular A–45 (Revised), Rental and Construction of Government Quarters, a review of private rental market housing rates is required at least once every 5 years to ensure that the rental, utility charges, and charges for related services to occupants of Government Furnished Housing (GFH) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, the Department of the Interior, Office of the Secretary, Interior Business Center, conducts rental market surveys as a shared federal service for the Departments of the Interior (DOI), Agriculture, Commerce, Homeland Security, Justice, Transportation, Health and Human Services, and Veterans Affairs. In this survey, two collection forms are used: OS–2000, covering ''Houses—Apartments—Mobile Homes'' and OS–2001, covering ''Trailer Spaces.''

This collection of information provides data that helps DOI and the other Federal agencies to meet the rent-setting requirements of OMB Circular A–45 (Revised). If this information were not collected from the public, DOI and the other Federal agencies with GFH would be required to use professional appraisals of open market rental costs for GFH, again, in accordance with OMB Circular A–45, but at an increased cost to the taxpayer.

**II. Data**

(1) *Title:* Private Rental Survey.

*OMB Control Number:* 1084–0033.

*Current Expiration Date:* September 30, 2016.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Entities:* Individuals or households, businesses and other for profit institutions.

*Estimated annual number of respondents:* OS–2000: 3,841; OS–2001: 200; Total: 4,041.

*Frequency of responses:* Once per respondent every fourth year. Three or four of 15 total survey regions are surveyed every year. Therefore a respondent may be potentially be surveyed every fourth year, if an individual respondent lives in the same unit and the exact same unit happens to be surveyed again four years later. In addition, if an individual business is a significant rental property owner or rental property manager in the community, they may provide multiple responses in the same survey. Participation is optional.

(2) *Annual reporting and recordkeeping burden:*

*Estimated burden per response:* OS–2000: 6 minutes; OS–2001: 4 minutes.

*Estimated average number of annual responses:* OS–2000: 3,383; OS–2001: 220

*Total estimated average annual reporting: OS–2000:* 338 hours; *OS–2001:* 15 hours, Total: 353 hours.

(3) Description of the need and use of the information.

This information collection provides the data for DOI to determine open market rental costs for GFH. These rates, in turn, enable DOI to set GFH rental rates for several agencies, as a shared federal service, in accordance with the requirements of OMB Circular A–45 (Revised).

**III. Request for Comments**

The Department invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information and 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 respondents, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

''Burden'' means the total time, effort, and financial resources expended by

persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, and to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. While you may ask us in your comment to withhold PII from public view, we cannot guarantee that we will be able to do so. If you wish to view any comments received, you may do so by scheduling an appointment with the point of contact given in the **ADDRESSES** section. A valid picture identification is required for entry into the Department of the Interior.

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.

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 Office of Management and Budget control number.

Dated: April 28, 2016.

**Debra E. Sonderman,**

*Director, Office of Acquisition and Property Management.*

[FR Doc. 2016–10502 Filed 5–4–16; 8:45 am]

**BILLING CODE 4334–63–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[XXXD5198NI DS61100000 DNINR0000.000000 DX61104]**

### Exxon Valdez Oil Spill Public Advisory Committee

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Call for nominations.

**SUMMARY:** The *Exxon Valdez* Oil Spill Trustee Council is soliciting nominations for the Public Advisory Committee, which advises the Trustee Council on decisions related to the planning, evaluation, funds allocation, and conduct of injury assessment and restoration activities related to the T/V *Exxon Valdez* oil spill of March 1989. Public Advisory Committee members will be selected by the Secretary of the Interior to serve a 24-month term, which will begin on December 1, 2016.

**DATES:** All nominations must be received on or before the close of business on June 20, 2016.

**ADDRESSES:** A complete nomination package should be submitted by hard copy to Elise Hsieh, Executive Director, *Exxon Valdez* Oil Spill Trustee Council, 4210 University Drive, Anchorage, Alaska, 99508–4650, or via email at *elise.hsieh@alaska.gov.*

**FOR FURTHER INFORMATION CONTACT:** Questions should be directed to Cherri Womac, *Exxon Valdez* Oil Spill Trustee Council, 4210 University Drive, Anchorage, Alaska, 99508–4650, 907–265–9339 or 800–478–7745; or Philip Johnson, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska, 99501–5126, 907–271–5011.

**SUPPLEMENTARY INFORMATION:** The *Exxon Valdez* Oil Spill Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Committee was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities, or other use of natural resource damage recoveries obtained by the government.

The Trustee Council consists of representatives of the Department of the Interior, Department of Agriculture, National Oceanic and Atmospheric Administration, Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, and Alaska Department of Law. Appointment to the Public Advisory Council will be made by the Secretary of the Interior.

The Public Advisory Committee consists of 10 members to reflect balanced representation from each of the following principal interests: Aquaculturist/mariculturist, commercial tourism business person, conservationist/environmentalist, recreation user, subsistence user, commercial fisher, public-at-large, native landowner, sport hunter/fisher, and scientist/technologist.

Nominations for membership may be submitted by any source.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Public Advisory Committee and permit the Department of the Interior to contact a potential member.

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

**Mary Josie Blanchard,**

*Acting Director, Office of Environmental Policy and Compliance.*

[FR Doc. 2016–10492 Filed 5–4–16; 8:45 am]

**BILLING CODE 4334–63–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR957000–L14400000–BJ0000–16XL1109AF: HAG 16–0128**

### Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

**Willamette Meridian**

*Oregon*

T. 16 S., R. 14 E., accepted March 16, 2016
T. 16 S., R. 17 E., accepted March 29, 2016
T. 39 S., R. 3 E., accepted March 29, 2016
T. 34 S. R. 3 E., accepted March 29, 2016

**ADDRESSES:** A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue Portland, Oregon 97204, upon required payment.

**FOR FURTHER INFORMATION CONTACT:** Kyle Hensley, (503) 808–6132, Branch of

Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS 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:** A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

**Mary J.M. Hartel,**

*Chief Cadastral Surveyor of Oregon/Washington.*

[FR Doc. 2016–10516 Filed 5–4–16; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[RR43100000, 16XR0680A1, RX002361010021000]**

### Notice To Extend the Public Comment Period and Change Point of Contact for the Draft Environmental Impact Statement for the Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of extension.

**SUMMARY:** The Bureau of Reclamation is extending the public comment period for the Draft Environmental Impact Statement (EIS) on continuing to implement the 2008 Operating Agreement for the Rio Grande Project (Operating Agreement), and to implement long-term contracts for storage of San Juan-Chama Project water in Elephant Butte Reservoir, to Wednesday, June 8, 2016. The Notice of Availability and Notice of Public Hearings for the Draft Environmental Impact Statement was published in the **Federal Register** on March 18, 2016 (81 FR 14886). The public comment period for the Draft EIS was originally scheduled to end on Monday, May 9, 2016.

**DATES:** Comments on the Draft EIS will be accepted until close of business on Wednesday, June 8, 2016.

**ADDRESSES:** Reclamation has changed the point of contact for this Draft EIS. Please send written comments to Ms. Nancy Coulam, Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1147; or via email to *ncoulam@usbr.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Coulam, EIS Project Manager, Bureau of Reclamation, via email at *ncoulam@usbr.gov,* or at (801) 524–3684.

**SUPPLEMENTARY INFORMATION:** In response to two requests for an extension, the Bureau of Reclamation is extending the close of the public comment period for the Draft EIS to Wednesday, June 8, 2016.

#### Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 27, 2016.

**Brent Rhees,**

*Regional Director.*

[FR Doc. 2016–10526 Filed 5–4–16; 8:45 am]

**BILLING CODE 4332–90–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–949]**

### Certain Audio Processing Hardware and Software and Products Containing Same: Commission Decision Not To Review an Initial Determination Terminating Dell Inc.; and Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 40) terminating the investigation on the basis of withdrawal of the complainant as to the last remaining respondent, Dell Inc. (''Dell'') of Round Rock, Texas.

**FOR FURTHER INFORMATION CONTACT:** Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 18, 2015, based on a complaint filed by Andrea Electronics Corp. (''Andrea'') of Bohemia, New York. 80 FR 14,159 (Mar. 18, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio processing hardware and software and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,825,898 (''the '898 patent''); 6,483,923 (''the '923 patent''); 6,049,607 (''the '607 patent'');

6,363,345 (''the '345 patent''); and 6,377,637 (''the '637 patent''). The complaint further alleges that an industry in the United States exists as required by 19 U.S.C. 1337(a)(2). The notice of investigation named Dell and the following 12 respondents: Acer Inc. of New Taipei City, Taiwan; Acer America Corp. of San Jose, California (collectively, ''Acer''); ASUSTeK Computer Inc. of Taipei, Taiwan; ASUS Computer International of Fremont, California (collectively, ''ASUS''); Hewlett Packard Co. (''HP'') of Palo Alto, California; Lenovo Holding Co., Inc. and Lenovo (United States) Inc. (collectively, ''Lenovo''), both of Morrisville, North Carolina; Lenovo Group Ltd. of Beijing, China; Toshiba Corp. of Tokyo, Japan; Toshiba America Information Systems, Inc. (collectively, ''Toshiba'') of Irvine, California; Toshiba America, Inc. of New York City, New York; and Realtek Semiconductor Corp. (''Realtek'') of Hsinchu, Taiwan. Also, intervenors Waves Audio Ltd. (''Waves'') of Tel Aviv, Israel and Conexant Systems Inc. (''Conexant'') of Irvine, California were subsequently added to the investigation. The Office of Unfair Import Investigations is a party in this investigation. The 12 other respondents and the two intervenors, as detailed below, have been terminated from the investigation based on settlement or stipulation.

On July 13, 2015, the Commission determined not to review an ID finding that Andre has standing to bring the complaint in this investigation and to deny respondents' motion for oral argument. On May 1, 2015, the Commission determined not to review two IDs (Order Nos. 4, 5) granting motions of Andrea terminating the investigation as to Lenovo Group Ltd. and Toshiba America, Inc., respectively, based on stipulation. On December 8, 2015, the Commission determined not to review an ID (Order No. 23) granting a joint motion of Andrea and Realtek terminating the investigation as to Realtek based on a settlement agreement and a patent license agreement. On December 21, 2015, the Commission determined not to review an ID (Order No. 24) granting a joint motion of Andrea and Acer terminating the investigation as to Acer based on a settlement agreement and a patent license agreement. On January 5, 2016, the Commission determined not to review two IDs (Order Nos. 25, 26) granting a motion of Andrea to terminate the investigation as to all infringement allegations relating to the '637 patent; the '898 patent; the '923 patent; claims 4–11, 18–20, 22, and 39–46 of the '345 patent; and claims 5–7, 9–12, 29–31, and 33–37 of the '607 patent. On February 3, 2016, the Commission determined not to review an ID (Order No. 30) granting a joint motion of Andrea and HP terminating the investigation as to HP based on a settlement agreement and a patent license agreement. On March 4, 2016, the Commission determined not to review an ID (Order No. 33) granting a joint motion of Andrea and ASUS terminating the investigation as to ASUS based on a settlement agreement and a patent license agreement. On March 17, 2016, the Commission determined not to review an ID (Order No. 36) granting a joint motion of Andrea and Lenovo terminating the investigation as to Lenovo based on a settlement agreement and a patent license agreement. On April 5, 2016, the Commission determined not to review an ID (Order No. 37) granting a joint motion of Andrea and Conexant terminating the investigation as to Conexant based on a settlement agreement and a patent license agreement. On April 19, 2016, the Commission determined not to review an ID (Order No. 38) granting a joint motion of Andrea and Waves terminating the investigation as to Waves based on a settlement agreement and a patent license agreement. On the same date, the Commission determined not to review an ID (Order No. 39) granting a joint motion of Andrea and Toshiba terminating the investigation as to Toshiba based on a settlement agreement.

On March 25, 2016, Andrea filed a motion to terminate the last remaining respondent, Dell, from the investigation on the basis of withdrawal of the complaint as to Dell. Andrea affirmed that there are no agreements, written or oral, express or implied, between itself and Dell concerning the subject matter of the investigation. None of the other parties opposed the motion.

On April 6, 2016, the ALJ granted the motion as an ID. The ALJ found no information indicating that termination of the investigation with respect to Dell on the basis of the withdrawal of the complaint is contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. The ALJ also terminated the investigation. Order No. 40 at 2.

No petitions for review of the ID were filed. The Commission has determined not to review the subject ID, and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Dated: May 2, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–10575 Filed 5–4–16; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability

On April 29, 2016, the Department of Justice lodged a consent decree with the United States District Court for the Middle District of Florida in the lawsuit entitled *United States* v. *EG&G Florida, Inc.,* Civil Action No. 6:16–cv–0716.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the recovery of costs that the United States incurred responding to releases of hazardous substances at Space Launch Complex 15 at the Cape Canaveral Air Force Station in Brevard County, Florida. The consent decree requires the defendant, EG&G Florida, Inc., to pay $331,556 to the United States. In return, the United States agrees not to sue the defendant under sections 106 and 107 of CERCLA.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *EG&G Florida, Inc.,* D.J. Ref. No. 90–11–3–10477/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the consent decree may be examined

and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Henry S. Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2016–10503 Filed 5–4–16; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

**TIME AND DATE:** 11:00 a.m., May 11, 2016.

**PLACE:** U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Approval of February 23, 2016 minutes.

**CONTACT PERSON FOR MORE INFORMATION:** Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: May 2, 2016.

**J. Patricia W. Smoot,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 2016–10655 Filed 5–3–16; 11:15 am]

**BILLING CODE 4410–31–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

**TIME AND DATE:** 12:00 p.m., Tuesday, May 11, 2016.

**PLACE:** U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Determination on two original jurisdiction cases.

**CONTACT PERSON FOR MORE INFORMATION:** Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: May 2, 2016.

**J. Patricia W. Smoot,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 2016–10654 Filed 5–3–16; 11:15 am]

**BILLING CODE 4410–31–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Comment Request for Information Collection for Form ETA–232, Domestic Agricultural In-Season Wage Report and Form ETA–232A, Wage Survey Interview Record, Extension With Revisions

**AGENCY:** Employment and Training Administration (ETA), Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data for Form ETA–232, *Domestic Agricultural In-Season Wage Report* and Form ETA–232A, *Wage Survey Interview Record.* Both forms exist under OMB Control No. 1205–0017, and both expire September 20, 2016. These forms are used by the State Workforce Agencies to collect wage information from agricultural employers.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before July 5, 2016.

**ADDRESSES:** Submit written comments to Brian Pasternak, National Director of Temporary Programs, Office of Foreign Labor Certification, Box 12–200, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2768. Email: *ETA.OFLC.Forms@dol.gov* subject line: ETA–232. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

This information collection is required by the Wagner-Peyser Act, codified at 20 CFR part 653, which covers the requirements for the acceptance and handling of intrastate and interstate job clearance orders seeking workers to perform agricultural or food processing work on a less than year-round basis. Section 653.501(d)(4) states, in pertinent part, that employers must assure that the ''wages and working conditions are not less than the prevailing wages and working conditions among similarly employed agricultural workers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher.''

This collection is also required by regulations for the temporary employment of alien agricultural workers in the United States (20 CFR part 655, subpart B) promulgated under section 218 of the Immigration and Nationality Act (INA), as amended, which require employers to pay covered workers at least the adverse effect wage rate in effect at the time the work is performed, the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the legal Federal or State minimum wage rate, whichever is highest, unless special procedures apply to the occupation. *See* 20 CFR 655.120(a).

The vehicle for establishing the prevailing wage rate is Form ETA–232, *The Domestic Agricultural In-Season Wage Report.* This Report contains the prevailing wage finding based on data collected by the States from employers in a specific crop area using the Form ETA–232A, *Wage Survey Interview Record.* In addition, the State Workforce Agencies (SWAs) collect information from agricultural employers to determine prevailing, normal, accepted or common employment practices for a specific occupational classification as required by 20 CFR 653.501(d)(3).

#### II. Review Focus

The Department is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**III. Current Actions**

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to wage rates for various crop activities.

*Type of Review:* extension with revisions.

*Title:* Domestic Agricultural In-Season Wage Report and Wage Survey Interview Record.

*OMB Number:* 1205–0017.

*Affected Public:* Business or other for-profits and farms; state, local, or tribal governments.

*Form(s):* ETA–232 and ETA–232A.

*Total Annual Respondents:* 24,662.

*Annual Frequency:* 129.

*Total Annual Responses:* 27,658.

*Average Time per Response:* 36 minutes.

*Estimated Total Annual Burden Hours:* 16,477.

*Total Annual Burden Cost for Respondents:* 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2016–10536 Filed 5–4–16; 8:45 am]

**BILLING CODE 4510–FP–P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/.* This information may also be requested by telephoning, 703/292–8687.

Dated: May 2, 2016.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2016–10515 Filed 5–4–16; 8:45 am]

**BILLING CODE 7555–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### President's Commission on White House Fellowships Advisory Committee: Closed Meeting

**AGENCY:** President's Commission on White House Fellowships, U.S. Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** The President's Commission on White House Fellowships (PCWHF) was established by an Executive Order in 1964. The PCWHF is an advisory committee composed of Special Government Employees appointed by the President. The Advisory Committee meets in June to interview potential candidates for recommendation to become a White House Fellow.

The meeting is closed.

*Name of Committee:* President's Commission on White House Fellowships Selection Weekend.

*Date:* June 9–12, 2016.

*Time:* 7:00 a.m.–9:30 p.m.

*Place:* St. Regis Hotel, 16th and K Street, Washington, DC 20006.

*Agenda:* The Commission will interview 30 National Finalists for the selection of the new class of White House Fellows.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Y. Kaplan, 712 Jackson Place NW., Washington, DC 20503, Phone: 202–395–4522.

President's Commission on White House Fellowships.

**Jennifer Y. Kaplan,**

*Director.*

[FR Doc. 2016–10549 Filed 5–4–16; 8:45 am]

**BILLING CODE 6325–44–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 213 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–128, CP2016–162.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–10480 Filed 5–4–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 211 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–126, CP2016–160.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–10489 Filed 5–4–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 18 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–129, CP2016–163.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–10500 Filed 5–4–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

**DATES AND TIMES:** Thursday, May 12, 2016, at 10:30 a.m.

**PLACE:** Las Vegas, Nevada.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

**Thursday, May 12, 2016, at 10:30 a.m.**

1. Strategic Issues.
2. Pricing.
3. Financial Matters.
4. Personnel Matters and Compensation Issues.
5. Executive Session—Discussion of prior agenda items.

**GENERAL COUNSEL CERTIFICATION:** The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:** Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone: (202) 268–4800.

**Julie S. Moore,**

*Secretary.*

[FR Doc. 2016–10639 Filed 5–3–16; 11:15 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 52 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–130, CP2016–164.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–10499 Filed 5–4–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective Date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 210 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–125, CP2016–159.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–10496 Filed 5–4–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective Date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority*

*Mail Contract 212 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–127, CP2016–161.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–10485 Filed 5–4–16; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective Date:* May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on April 29, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 209 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–124, CP2016–158.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2016–10498 Filed 5–4–16; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting; Additional Item

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 81 FR 26600, May 3, 2016.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Thursday, May 5, 2016 at 2 p.m.

**CHANGES IN THE MEETING:** The following matter will also be considered during the 2 p.m. closed meeting scheduled for Thursday, May 5, 2016:

Adjudicatory matter

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields, Secretary, Office of the Secretary at (202) 551–5400.

Dated: April 29, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–10474 Filed 5–3–16; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77748; File No. SR–NYSEARCA–2016–57]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.61 Regarding Price Protection for Market Maker Quotes

April 29, 2016.

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 April 27, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.61 regarding price protection for Market Maker quotes. 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend Rule 6.61 regarding price protection for Market Maker quotes.

Rule 6.61 provides two layers of price protection to incoming Market Maker quotes, rejecting those Market Maker quotes that exceed certain parameters, as a risk mitigation tool.[4] The Exchange proposes to modify Rule 6.61(a)(2) and (3), which relates to the second layer of protection, the ''Underlying Price Check,'' which assesses the price of call or put bids against a specified benchmark. The Underlying Price Check applies to bids in call options or put options when (1) there is no NBBO available, for example, during pre-opening or prior to conducting a re-opening after a trading halt, or (2) if the NBBO is so wide as to not reflect an appropriate price for the respective options series.[5]

To date, the Exchange has not implemented the Underlying Price Check because of technological issues discovered shortly after the Exchange adopted the rule. However, the Exchange has finalized the technology related to this aspect of the Rule and proposes to modify the Rule as it relates to the Underlying Price Check.[6] Specifically, the Exchange proposes to exclude certain securities that do not have reliable (or, in some cases, any available) underlying consolidated last sale information (''last sale'') against

[4] The first layer of protection, referred to as the NBBO Reasonability Check, assesses incoming sell quotes against the National Best Bid (''NBB'') and incoming buy quotes against the National Best Offer (''NBO''). Specifically, per Rule 6.61(a)(1), provided that an NBBO is available, a Market Maker quote would be rejected if it is priced a specified dollar amount or percentage through the contra-side NBBO. The Exchange has implemented the NBBO Reasonability Check and does not propose to modify rule text related to this feature.

[5] *See* Rule 6.61, Commentary .01 (directing OTP Holders and OTP Firms to consult Trader Updates for additional information regarding the implementation schedule for paragraphs (a)(2) and (a)(3) of the Rule, with final implementation of such paragraphs to be completed by no later than July 31, 2016).

[6] *See* Securities Exchange Act Release No. 74441 (March 4, 2015), 80 FR 12664 (March 10, 2015) (SR–NYSEArca–2014–150) (Approval Order); *see also* Securities Exchange Act Release No. 74018 (January 8, 2015), 80 FR 1982 (January 14, 2015) (SR–NYSEArca-2014–150) (Notice). *See also* Securities Exchange Act Release Nos. 75156 (June 11, 2015), 80 FR 34756 (June 17, 2015) (SR–NYSEArca-2015–45) (modifying rule related to the Underlying Price Check to allow for implementation of the feature by March 4, 2016); 77357 (March 14, 2016), 81 FR 14912 (March 18, 2015) (SR–NYSEArca–2016–41) (extending March 4, 2016 deadline until July 31, 2016).

which to perform the Underlying Price Check because, in the absence of reliable price data, the Underlying Price Check may result in Market Maker quotes being rejected too frequently. Accordingly, the Exchange proposes to modify Commentary .01 to the Rule to provide that the Underlying Price Check would not apply to ''(i) any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action; (ii) any options series for which the underlying security is identified as over-the-counter (''OTC'') [7]; (iii) any option series on an index; (iv) Binary Return Derivatives (''ByRDs'')'' (the ''Excluded Options'').[8] The proposed change would enable the Exchange to implement this price protection feature and apply it to securities for which there is reliable price data for the underlying security to perform the check. Specifically, the Exchange would exclude any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action because the last sale information would not have been adjusted for the non-standard deliverable, and would therefore be unreliable.[9] Options in OTC would be considered Excluded Options because unlike listed securities, the Exchange does not receive an active data feed with last sale information for OTC securities. The Exchange would exclude any options series overlying a stock index because such indices do not have last sale information. Similarly, the Exchange would exclude options on ByRDs because ByRDS track a value weighted average price (''VWAP'') and not the last sale of the underlying security.[10] The Exchange notes the Excluded Options would continue to be subject to the NBBO Reasonability Check, which is the first layer of price protection (*see supra* n. 4) when there is a reliable NBBO and, thus, Market Maker quotes in these securities are not without price protection on the Exchange.

The Exchange also proposes to exempt from the Underlying Price Check any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and orderly market.[11] The Exchange believes this proposed change would enable the Exchange to exclude option series, other than Excluded Options, from the Underlying Price Check if the Exchange determines that the price protection feature would not function as intended.[12] For example, if the last sale is zero, for whatever reason, the Exchange would have the discretion to forego the Underlying Price Check for a particular call bid. Similarly, if there was some other event or change that impacted the underlying security (for example if there was a change to the ticker symbol for the underlying security), the Exchange would retain discretion to exclude the affected options series from the Underlying Price Check. The Exchange notes that another options exchange likewise has retained discretion to withhold price protection features consistent with the Underlying Price Check.[13] If the Exchange determines that the Underlying Price Check should not apply in the interest of maintaining a fair and orderly market, as proposed, the Exchange would announce this decision by electronic message to OTP Holders and OTP Firms that request to receive such messages.

Implementation

The Exchange will announce the implementation date of the proposed rule change, which will be before July 31, 2016, by Trader Update.[14]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[15] which requires the rules of an exchange 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 the proposed modifications would remove impediments to and perfect the mechanism of a free and open market and would protect investors and the public interest because it would exempt from the Underlying Price Check those Excluded Options for which there is no reliable pricing data for the underlying security or index to perform the Check properly. Similarly, the Exchange believes the proposal to exclude any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and orderly market would likewise protect investors and the public interest because this change would enable the Exchange to ensure that the Underlying Price Check operates as intended (*i.e.,* when there is reliable price data against which to perform the Check). Absent the proposed modification, otherwise acceptable Market Maker quotes would be erroneously rejected upon arrival because the Underlying Price Check would deem such quotes to be at prices that are through the (unreliable) last sale price, which would be disruptive to Market Makers that provide necessary liquidity to the Exchange. Thus, the Exchange believes that this proposal meets these requirements because it would assist with the maintenance of a fair and orderly market by allowing the Exchange to implement the Underlying Price Check to work as intended—to reduce the risk of Market Maker quotes sweeping through multiple price points resulting in executions at prices that are through the last sale price and potentially erroneous.

Finally, the Exchange believes the proposed change would promote just and equitable principles of trade because it would enable the Exchange to implement the second layer of price protection for when an NBBO is not available, which would further assist the Exchange in avoiding the processing of erroneous quotes that otherwise may cause price dislocation before such quotes could cause harm to the market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

[7] Options on OTC securities, which are not considered NMS stocks, are subject to trading pursuant to Rule 5.4(b)(6) (Withdrawal of Approval of Underlying Securities). The Commission notes that Rule 5.4 provides for the continued listing of options on underlying securities that no longer meet the criteria for listing and trading on the Exchange.

[8] *See* proposed Rule 6.61, Commentary .01. *See also* proposed Rule 6.61(a)(2) and (3) (providing that the Underlying Price Check would apply, ''except as provided in Commentary .01 to this Rule'').

[9] Corporate actions such as mergers or reorganizations can result in options being adjusted to a non-standard deliverable.

[10] *See generally* Section 8, Binary Return Derivatives, Rules 5.82–5.95. ByRDs are European-style option contracts on individual stocks, exchange-traded funds and Index-Linked Securities that have a fixed return in cash based on a set strike price

[11] *See* proposed Rule 6.61, Commentary .01. *See also* proposed Rule 6.61(a)(2) and (3) (providing that the Underlying Price Check would apply, ''except as provided in Commentary .01 to this Rule'').

[12] The Exchange would document, retain, and periodically review any Exchange decision to not apply the Underlying Price Check, including the reason for the decision.

[13] *See* Securities Exchange Act Release No. 76960 (January 21, 2016), 81 FR 4728 (January 27, 2016) (SR–CBOE–2015–107) (approving price protection mechanisms for quotes and orders, which includes the Chicago Board Options Exchange, Inc. retaining discretion to withhold its Put Strike Price and Call Underlying Value Checks).

[14] *See supra* n. 5. Once implemented, the Exchange will file a separate proposed rule change to delete text in Commentary .01 regarding the July 31, 2016 implementation deadline.

[15] 15 U.S.C. 78f(b).

Exchange believes the proposal would not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group (*i.e.,* Market Markers versus non-Market Makers) as the Underlying Price Check, as modified, is designed to address the unique role of Market Makers to enter two-sided quotations in their appointments and would apply equally to all Market Makers. Moreover, the Exchange believes the proposal would provide market participants with additional protection from anomalous executions while ensuring that the Underlying Price Check would not be performed in instances where the Exchange lacks reliable pricing data for the underlying security. Thus, the Exchange does not believe the proposal creates any significant impact on competition. The Exchange believes this proposal is pro-competitive as it allows the Exchange to implement the second layer of price protection, which may encourage Market Makers to quote tighter deeper markets, which will increase liquidity and enhance competition.

*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**

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) [16] of the Act and Rule 19b–4(f)(6) thereunder.[17]

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–NYSEARCA–2016–57 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–2016–57. 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–2016–57, and should be submitted on or before May 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–10471 Filed 5–4–16; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Solarbrook Water and Power Corp.; Order of Suspension of Trading

May 3, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solarbrook Water and Power Corp. (''Solarbrook'') because of concerns regarding the accuracy and adequacy of information in the marketplace and potentially manipulative transactions in Solarbrook common stock. Solarbrook was a North Carolina corporation with its principal place of business located in Cary, NC, until April 4, 2012, when it was administratively dissolved by the state for failure to file required annual reports. Its stock is quoted on OTC Link (previously ''Pink Sheets''), operated by OTC Markets Group Inc. (''OTC Link''), under the ticker symbol SLRW.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

*Therefore, it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 3, 2016, through 11:59 p.m. EDT on May 16, 2016.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–10677 Filed 5–3–16; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77750; File Nos. SR–DTC–2016–801; SR–NSCC–2016–801]**

## Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Notice of Filing of and No Objection to Advance Notices To Renew the Credit Facility

April 29, 2016.

Pursuant to section 806(e)(1) of title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on April 15, 2016, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' together with DTC, ''Clearing Agencies'') filed with the Securities and Exchange Commission (''Commission'') the advance notices SR–DTC–2016–801 and SR–NSCC–2016–801 (''Advance Notices'') as described in Items I, II and III below, which Items have been prepared primarily by the Clearing Agencies. The Commission is publishing this notice to solicit comments on the Advance Notices from interested persons and providing notice that the Commission does not object to the Advance Notices.

### I. Clearing Agencies' Statement of the Terms of Substance of the Advance Notices

The Advance Notices are filed by the Clearing Agencies in connection with the proposed renewal (the ''Renewal'') of the Clearing Agencies' 364-day committed revolving credit facility (the ''Credit Facility''). The Renewal is described in greater detail below.[3]

### II. Clearing Agencies' Statement of the Purpose of, and Statutory Basis for, the Advance Notices

In their filings with the Commission, the Clearing Agencies included statements concerning the purpose of and basis for the Advance Notices and discussed any comments they received on the Advance Notices. The text of these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

*(A) Clearing Agencies' Statement on Comments on the Advance Notices Received From Members, Participants, or Others*

The Clearing Agencies have not solicited or received any written comments relating to these proposals. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

*(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act*

Description of the Proposed Change

As part of their liquidity risk management regime, the Clearing Agencies maintain a 364-day committed revolving line of credit with a syndicate of commercial lenders, which is renewed every year. The terms and conditions of the current Renewal would be specified in the Fifteenth Amended and Restated Revolving Credit Agreement, to be dated as of May 10, 2016 (''Renewal Agreement''), among the Clearing Agencies,[4] the lenders party thereto, the administrative agent and the collateral agent, and are substantially the same as the terms and conditions of the existing credit agreement, dated as of May 12, 2015, as heretofore amended (''Existing Agreement''),[5] except that pricing and the amount of the aggregate commitment for NSCC may change. The substantive terms of the Renewal Agreement are set forth in the Summary of Indicative Principal Terms and Conditions, dated March 24, 2016, which is not a public document. The aggregate commitments being sought under the Renewal would be for an amount up to $14 billion for NSCC and DTC together, of which all but a $1.9 billion commitment would be the aggregate commitment to NSCC as borrower as is provided in the Existing Agreement.

Expected Effect on Risks to the Clearing Agencies, Their Participants, and the Market

The Renewal would continue to promote the reduction of risks to the Clearing Agencies, their members, and the securities market in general because it would (1) help DTC maintain sufficient liquidity resources to complete system-wide settlement on each business day, with a high degree of confidence and notwithstanding the failure-to-settle of the Participant, or affiliated family of Participants, with the largest net settlement obligation; and (2) help NSCC maintain sufficient liquidity resources to timely meet its settlement obligations with a high degree of confidence. The Renewal Agreement and its substantially similar predecessor agreements have been in place since the introduction of same day funds settlement at the Clearing Agencies.

Management of Identified Risks

The Clearing Agencies require same day liquidity resources to cover the failure-to-settle of NSCC's Member, or affiliated family of Members, with the largest aggregate liquidity exposure, or of DTC's Participant, or affiliated family of Participants, with the largest net settlement obligation. If an NSCC Member defaults or a DTC Participant fails to satisfy its end-of-day net settlement obligation, each Clearing Agency may borrow under its line of credit to enable it, if necessary, to fund settlement among non-defaulting Members or DTC Participants.

Any NSCC borrowing would be secured principally by (i) securities deposited by Members in NSCC's Clearing Fund [6] (*i.e.*, the Eligible Clearing Fund Securities, as defined in NSCC's Rules, pledged by Members to NSCC in lieu of cash Clearing Fund deposits) and (ii) securities cleared through NSCC's Continuous Net Settlement System that were intended for delivery to the defaulting Member upon payment of its net settlement obligation. In addition to the Credit Facility and the Clearing Fund, NSCC has diversified its liquidity resources by implementing a commercial paper and extendible-term note facility.[7] As integral parts of NSCC's risk management structure, the Credit

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] Terms not defined herein are defined in NSCC's Rules and Procedures (''NSCC Rules''), *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf* or DTC's Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[4] The Renewal Agreement would provide for both DTC and NSCC as borrowers, with an aggregate commitment of $1.9 billion for DTC and the amount of any excess aggregate commitment for NSCC. The borrowers are not jointly and severally liable and each lender has a ratable commitment to each borrower. DTC and NSCC provide separate collateral to secure their respective borrowings.

[5] *See* Securities Exchange Act Release No. 74906 (May 7, 2015), 80 FR 27714 (May 14, 2015) (SR–DTC–2015–801; SR–NSCC–2015–801).

[6] NSCC's Clearing Fund (which operates as its default fund) addresses potential exposure through a number of risk-based component charges calculated and assessed daily and includes additional liquidity deposits by certain Members pursuant to NSCC's Supplemental Liquidity Deposits rule (NSCC's Rule 4(A), *supra* note 3).

[7] *See* Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR–NSCC–2015–802).

Facility, the commercial paper and extendible-term note facility and the Clearing Fund, together, provide NSCC liquidity to complete end-of-day net funds settlement.

Any DTC borrowing would be secured principally by securities that were intended to be delivered to the defaulting Participant upon payment of its net settlement obligation and securities previously designated by the defaulting Participant as collateral. The Credit Facility is built into DTC's primary risk management controls, the Net Debit Cap [8] and Collateral Monitor,[9] which together require that the end-of-day net funds settlement obligation of a Participant cannot exceed DTC's liquidity resources and is fully collateralized.

The Credit Facility is a cornerstone of each of the Clearing Agencies' risk management, and this Renewal is critical to each of the Clearing Agencies' risk management infrastructure. Because the Renewal Agreement would preserve substantially similar terms and conditions to the Existing Agreement, the Clearing Agencies believe that the Renewal would not otherwise affect or alter the management of risk at the Clearing Agencies.

Consistency With the Clearing Supervision Act

The Clearing Agencies believe the Renewal is consistent with section 805(b) of the Clearing Supervision Act.[10] The objectives and principles of section 805(b) of the Clearing Supervision Act are the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks, and support of the stability of the broader financial system.[11] The Clearing Agencies believe that the Renewal would promote these objectives and principles because it would provide a continuing source of committed liquidity for NSCC to meet its settlement obligations and for DTC to complete net funds settlement among non-defaulting Participants, thus mitigating liquidity risk.

The Clearing Agencies believe the Renewal also is consistent with Clearing Agency Standards, in particular, Commission Rule 17Ad–22(b)(3) [12] and Rule 17Ad–22(d)(11).[13] Commission Rule 17Ad–22(b)(3) [14] requires a central counterparty, like NSCC, to ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions . . . .'' The Clearing Agencies believe the Renewal is consistent with Rule 17Ad–22(b)(3) [15] because it would help NSCC maintain sufficient financial resources to withstand, at a minimum, a default by a Member to which NSCC has the largest exposure.

Commission Rule 17Ad–22(d)(11) [16] requires that registered clearing agencies, like NSCC and DTC, ''establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.'' The Clearing Agencies believe that the Renewal is consistent with Rule 17Ad–22(d)(11) [17] because it would provide the Clearing Agencies with a readily available liquidity resource that would enable the Clearing Agencies to continue to meet their obligations in a timely fashion, in the event of a Member default at NSCC or Participant default at DTC, thereby helping to contain losses and liquidity pressures from that default.

## III. Date of Effectiveness of the Advance Notices and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The Clearing Agencies shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the Clearing Agencies with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the Advance Notices are filed, or the date further information requested by the Commission is received, if the Commission notifies the Clearing Agencies in writing that it does not object to the proposed change and authorizes the Clearing Agencies to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The Clearing Agencies shall post notice on their Web site of proposed changes that are implemented.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notices are consistent with the Clearing Supervision 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–DTC–2016–801 or SR–NSCC–2016–801 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2016–801 or SR–NSCC–2016–801. One of these file numbers 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

[8] The Net Debit Cap risk control is designed so that DTC may complete settlement among non-defaulting Participants, even if the Participant or affiliated family of Participants with the largest settlement obligation that day fails to settle. Before completing a transaction in which a Participant is the receiver, DTC calculates the effect the transaction would have on such Participant's Settlement Account, and determines whether any resulting Net Debit Balance would exceed the Participant's Net Debit Cap. Any transaction that would cause the Net Debit Balance to exceed the Net Debit Cap is placed on a pending (recycling) queue until the Net Debit Cap will not be exceeded by processing the transaction.

[9] DTC tracks Collateral in a Participant's account through the Collateral Monitor. At all times, the Collateral Monitor reflects the amount by which the Collateral Value in the account exceeds the Net Debit Balance in the account. When processing a transaction, DTC verifies that the Collateral Monitor of each of the deliverer and receiver will not become negative when the transaction is processed. If the transaction would cause either party's Settlement Account to have insufficient collateral to support its net settlement obligation, the transaction will recycle until the deficient account has sufficient Collateral to proceed or until the applicable cutoff time occurs.

[10] 12 U.S.C. 5464(b).

[11] *Id.*

[12] 17 CFR 240.17Ad–22(b)(3).

[13] 17 CFR 240.17Ad–22(d)(11).

[14] 17 CFR 240.17Ad–22(b)(3).

[15] *Id.*

[16] 17 CFR 240.17Ad–22(d)(11).

[17] *Id.*

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 Advance Notices that are filed with the Commission, and all written communications relating to the Advance Notices 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 filings also will be available for inspection and copying at the principal office of the Clearing Agencies and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2016–801 or SR–NSCC–2016–801 and should be submitted on or before May 26, 2016.

## V. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive.[18] The stated purpose is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''FMUs'') and strengthening the liquidity of systemically important FMUs.[19] Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the Supervisory Agency or the appropriate financial regulator.[20] Section 805(b) of the Clearing Supervision Act states that the objectives and principles for the risk management standards prescribed under section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.[21]

The Commission has adopted risk management standards under section 805(a)(2) of the Clearing Supervision Act and the Act (''Clearing Agency Standards'').[22] The Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[23] Therefore, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in section 805(b) of the Clearing Supervision Act.[24]

The Commission believes that the proposal in the Advance Notices is consistent with Clearing Agency Standards, in particular, Rule 17Ad–22(d)(11) of the Act [25] for NSCC and DTC, and Rule 17Ad–22(b)(3) of the Act [26] for NSCC. Rule 17Ad–22(d)(11) requires that registered clearing agencies ''establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.'' [27] The Commission believes that the proposal is consistent with Rule 17Ad–22(d)(11) because the renewed Credit Facility will provide the Clearing Agencies with a readily available liquidity resource that will enable them to continue to meet their respective obligations in a timely fashion, in the event of a member default, thereby helping to contain losses and liquidity pressures from that default.

Rule 17Ad–22(b)(3) of the Act requires a central counterparty, like NSCC, to ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions . . . .'' [28] The Commission believes that the proposal is consistent with Rule 17Ad–22(b)(3) because the renewed credit facility will continue to provide NSCC with a readily available liquidity resource that helps NSCC maintain sufficient financial resources to withstand, at a minimum, a default by an NSCC member to which NSCC has the largest exposure.

For these reasons, the Commission believes the Advance Notices are consistent with the objectives and principles described in section 805(b) of the Clearing Supervision Act,[29] including that they reduce systemic risks and support the stability of the broader financial system. As discussed above, the renewal of the Credit Facility will provide the Clearing Agencies needed liquidity if they experience severe liquidity pressure from a member default. Given that the Clearing Agencies have been designated as systemically important FMUs, the Clearing Agencies' ability to provide their clearing services during such an event contributes to reducing systemic risks and supporting the stability of the broader financial system.

For the reasons stated above, the Commission does not object to the Advance Notices.

## VI. Conclusion

*It is therefore noticed*, pursuant to section 806(e)(1)(I) of the Clearing Supervision Act,[30] that the Commission *does not object* to the Advance Notices SR–DTC–2016–801 and SR–NSCC–2016–801 and that DTC and NSCC be and hereby are *authorized* to implement the change as of the date of this notice.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–10473 Filed 5–4–16; 8:45 am]

**BILLING CODE 8011–01–P**

[18] *See* 12 U.S.C. 5461(b).

[19] *Id.*

[20] 12 U.S.C. 5464(a)(2).

[21] 12 U.S.C. 5464(b).

[22] *See* 17 CFR 240.17Ad–22; Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11).

[23] *Id.*

[24] 12 U.S.C. 5464(b).

[25] 17 CFR 240.17Ad–22(d)(11).

[26] 17 CFR 240.17Ad–22(b)(3).

[27] 17 CFR 240.17Ad–22(d)(11).

[28] 17 CFR 240.17Ad–22(b)(3).

[29] 12 U.S.C. 5464(b).

[30] 12 U.S.C. 5465(e)(1)(I).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77749; File No. SR–NYSEMKT–2016–47]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 967.1NY Regarding Price Protection for Market Maker Quotes

April 29, 2016.

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 April 27, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 967.1NY regarding price protection for Market Maker quotes. 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 is proposing to amend Rule 967.1NY regarding price protection for Market Maker quotes.

Rule 967.1NY provides two layers of price protection to incoming Market Maker quotes, rejecting those Market Maker quotes that exceed certain parameters, as a risk mitigation tool.[4] The Exchange proposes to modify Rule 967.1NY(a)(2) and (3), which relates to the second layer of protection, the ''Underlying Price Check,'' which assesses the price of call or put bids against a specified benchmark. The Underlying Price Check applies to bids in call options or put options when (1) there is no NBBO available, for example, during pre-opening or prior to conducting a re-opening after a trading halt, or (2) if the NBBO is so wide as to not reflect an appropriate price for the respective options series.[5]

To date, the Exchange has not implemented the Underlying Price Check because of technological issues discovered shortly after the Exchange adopted the rule. However, the Exchange has finalized the technology related to this aspect of the Rule and proposes to modify the Rule as it relates to the Underlying Price Check.[6] Specifically, the Exchange proposes to exclude certain securities that do not have reliable (or, in some cases, any available) underlying consolidated last sale information (''last sale'') against which to perform the Underlying Price Check because, in the absence of reliable price data, the Underlying Price Check may result in Market Maker quotes being rejected too frequently. Accordingly, the Exchange proposes to modify Commentary .01 to the Rule to provide that the Underlying Price Check would not apply to ''(i) any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action; (ii) any options series for which the underlying security is identified as over-the-counter (''OTC'')[7]; (iii) any option series on an index; (iv) Binary Return Derivatives (''ByRDs'')'' (the ''Excluded Options'').[8] The proposed change would enable the Exchange to implement this price protection feature and apply it to securities for which there is reliable price data for the underlying security to perform the check. Specifically, the Exchange would exclude any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action because the last sale information would not have been adjusted for the non-standard deliverable, and would therefore be unreliable.[9] Options in OTC would be considered Excluded Options because unlike listed securities, the Exchange does not receive an active data feed with last sale information for OTC securities. The Exchange would exclude any options series overlying a stock index because such indices do not have last sale information. Similarly, the Exchange would exclude options on ByRDs because ByRDS track a value weighted average price (''VWAP'') and not the last sale of the underlying security.[10] The Exchange notes the Excluded Options would continue to be subject to the NBBO Reasonability Check, which is the first layer of price protection (*see supra* n. 4) when there is a reliable NBBO and, thus, Market Maker quotes in these securities are not without price protection on the Exchange.

The Exchange also proposes to exempt from the Underlying Price Check any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The first layer of protection, referred to as the NBBO Reasonability Check, assesses incoming sell quotes against the National Best Bid (''NBB'') and incoming buy quotes against the National Best Offer (''NBO''). Specifically, per Rule 967.1NY(a)(1), provided that an NBBO is available, a Market Maker quote would be rejected if it is priced a specified dollar amount or percentage through the contra-side NBBO. The Exchange has implemented the NBBO Reasonability Check and does not propose to modify rule text related to this feature.

[5] *See* Rule 967.1NY, Commentary .01 (directing ATP Holders to consult Trader Updates for additional information regarding the implementation schedule for paragraphs (a)(2) and (a)(3) of the Rule, with final implementation of such paragraphs to be completed by no later than July 31, 2016).

[6] *See* Securities Exchange Act Release No. 74440 (March 4, 2015), 80 FR 12687 (March 10, 2015) (SR–NYSEMKT–2014–116) (Approval Order); *see also* Securities Exchange Act Release No. 74017 (January 8, 2015), 80 FR 1979 (January 14, 2015) (SR–NYSEMKT–2014–116) (Notice). *See also* Securities Exchange Act Release Nos. 75151 (June 11, 2015), 80 FR 34770 (June 17, 2015) (SR–NYSEMKT–2015–42) (modifying rule related to the Underlying Price Check to allow for implementation of the feature by March 4, 2016); 77356 (March 14, 2016), 81 FR 14917 (March 18, 2015) (SR–NYSEMKT–2016–36) (extending March 4, 2016 deadline until July 31, 2016).

[7] Options on OTC securities, which are not considered NMS stocks, are subject to trading pursuant to Rule 916 (Withdrawal of Approval of Underlying Securities), Commentary .01(5). The Commission notes that Rule 916 provides for the continued listing of options on underlying securities that no longer meet the criteria for listing and trading on the Exchange.

[8] *See* proposed Rule 967.1NY, Commentary .01. *See also* proposed Rule 967.1NY (a)(2) and (3) (providing that the Underlying Price Check would apply, ''except as provided in Commentary .01 to this Rule'').

[9] Corporate actions such as mergers or reorganizations can result in options being adjusted to a non-standard deliverable.

[10] *See generally* Section 17, Binary Return Derivatives, Rules 900ByRDs–980ByRDs. ByRDs are European-style option contracts on individual stocks, exchange-traded funds and Index-Linked Securities that have a fixed return in cash based on a set strike price.

orderly market.[11] The Exchange believes this proposed change would enable the Exchange to exclude option series, other than Excluded Options, from the Underlying Price Check if the Exchange determines that the price protection feature would not function as intended.[12] For example, if the last sale is zero, for whatever reason, the Exchange would have the discretion to forego the Underlying Price Check for a particular call bid. Similarly, if there was some other event or change that impacted the underlying security (for example if there was a change to the ticker symbol for the underlying security), the Exchange would retain discretion to exclude the affected options series from the Underlying Price Check. The Exchange notes that another options exchange likewise has retained discretion to withhold price protection features consistent with the Underlying Price Check.[13] If the Exchange determines that the Underlying Price Check should not apply in the interest of maintaining a fair and orderly market, as proposed, the Exchange would announce this decision by electronic message to ATP Holders that request to receive such messages.

Implementation

The Exchange will announce the implementation date of the proposed rule change, which will be before July 31, 2016, by Trader Update.[14]

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[15] which requires the rules of an exchange 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 the proposed modifications would remove impediments to and perfect the mechanism of a free and open market and would protect investors and the public interest because it would exempt from the Underlying Price Check those Excluded Options for which there is no reliable pricing data for the underlying security or index to perform the Check properly. Similarly, the Exchange believes the proposal to exclude any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and orderly market would likewise protect investors and the public interest because this change would enable the Exchange to ensure that the Underlying Price Check operates as intended (*i.e.,* when there is reliable price data against which to perform the Check). Absent the proposed modification, otherwise acceptable Market Maker quotes would be erroneously rejected upon arrival because the Underlying Price Check would deem such quotes to be at prices that are through the (unreliable) last sale price, which would be disruptive to Market Makers that provide necessary liquidity to the Exchange. Thus, the Exchange believes that this proposal meets these requirements because it would assist with the maintenance of a fair and orderly market by allowing the Exchange to implement the Underlying Price Check to work as intended—to reduce the risk of Market Maker quotes sweeping through multiple price points resulting in executions at prices that are through the last sale price and potentially erroneous.

Finally, the Exchange believes the proposed change would promote just and equitable principles of trade because it would enable the Exchange to implement the second layer of price protection for when an NBBO is not available, which would further assist the Exchange in avoiding the processing of erroneous quotes that otherwise may cause price dislocation before such quotes could cause harm to the market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal would not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group (*i.e.,* Market Markers versus non-Market Makers) as the Underlying Price Check, as modified, is designed to address the unique role of Market Makers to enter two-sided quotations in their appointments and would apply equally to all Market Makers. Moreover, the Exchange believes the proposal would provide market participants with additional protection from anomalous executions while ensuring that the Underlying Price Check would not be performed in instances where the Exchange lacks reliable pricing data for the underlying security. Thus, the Exchange does not believe the proposal creates any significant impact on competition. The Exchange believes this proposal is pro-competitive as it allows the Exchange to implement the second layer of price protection, which may encourage Market Makers to quote tighter deeper markets, which will increase liquidity and enhance competition.

*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**

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)[16] of the Act and Rule 19b–4(f)(6) thereunder.[17]

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.

[11] *See* proposed Rule 967.1NY, Commentary .01. *See also* proposed Rule 967.1NY (a)(2) and (3) (providing that the Underlying Price Check would apply, ''except as provided in Commentary .01 to this Rule'').

[12] The Exchange would document, retain, and periodically review any Exchange decision to not apply the Underlying Price Check, including the reason for the decision.

[13] *See* Securities Exchange Act Release No. 76960 (January 21, 2016), 81 FR 4728 (January 27, 2016) (SR–CBOE–2015–107) (approving price protection mechanisms for quotes and orders, which includes the Chicago Board Options Exchange, Inc. retaining discretion to withhold its Put Strike Price and Call Underlying Value Checks).

[14] *See supra* n. 5. Once implemented, the Exchange will file a separate proposed rule change to delete text in Commentary .01 regarding the July 31, 2016 implementation deadline.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–47 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–47. 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 referto File Number SR–NYSEMKT–2016–47, and should be submitted on or before May 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–10472 Filed 5–4–16; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 9548]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Graphic Masters: Dürer, Rembrandt, Hogarth, Goya, Picasso, R. Crumb'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E. O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition ''Graphic Masters: Dürer, Rembrandt, Hogarth, Goya, Picasso, R. Crumb,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Seattle Art Museum, Seattle, Washington, from on or about June 9, 2016, until on or about August 28, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: April 27, 2016.

**Mark Taplin,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2016–10548 Filed 5–4–16; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 9547]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Bestowing Beauty: Masterpieces From The Hossein Afshar Collection'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition ''Bestowing Beauty: Masterpieces from The Hossein Afshar Collection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston, Houston, Texas, from on about November 30, 2017, until on or about November 27, 2022, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: April 27, 2016.

**Mark Taplin,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2016–10547 Filed 5–4–16; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[FHWA Docket No. FHWA–2015–0020]**

### Revision of Thirteen Controlling Criteria for Design and Documentation of Design Exceptions

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The geometric design standards for projects on the National Highway System (NHS) are incorporated by reference in FHWA regulations in 23 CFR 625 and apply regardless of funding source. These design standards are comprehensive in nature, covering a multitude of design characteristics, while allowing flexibility in application. Exceptions may be approved on a project basis for designs that do not conform to the minimum or limiting criteria set forth in the standards, policies, and standard specifications.

The FHWA is updating its 1985 policy regarding controlling criteria for design, applicable to projects on the NHS, to reduce the number of controlling criteria from 13 to 10, and to apply only 2 of those criteria to low speed roadways. The FHWA is also issuing guidance to clarify when design exceptions are needed and the documentation that is expected to support such requests. The FHWA's guidance memorandum, which is available in the docket (FHWA–2015–0020), transmits this policy to FHWA field offices.

**FOR FURTHER INFORMATION CONTACT:** For questions, contact Elizabeth Hilton, Geometric Design Engineer, FHWA Office of Program Administration, telephone 512–536–5970, or via email at *Elizabeth.Hilton@dot.gov.* For legal questions, please contact Robert Black, Office of the Chief Counsel, telephone 202–366–1359, or via email at *Robert.Black@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Business 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 and Filing

This document, the request for comments notice, and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The docket identification number is FHWA–2015–0020. The Web site is available 24 hours each day, 365 days each year. Anyone can search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

#### Request for Comments

On October 7, 2015, FHWA published a Notice with Request for Comments (80 FR 60732) soliciting public comments on proposed revisions to the 13 controlling criteria for the design and the documentation that is expected to support requests for design exceptions. When used in this notice, the term ''design exception'' refers to documentation prepared for projects on the NHS when a controlling criterion is not met, and that must be approved in accordance with 23 CFR 625.3(f), by FHWA or on behalf of FHWA if a State Transportation Agency (STA) has assumed this responsibility through a Stewardship and Oversight agreement.

#### Background

As codified in 23 CFR 625.3 and 625.4, the geometric design standards for projects on the NHS are A Policy on Geometric Design of Highways and Streets (2011) and A Policy on Design Standards Interstate System (2005), published by the American Association of State Highway and Transportation Officials (AASHTO). As codified in 23 CFR 625.3(f), exceptions may be approved on a project basis for designs that do not conform to the minimum or limiting criteria set forth in the standards, policies, and standard specifications adopted in 23 CFR 625. In 1985, FHWA designated 13 criteria as controlling criteria, requiring design exceptions when any of these 13 criteria were not met.

The FHWA proposed to eliminate 3 criteria, rename others, and focus the application of most criteria on high-speed roadways (*i.e.,* design speed ≥50 mph). The 10 controlling criteria proposed for design of projects on the NHS were: Design Speed, Lane Width, Shoulder Width, Horizontal Curve Radius, Superelevation, Stopping Sight Distance, Maximum Grade, Cross Slope, Vertical Clearance, and Design Loading Structural Capacity. The FHWA proposed that all 10 controlling criteria would apply to high-speed roadways on the NHS, and that only two, Design Speed and Design Loading Structural Capacity, would apply on low-speed roadways (*i.e.,* design speed <50 mph) on the NHS.

#### Purpose of the Notice

The purpose of this notice is to publish final designation of the controlling criteria for design of projects on the NHS and how they will be applied in various contexts, and describe the design documentation needed to support requests for design exceptions. While all of the criteria contained in the adopted standards are important design considerations, they do not all affect the safety and operations of a roadway to the same degree, and therefore do not require the same level of administrative control. The FHWA encourages agencies to document design decisions to demonstrate compliance with accepted engineering principles and the reasons for the decision. Deviations from criteria contained in the standards for projects on the NHS which are not considered to be controlling criteria should be documented by the STA in accordance with State laws, regulations, directives, and safety standards. States can determine their own level of documentation depending on State laws and risk management practices.

#### Designation of Controlling Criteria

Based on the comments received in response to FHWA's proposal, combined with FHWA's own experience and the findings of National Cooperative Highway Research Program (NCHRP) Report 783 ''Evaluation of the 13 Controlling Criteria for Geometric Design'' (2014), the 10 controlling criteria for design are:

- Design Speed;
- Lane Width;
- Shoulder Width;
- Horizontal Curve Radius;
- Superelevation Rate;
- Stopping Sight Distance (SSD);
- Maximum Grade;
- Cross Slope;
- Vertical Clearance; and
- Design Loading Structural Capacity.

All 10 controlling criteria apply to high-speed (*i.e.,* Interstate highways, other freeways, and roadways with design speed ≥50 mph) roadways on the NHS. The SSD applies to horizontal alignments and vertical alignments except for sag vertical curves. On low-speed roadways (*i.e.,* non-freeways with design speed <50 mph) on the NHS, only the following two controlling criteria apply:

- Design Loading Structural Capacity; and
- Design Speed.

**Design Documentation**

Design exceptions, subject to approval by FHWA, or on behalf of FHWA if an STA has assumed the responsibility through a Stewardship and Oversight agreement, are required for projects on the NHS only when the controlling criteria are not met. The FHWA expects documentation of design exceptions to describe all of the following:

- Specific design criteria that will not be met.
- Existing roadway characteristics.
- Alternatives considered.
- Comparison of the safety and operational performance of the roadway and other impacts such as right-of-way, community, environmental, cost, and usability by all modes of transportation.
- Proposed mitigation measures.
- Compatibility with adjacent sections of roadway.

Design Speed and Design Loading Structural Capacity are fundamental criteria in the design of a project. Exceptions to these criteria should be extremely rare and FHWA expects the documentation to provide the following additional information:

- Design Speed exceptions:
  - Length of section with reduced design speed compared to overall length of project.
  - Measures used in transitions to adjacent sections with higher or lower design or operating speeds.
- Design Loading Structural Capacity exceptions:
  - Verification of safe load-carrying capacity (load rating) for all State unrestricted legal loads or routine permit loads and, in the case of bridges and tunnels on the Interstate, all Federal legal loads.

The FHWA encourages agencies to document all design decisions to demonstrate compliance with accepted engineering principles and the reasons for the decision. The approval of deviations from applicable design criteria are to be handled as follows:

1. The project is located on a NHS roadway and controlling criteria are not met: In accordance with 23 CFR 625.3(f), design exceptions are required and FHWA is the approving authority, or exceptions may be approved on behalf of FHWA if an STA has assumed the responsibility through a Stewardship and Oversight agreement, with documentation as stated above.

2. The project is located on a NHS roadway and non-controlling criteria are not met: STA is the approving authority for design deviations,[1] in accordance with State laws, regulations, directives, and safety standards. States can determine their own level of documentation depending on State laws and risk management practices.

3. The project is located on a non-NHS roadway and the State design criteria are not met on a Federal-aid project: STA is the approving authority for design deviations, in accordance with State laws, regulations, directives, and safety standards. States can determine their own level of documentation depending on their State laws and risk management practices.

**Analysis of Comments**

The FHWA received comments from 2,327 individuals and organizations on the proposed changes to the controlling criteria. Of these, 2,167 were individual form-letter comments delivered to the docket by Transportation for America. Of the remaining, 87 were from individuals, 23 from STAs, 22 from other public entities, 18 from private organizations, 5 from industry associations, 4 from private firms, and 1 from an elected official. The comments are summarized below.

**General Comments**

Many commenters referred to the proposed changes as a rulemaking. The controlling criteria are not established by Federal regulation, instead they are a matter of policy. The proposed changes are not a rulemaking as they will not modify the CFR and will not impose binding requirements that have the force and effect of law. The proposal was published as a notice in the **Federal Register** as a way to invite public comment on the proposed policy changes.

**Controlling Criteria**

All but 7 of the 2,327 commenters support revisions to the controlling criteria. Some supporters suggested changes which were considered by FHWA, as shown below.

1. Over 2,100 commenters asked FHWA to replace the term ''design speed'' with ''target speed'' for low-speed NHS roadways so that roadway design elements could be selected to meet community needs and provide safety for all modes of transportation.

*Response:* No changes were made. The proposed changes, combined with recent clarification by FHWA about design speeds and posted speeds (available at *http://www.fhwa.dot.gov/design/standards/151007.cfm*), allow agencies the flexibility to design based on target speed while remaining consistent with the terminology used in the adopted AASHTO standards. The FHWA forwarded this comment to the AASHTO Technical Committee on Geometric Design for its consideration.

2. The National Association of City Transportation Officials asked FHWA to clarify that there is no minimum design speed.

*Response:* No changes were made. Minimum design speeds are included in the adopted standards for the NHS and design exceptions are required if a lower design speed is selected. The FHWA forwarded this comment to the AASHTO Technical Committee on Geometric Design for its consideration.

3. Three STAs recommended retaining vertical clearance as a controlling criterion on low-speed roadways to ensure that insufficient vertical clearance on a minor roadway would not result in damage to an overpassing high-speed roadway, such as an Interstate highway or other freeway.

*Response:* No changes were made. The FHWA agrees that vertical clearance is an important criterion and that insufficient clearance on one roadway may negatively impact the overpassing roadway. However, States are already managing the scenario described if the low-speed roadway is not on the NHS. Under this revised policy, States would continue to manage the risks associated with insufficient vertical clearance for all low-speed roadways (non-freeway), including those on the NHS.

4. The Oregon DOT and a few individuals thought that 50 mph was too high for the threshold between high- and low-speed roadways, citing concerns about urban expressways and that freight vehicles need wider lanes.

*Response:* The speed threshold remains unchanged. The intent was to capture all freeways in the high-speed category. For clarification, FHWA revised the definition of high-speed roadway for the purposes of this policy to include all Interstate highways, other freeways, and roadways with design speed greater than or equal to 50 mph.

5. The Wisconsin DOT recommended using a posted speed of 40 mph to define the threshold, stating that a design speed of 50 mph is too high given the likelihood of pedestrian fatalities at that speed.

*Response:* No changes were made. The proposed threshold was chosen for consistency with AASHTO policy documents adopted through regulation at 23 CFR 625.4. The policy allows maximum design flexibility for roads

[1] The term ''deviation,'' when used in this document, refers to any departure from design criteria that does not require FHWA approval because either the criteria is non-controlling or the facility is not on the NHS. States often refer to these instances as design deviations or variances.

with a design speed less than 50 mph which can be applied in ways that improve pedestrian safety.

6. The Indiana DOT asked FHWA to clarify that the superelevation criterion is for rate only, and that transition length and distribution are not subject to a design exception.

*Response:* The FHWA concurs and clarified the term in the controlling criteria list.

7. The Indiana DOT asked FHWA to clarify the application of SSD to vertical and horizontal curves.

*Response:* Clarification was added. The SSD applies to a variety of situations and is well described in A Policy on Geometric Design of Highways and Streets (2011). As noted in NCHRP Report 783, SSD has little impact on the safety and operations at sag vertical curves under daytime conditions when the driver can see beyond the sag vertical curve, or at night, when vehicle taillights and headlights make another vehicle on the road ahead visible in or beyond a sag vertical curve. Therefore, the application of SSD at sag vertical curves is excluded from the controlling criterion.

8. The Minnesota DOT suggested eliminating design speed as a controlling criterion on low-speed roadways.

*Response:* No changes were made. Design speed must be retained because it is a fundamental criterion in the design of the project and because it sets the threshold for application of the controlling criteria. If, for example, design speed was not a controlling criterion for low-speed roadways, practitioners could simply select a lower design speed to avoid the controlling criteria requirements for high-speed roadways.

9. The Georgia DOT and two others commented that lateral offset to obstruction should be retained as a controlling criterion.

*Response:* No changes were made. Lateral offset is most relevant to urban and suburban roadways to ensure that mirrors or other appurtenances of heavy vehicles do not strike roadway objects and passengers in parked cars are able to open their doors. While these are important considerations, they do not rise to the same level of effect as other controlling criteria proposed to be retained and do not require the same level of administrative control.

10. The Wisconsin DOT recommended retaining lane width, superelevation, stopping sight distance, and cross slope as controlling criteria for low-speed roadways, and adding a new controlling criterion for critical length of grade.

*Response:* No changes were made. The FHWA finds that removing these controlling criteria from application in low-speed environments is supported by research and provides additional flexibility to better accommodate all modes of transportation. No new controlling criteria are proposed at this time.

11. The Wisconsin DOT commented that bridge width is not redundant if lane and shoulder widths are dropped from the controlling criteria list in the low-speed environment, which may result in choke points that are expensive to correct. They also commented that vertical and horizontal clearances can influence structural ratings; that stopping sight distances at intersections can be critical; and that the combination of flat grades and cross slopes is problematic.

*Response:* No changes were made. While these criteria are important, the risk of deviations can be handled by STAs in accordance with their risk management practices.

12. The Wisconsin DOT asked why clear zone was not included in the updated controlling criteria.

*Response:* No changes were made. The Roadside Design Guide was not adopted as a standard under 23 CFR 625. Instead it serves as guidance with regard to roadside safety. Therefore, adoption of values in the Roadside Design Guide as controlling criteria would not be appropriate.

13. A few commenters asked FHWA to adopt additional controlling criteria to require the provision of bicycle and/or pedestrian facilities on roadways.

*Response:* No changes were made. Such a policy would require a regulatory change which is beyond the scope of this controlling criteria policy.

Several commenters supporting changes to the 1985 policy requested clarifying guidance in the final notice, as follows:

1. Clarify requirements for non-NHS Federal-aid projects.

*Response:* This policy change does not modify existing regulations. Per 23 CFR 625.3(a)(2), ''Federal-aid projects not on the NHS are to be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.'' The FHWA reiterated in this notice that the controlling criteria apply only to the NHS.

2. Limit application on the NHS to new construction and reconstruction projects, and/or clarify that the proposed modifications will not reduce current State flexibility regarding projects that are not new construction or reconstruction.

*Response:* This policy change does not modify existing regulations. It is not limited to new construction and reconstruction projects on the NHS. Title 23 CFR 625.4(a)(3) states that ''resurfacing, restoration, and rehabilitation (RRR) projects on NHS highways other than freeways'' may utilize the design criteria established by the State and approved by FHWA. The regulations do not allow the adoption of RRR criteria for NHS freeways. The FHWA Division Administrator is allowed to determine the applicability of the roadway geometric design standards to traffic engineering, safety, and preventive maintenance projects which include very minor or no roadway work under 23 CFR 625.3(e).

3. One commenter asked FHWA to clarify that States can be more restrictive than Federal guidance proposed here, while other commenters asked FHWA to encourage State DOTs to apply the same logic to non-NHS facilities.

*Response:* States may adopt policies that are more restrictive than the revised FHWA policy published here. The FHWA encourages agencies to work together with stakeholders to develop context sensitive solutions that enhance communities and provide multiple transportation options to connect people to work, school, and other critical destinations. The FHWA notes that the Fixing America's Surface Transportation (FAST) Act of 2015 includes new provisions encouraging design flexibility. The FHWA also issued a memorandum in 2013 expressing support for taking a flexible approach to bicycle and pedestrian facility design. The memorandum is available at *http://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility.cfm.*

4. A few commenters expressed concern that FHWA is abandoning safety on low speed roadways, or that some designers will view non-controlling criteria as less important.

*Response:* The FHWA developed this proposal, based on the findings in NCHRP Report 783 and FHWA's experience, to give agencies the flexibility to balance the safety and operations of all modes of transportation, while reducing administrative requirements where they do not clearly result in improved safety and operations. The FHWA encourages agencies to document all design decisions to demonstrate compliance with accepted engineering principles and the reasons for the decision.

Deviations from criteria contained in the standards for projects on the NHS which are not considered to be controlling criteria should be documented by the STA in accordance with State laws, regulations, directives, and safety standards. States can determine their own level of documentation depending on State laws and risk management practices. Agencies are responsible for the training and development of their employees.

5. Clarify that design exceptions are not required for non-controlling criteria.

*Response:* Clarifying language was added to the Design Documentation section that stated design exceptions are not required for non-controlling criteria.

6. For low-speed roadways, clarify that elements dependent on design speed that are substandard do not require a design exception. For example, design speed is 40 mph (and does not require a design exception), but the minimum curve radius provided meets 35 mph (no design exception is required).

*Response:* For non-freeways, the controlling criteria categories are based on design speed, which puts the project in one of two groups: High-speed or low-speed. Within each category, design exceptions are only required when the controlling criteria are not met. In the example provided, a non-freeway with a 40 mph design speed in accordance with the AASHTO criteria would be classified as low-speed. Design exceptions would only be required if the design speed or design loading structural capacity criteria were not met. No changes were made to the text of the policy.

7. The Wisconsin DOT asked what will be allowed for the National Network (Federally designated long truck routes per 23 CFR 658) if lane and shoulder widths are not important for safety and operations.

*Response:* All of the criteria contained in the adopted standards are important design considerations. They do not all affect the safety and operations of a roadway to the same degree, and therefore should not require the same level of administrative control. Changes to the controlling criteria policy do not modify the regulations contained in 23 CFR 658.

8. The Wisconsin DOT asked what consideration was given to oversize and overweight vehicles.

*Response:* As noted in Chapter 2 of the A Policy on Geometric Design of Highways and Streets, the designer should consider the largest design vehicle that is likely to use that facility with considerable frequency or a design vehicle with special characteristics appropriate to a particular location in determining the design of such critical features as radii at intersections and radii of turning roadways. Designers are responsible for proper consideration of oversize and overweight vehicles and all other aspects of the project context.

9. The Southern Environmental Law Center asked FHWA to clarify whether rural roads with a design speed of less than 50 mph remain subject to the 10 remaining design criteria.

*Response:* No changes were made. The application of the controlling criteria is the same regardless of urban or rural designation.

Seven private citizens oppose changes to the controlling criteria policy. Five of the seven who oppose the changes believe the proposed flexibility will divert scarce Federal gasoline and road taxes to non-highway purposes.

No changes were made as a result of these comments. The design standards for the NHS and design exception process apply regardless of project funding. Revising the controlling criteria gives communities the ability to develop a transportation system that best serves their needs, but does not change existing laws or regulations pertaining to project expenses eligible for Federal reimbursement.

Several comments were received that do not pertain directly to the controlling criteria policy. The Southern Environmental Law Center recommends changes to the design speeds shown in the AASHTO Green Book to reflect a range instead of a single minimum number, as currently shown for three of the categories (rural freeway, urban freeway, and urban collector). The criterion for urban collectors should vary according to the different types of terrain. Likewise, the low end of the design speed range for urban collectors in mountainous terrain should be the same 20 mph minimum used for collectors in rural mountainous terrain. Finally, the definition of the term ''urban'' should be revised to include areas of low density sprawl that now surround most cities.

This comment is outside the scope of this notice. The FHWA forwarded this comment to the AASHTO Technical Committee on Geometric Design for its consideration.

Comments pertaining to the need for bicycle and pedestrian accommodation on bridges; appraisal ratings contained in the National Bridge Inspection Standards; the definition of pavement reconstruction; design loading for military vehicles; and the methods for determining posted speeds were also received.

These comments are outside the scope of this notice but were forwarded to the appropriate program office within FHWA for consideration.

**Design Exception Documentation**

Sixteen commenters provided comments on the proposed documentation expected in support of requests for design exceptions. Fourteen STAs, AASHTO, and the Chicago DOT all commented that the level of documentation proposed for design exceptions would be burdensome and would result in less flexibility than currently exists for roadways with a design speed greater than 50 mph. They also believe that such a requirement is at odds with FHWA's current emphasis on Performance Based Practical Design (PBPD). Instead of providing an inclusive list of items to be addressed in design documentation, they recommend that any list be more suggestive in nature. Agencies asked FHWA to remove the requirement for quantitative operational and safety analysis, and expressed concern that references to the environment and community would add too much specificity.

The PBPD is a design-up approach to address the purpose and need of a project and emphasizes the need to document design decisions made under this approach. Therefore, FHWA sees no inconsistency between the design documentation proposed here and the PBPD approach. In response to the concerns expressed, FHWA modified the language regarding the safety and operational analysis such that it does not require a quantitative analysis in all cases. The level of analysis should be commensurate with the complexity of the project. The FHWA notes however, that the FAST Act adds the Highway Safety Manual (HSM) to the list of publications FHWA shall consider when developing design criteria for the NHS. The FHWA strongly encourages agencies to utilize the HSM procedures to the maximum extent applicable. The FHWA retained references to the environment and community because design exceptions to address these concerns are not uncommon, and therefore need to be a part of any documentation.

**Conclusion**

The overwhelming support for changes to the controlling criteria indicate that the changes will support agency and community efforts to develop transportation projects that support community goals and are appropriate to the project context. The provisions included here for design documentation will result in more

consistent evaluation of exceptions to the adopted design standards when controlling criteria are not met on NHS highways.

**Authority:** 23 U.S.C. 109 and 315; 23 CFR 1.32 and 625; 49 CFR 1.85.

Issued on: April 22, 2016.

**Gregory G. Nadeau,**

*Administrator, Federal Highway Administration.*

[FR Doc. 2016–10299 Filed 5–4–16; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Agency Information Collection Activities; Proposals, Submissions, and Approvals

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Employment Tax Adjustments.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Employment Tax Adjustments; and Rules Relating to Additional Medicare Tax.

*OMB Number:* 1545–2097.

*Regulation Project Number:* REG–111583–07 [T.D. 9405 (final)] and REG–130074–11.

*Abstract:* This document contains final regulations relating to employment tax adjustments and employment tax refund claims. These regulations modify the process for making interest-free adjustments for both underpayments and overpayments of Federal Insurance Contributions Act (FICA) and Railroad Retirement Tax Act (RRTA) taxes and federal income tax withholding (ITW) under sections 6205(a) and 6413(a), respectively, of the Internal Revenue Code (Code).

*Current Actions:* There is a no in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a previously approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 3,400,000.

*Estimated Time per Respondent:* 10 hours.

*Estimated Total Annual Burden Hours:* 16,900,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2016.

**Sara Covington,**

*IRS Tax Analyst.*

[FR Doc. 2016–10570 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Information Collection; Comment Request

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or at *Elaine.H.Christophe@irs.gov.*

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6513, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

**REQUEST FOR COMMENTS:** Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential

or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including 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 requested information.

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

1. *Title:* Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

*OMB Number:* 1545–1693.

*Form Number:* Forms 8871 and 8453–X.

*Abstract:* Public Law 106–230 as amended by Public Law 107–276, amended Internal Revenue Code section 527(i) to require certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, Board of Directors, and related entities within the meaning of section 168(h)(4). Forms 8871 and 8453–X are used to report this information to the IRS.

*Current Actions:* There are no changes being made at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 7 hrs., 2 min.

*Estimated Total Annual Reporting Burden hours:* 35,195.

2. *Title:* Annual Information Return of Foreign Trust With A U.S. owner.

*OMB Number:* 1545–0160.

*Form Number:* 3520–A.

*Abstract:* Internal Revenue Code section 6048(b) requires that foreign trusts with at least on U.S. beneficiary must file an annual information return. Form 3520–A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and business or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time per Respondent:* 43 hrs., 24 min.

*Estimated Total Annual Burden Hours:* 21,700.

3. *Title:* Information Return for Transfers Associated With Certain Personal Benefit Contracts.

*OMB Number:* 1545–1702.

*Form Number:* 8870.

*Abstract:* Section 537 of the Ticket to Work and Work Incentives Improvement Act of 1999 added section 170(f)(10) to the Internal Revenue Code. Section 170(f)(10)(F) requires an organization to report annually: (1) Any premiums paid after February 8, 1999, to which section 170(f)(10) applies; (2) the name and taxpayer identification number (TIN) of each beneficiary under each contact to which the premiums related; and (3) any other information the Secretary of the Treasury may require. A charitable organization described in section 170(c) or a charitable remainder trust described in section 664(d) that paid premiums after February 9, 1999, or certain life insurance, annuity, and endowment contracts (personal benefit contracts) must complete and file Form 8870.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 14 hours, 50 minutes.

*Estimated Total Annual Burden Hours:* 74,200.

4. *Title:* Generation-Skipping Transfer Tax Return for Distributions.

*OMB Number:* 1545–1144.

*Form Number:* 706–GS(D).

*Abstract:* Form 706–GS(D) is used by persons who receive taxable distributions from a trust to compute and report the generation-skipping transfer tax imposed by Internal Revenue Code section 2601. IRS uses the information to verify that the tax has been properly computed.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

Affected Public: Individuals or households.

*Estimated Number of Respondents:* 1,000.

*Estimated Time per Respondent:* 59 minutes.

*Estimated Total Annual Burden Hours:* 980.

5. *Title:* Rewards for Information Relating to Violations of Internal Revenue Laws.

*OMB Number:* 1545–1534.

*Regulations:* REG–252936–96 (TD 8780—final).

*Abstract:* The regulations explain the procedure for submitting information that relates to violations of the internal revenue laws. The regulations also require a person claiming a reward for information to provide, in certain circumstances, identification of evidence that the person is the proper claimant.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, businesses or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 10,000.

*Estimated Time per Respondent:* 3 hrs.

*Estimated Total Annual Reporting Burden Hours:* 30,000.

6. *Title:* Information Return for Transfers Associated With Certain Personal Benefit Contracts.

*OMB Number:* 1545–1702.

*Form Number:* 8870.

*Abstract:* Section 537 of the Ticket to Work and Work Incentives Improvement Act of 1999 added section 170(f)(10) to the Internal Revenue Code. Section 170(f)(10)(F) requires an organization to report annually: (1) Any premiums paid after February 8, 1999, to which section 170(f)(10) applies; (2) the name and taxpayer identification number (TIN) of each beneficiary under each contact to which the premiums related; and (3) any other information the Secretary of the Treasury may require. A charitable organization described in section 170(c) or a charitable remainder trust described in section 664(d) that paid premiums after February 9, 1999, or certain life insurance, annuity, and endowment contracts (personal benefit contracts) must complete and file Form 8870.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 14 hours, 50 minutes.

*Estimated Total Annual Burden Hours:* 74,200.

7. *Title:* Extended Carryback of Losses to or From a Consolidated Group.

*OMB Number:* 1545–2171.

*Regulations:* TD 9490.

*Abstract:* This document contains final and temporary regulations under section 1502 that affect corporations filing consolidated returns. The regulations contain rules regarding the implementation of section 172(b)(1)(H) within a consolidated group. These regulations also permit certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition carryback period pursuant to section 172(b)(1)(H) for specific losses attributable to certain acquired members.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 4,000

*Estimated Time per Respondent:* 0.25 hours

*Estimated Total Annual Burden Hours:* 1,000

8. *Title:* Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt charitable Trust Treated as a Private Foundation, and Form 4720, return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal revenue Code.

*OMB Number:* 1545–0052.

*Form Number:* 990–PF and 4720.

*Abstract:* Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Form 990–PF is used for this purpose. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Form 4720 is used by foundations and/or related persons to report prohibited activities in detail and pay the tax on them.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 55,000.

*Estimated Time per Respondent:* 200 hrs., 58 min.

*Estimated Total Annual Reporting Burden Hours:* 11,052,594.

9. *Title:* Treatment of Shareholders of Certain Passive Foreign Investment Companies.

*OMB Number:* 1545–1507.

*Regulation Project Number:* INTL–656–87 (TD 8701).

*Abstract:* The reporting requirements affect United States persons that are direct and indirect shareholders of passive foreign investment companies (PFICSs). The requirements enable the Internal Revenue Service to identify PFICs, United States shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions, and deferred tax amounts.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 131,250.

*Estimated Time per Respondent:* 46 minutes.

*Estimated Total Annual Burden Hours:* 100,000.

10. *Title:* Credit for New Qualified Alternative Motor Vehicles (Qualified Fuel Cell Motor Vehicles).

*OMB Number:* 1545–2028.

*Form Number:* Notice 2008–33.

*Abstract:* This Notice will be used to determine whether the vehicle for which the credit is claimed under § 30B by a taxpayer is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations and partnerships.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and Households, Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 5.

*Estimated Time per Respondent:* 40 hours.

*Estimated Total Annual Burden Hours:* 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: April 28, 2016.

**Tuawana Pinkston,**

*Supervisory Tax Analyst.*

[FR Doc. 2016–10587 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning general rules for making and maintaining qualified electing fund elections.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* General Rules for Making and Maintaining Qualified Electing Fund Elections.

*OMB Number:* 1545–1555.

*Regulation Project Number:* REG–115795–97.

*Abstract:* This regulation provides guidance to a passive foreign investment company (PFIC) shareholder that makes the election under Code section 1295 to

treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis. Guidance is also provided on revoking such elections.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organization, and not-for-profit institutions.

*Estimated Number of Respondents:* 1,290.

*Estimated Time per Respondent:* 29 minutes.

*Estimated Total Annual Burden Hours:* 623.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2016.

**Sara Covington,**

*IRS Tax Analyst.*

[FR Doc. 2016–10571 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, June 29, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kim Vinci at 1–888–912–1227 or 916–974–5086.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, June 29, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: May 2, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–10615 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, June 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** Otis Simpson at 1–888–912–1227 or 202–317–3332.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Wednesday, June 8, 2016, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact: Otis Simpson at 1–888–912–1227 or 202–317–3332, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: May 2, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–10616 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, June 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kim Vinci at 1–888–912–1227 or 916–974–5086.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer

Advocacy Panel Special Projects Committee will be held Tuesday, June 7, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various special topics with IRS processes.

Dated: May 2, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–10618 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Stock Transfer Rules: Carryover of Earnings and Taxes.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Kerry Dennis, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Stock Transfer Rules: Carryover of Earnings and Taxes.

*OMB Number:* 1545–1711. Regulation Project Number: REG–116050–99.

*Abstract:* The final regulations relate to the carryover of certain tax attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a section 367(b) transaction.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 600.

*Estimated Time per Respondent:* 3 hours.

*Estimated Total Annual Burden Hours:* 1,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–10574 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Low Income Taxpayer Clinic Grant Program; Availability of 2017 Grant Application Package

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This document contains a notice that the IRS has made available the *2017 Grant Application Package and Guidelines* (Publication 3319) for organizations interested in applying for a Low Income Taxpayer Clinic (LITC) matching grant for the 2017 grant year, which runs from January 1, 2017, through December 31, 2017. The application period runs May 2, 2016, through June 20, 2016.

The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations, subject to the limitations of Internal Revenue Code section 7526. For fiscal year 2016, Congress appropriated a total of $12,000,000 in federal funds for LITC grants. See Public Law 114–113. A qualifying organization may receive a matching grant of up to $100,000 per year for up to a three-year project period. Qualifying organizations that provide representation to low income taxpayers involved in a tax controversy with the IRS and educate individuals for whom English is a second language (ESL) about their rights and responsibilities under the Internal Revenue Code are eligible for a grant. An LITC must provide services for free or for no more than a nominal fee.

Examples of qualifying organizations include: (1) A clinical program at an accredited law, business or accounting school whose students represent low income taxpayers in tax controversies with the IRS, and (2) an organization exempt from tax under IRC § 501(a) whose employees and volunteers represent low income taxpayers in tax controversies with the IRS.

In determining whether to award a grant, the IRS will consider a variety of factors, including: (1) The number of taxpayers who will be assisted by the organization, including the number of ESL taxpayers in that geographic area; (2) the existence of other LITCs assisting the same population of low income and ESL taxpayers; (3) the quality of the program offered by the organization, including the qualifications of its administrators and qualified representatives, and its record, if any, in providing representation services to low

income taxpayers; (4) the quality of the application, including the reasonableness of the proposed budget; (5) the organization's compliance with all federal tax obligations (filing and payment); (6) the organization's compliance with all federal nontax obligations (filing and payment); (7) whether debarment or suspension (31 CFR part 19) applies, or whether the organization is otherwise excluded from or ineligible for a federal award; and (8) alternative funding sources available to the organization, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the organization.

**DATES:** The IRS is authorized to award a multi-year grant not to exceed three years. For an organization not currently receiving a grant for 2016, an organization that received a single-year grant for 2016, or an organization whose multi-year grant ends in 2016, the organization must submit the application electronically at *www.grants.gov.* For an organization currently receiving a grant for 2016 which is requesting funding for the second or third year of a multi-year grant, the organization must submit the funding request electronically at *www.grantsolutions.gov.* All organizations must use the funding number of TREAS–GRANTS–052017–001, and applications and funding requests for the 2017 grant year must be filed by June 20, 2016. The Catalog of Federal Domestic Assistance program number is 21.008. *See www.cfda.gov.*

**ADDRESSES:** The LITC Program Office is located at: Internal Revenue Service, Taxpayer Advocate Service, LITC Grant Program Administration Office, TA:LITC, 1111 Constitution Avenue NW., Room 1034, Washington, DC 20224. Copies of the *2017 Grant Application Package and Guidelines,* IRS Publication 3319 (Rev. 4–2016), can be downloaded from the IRS internet site at *www.irs.gov/advocate* or ordered by calling the IRS Distribution Center toll-free at 1–800–829–3676.

**FOR FURTHER INFORMATION CONTACT:** The LITC Program Office at (202) 317–4700 (not a toll-free number) or by email at *LITCProgramOffil2Q@irsc..9.Q_\,I.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award qualified organizations matching grants of up to $100,000 per year for the development, expansion, or continuation of qualified low income taxpayer clinics. A qualified organization is one that represents low income taxpayers in controversies with the IRS and informs individuals for whom English is a second language of their taxpayer rights and responsibilities, and does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred). The IRS may award grants to qualified organizations to fund one-year, two-year, or three-year project periods. Grant funds may be awarded for start-up expenditures incurred by new clinics during the grant year.

**Mission Statement**

Low Income Taxpayer Clinics ensure the fairness and integrity of the tax system for taxpayers who are low income or speak English as a second language by providing *pro bono* representation on their behalf in tax disputes with the IRS by educating them about their rights and responsibilities as taxpayers, and by identifying and advocating for issues that impact low income taxpayers.

**Selection Consideration**

Applications that pass the eligibility screening process will undergo a two-tier evaluation process. Applications will be subject to both a technical evaluation and a Program Office evaluation. The final funding decision is made by the National Taxpayer Advocate, unless recused. The costs of preparing and submitting an application (or a request for continued funding) are the responsibility of each applicant. Each application and request for continued funding will be given due consideration and the LITC Program Office will notify each applicant once funding decisions have been made.

**Nina E. Olson,**

*National Taxpayer Advocate, Internal Revenue Service.*

[FR Doc. 2016–10603 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, June 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** Linda Rivera at 1–888–912–1227 or (202) 317–3337.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, June 15, 2016, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202)317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: May 2, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–10576 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 13920 and 13930

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13920, Directed Withholding and Deposit Verification and Form 13930, Central Withholding Agreement.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Directed Withholding and Deposit Verification and Central Withholding Agreement.

*OMB Number:* 1545–2102.

*Form Number:* Form 13920 and 13930.

*Abstract:* Form 13930 will be used by an individual who wishes to have a Central Withholding Agreement (CWA). IRC Section 1441(a) requires withholding on certain payments of Non Resident Aliens (NRAs). Section 1.1441–4(b)(3) of the Income Tax Regulations provides that the withholding can be considered for adjustment if a CWA is applied for and granted. Form 13920 is used by withholding agents to verify to IRS that required deposits were made and give the amount of such deposits.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations, Not-for-profit organizations, and State, Local, or Tribal Governments.

Form 13920:

*Estimated Number of Respondents:* 8,100.

*Estimated Time per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 2,700.

Form 13930:

*Estimated Number of Respondents:* 2,300.

*Estimated Time per Respondent:* 4 hours.

*Estimated Total Annual Burden Hours:* 9,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–10586 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 706–A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–A, United States Additional Estate Tax Return.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* United States Additional Estate Tax Return.

*OMB Number:* 1545–0016.

*Form Number:* Form 706–A.

*Abstract:* Form 706–A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 180.

*Estimated Time per Respondent:* 9 hours 19 minutes.

*Estimated Total Annual Burden Hours:* 1,678.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 22, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–10605 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2016. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

| Last name | First name | Middle name/initials |
|---|---|---|
| ABE | KOUICHI. | |
| ABE | SUMIKO. | |
| ACKER | THOMAS | HAROLD |
| ACOSTA | FERNANDO. | |
| ACOSTA | MARIA | ENCARNACION |
| AEBI | CAROL | A. |
| AHMED | MARZIYEH | NAAZ |
| AINTABLIAN | JOHNNY. | |
| AITON | GLEN | NEIL |
| AL-HAIFI | MOHAMMED | IBRAHIM |
| ALTSCHAEFFL | TAMI | MUNOZ HAYAKAWA |
| ALTWAJRI | ALJOHARA | KHALED |
| AL-YAHYA | HIND | M. |
| AMBUS | INGRID | ANN |
| AMTHOR-RUESSMANN | SARITA. | |
| AMYOTTE | KATHERINE | ELLEN |
| AN | CHANG | YE |
| ANDERL | ANGELIKA | MARIA |
| ANDERSON | JOSEPH | DALE |
| ANDREWS | MIRIAM | DAWN MORRISON |
| ANG | WILLIAM | ZONG-SHI |
| ANGOTTI | MARC | GERARD |
| AOKI | HIDEO | PAUL |
| APOSTLE | VICTOR. | |
| APOSTOLOV | MARIO | A. |
| ARIGA | CHIEKO. | |
| ARMBRUESTER | ALICIA | MARIA |
| ARNDT | SHANNON | MAUREEN |
| ARNS-HERMLE | ILONA. | |
| ASHER | ROBERT | VERNON |
| ATKINS | BRIAN. | |
| ATKINS | CAROL | ANNE |
| AULD | DANIEL | JOSEPH |
| BACHANT–SELLARS | KAREN | A. |
| BACON | NORIKO | NAKAMURA |
| BAGI–GLOBKE | CHARMAINE | HOPE |
| BAI | KELLY. | |
| BALAGAT | TED. | |
| BALDWIN | ELLEN | CHARLOTTE |
| BALDWIN III | LEVI | J. |
| BAMFORD | STEPHEN | FILDES |
| BANKES | TALERI | CHRISTIAN MARY |
| BARBLAN | JUERG | ANDREAS |
| BARRERE | BARBARA | PRISCILLA COLETTE |
| BARRETT | JUDITH | ANN |
| BARRON | JOHN | PATRICK |
| BARTHE | LOUISE | JANE |
| BARTHE | SUSAN. | |
| BASKWILL | JANE. | |
| BAUER | JAN. | |
| BAUMGARTNER | PHILIP | MARK |
| BAUMGARTNER | SIBYLLE | CLAIRE |
| BAXTER | ISABELLE. | |
| BEARD | CHRISTINA | KAYO |
| BEATTY | CLAIRE | ELIZABETH |
| BEGNOCHE | GERALD. | |
| BELLEVILLE | RITA. | |
| BENSON | NOEL | MANLY |
| BERCOT | LAURENT | GREGORY |

| Last name | First name | Middle name/initials |
|---|---|---|
| BERGER | HARALD | ARTHUR |
| BERGONZI | GIACOMO | ANGELO |
| BERGSTROM | KRISTEN | WILLIAM |
| BERNASCONI | RAYMONDO | MASSIMO |
| BERNHEIM | BEATRICE | HEIDI |
| BERNOUS | PASCAL | MARC |
| BERSIER | LORRAINE | ELESTRE |
| BERSIER | NICOLAS. | |
| BERTOLI | JEANNE | MARIE |
| BERTSCHINGER | MAYA | ELIZABETH |
| BESSLER | MARIE | ALESSANDRA |
| BINDER | BRIGITTE. | |
| BIRNBERG | ERIC | STEPHEN |
| BISCONTI | GIANCARLO. | |
| BISCONTI | STEFANIA. | |
| BLACKBURN | SALLIE | PATRICIA |
| BLAKE | SUSAN | ELIZABETH |
| BLAKEWAY | MARTIN | IVAN |
| BLANCO | MANUEL | C. |
| BLUM | DIANE | MARIE |
| BLUM | KIM | BARBARA |
| BODART | SERGE | YVES |
| BODDEN | JENNIFER | MARGARET |
| BODMER | ANNI | MITLOEHNER |
| BODMER | RONALD | ERNEST |
| BOGUE | MICHELLE | MARIE BISSON |
| BOLDRINI | MARY | GINETTA CARMELA |
| BOLLIGER | JACQUELINE | JENNIFER |
| BOLSTAD | KATHRYN | DELL |
| BONI | OLIVER | JEFFREY |
| BONILLA | JOSE | VITAL |
| BONSTEIN | NICHOLAS | JEROME |
| BOOMSMA | KEVIN | SCOTT |
| BORNEMANN | JAMES. | |
| BORNEMANN | SANDRA | TZIPORAH |
| BOROVOY | NICHOLAS | SAMUEL |
| BOSISIO | BRUNO | JOSEPH MARIO |
| BOSISIO | PIERRE. | |
| BOUCHER | GILLES. | |
| BOURRET | PIERRE | RONALD |
| BOYLE | JAMES | JOSEPH |
| BRADY | ERIN | LOUISE |
| BRAND | MONIQUE | YVONNE |
| BRANDT | ALLEN | ROBERTS |
| BRASSARD | ANNE. | |
| BRASSARD | PIERRE | JOSEPH |
| BRAUN | | H. |
| BREWER | MARY | FRANCES |
| BRIGUET | PATRICIA. | |
| BRISCOE | KARIN | MARGRETHE |
| BROOKS | TIMOTHY | MICHAEL |
| BRUCHEZ-AMBROSE | SARI | NICOLE |
| BRUGGER | ISABELLE | SUSANNE |
| BRUINSMA | IRENE | KAY ADAMS |
| BRYSON, JR | DONALD | ALAN |
| BUEHLER | MIRIAM | CATHERINE |
| BUEHLMANN | CAROLINE | NICOLE |
| BUNT | LOUIS | BRIAN |
| BURROWS | MARY | PATRICIA |
| BURROWS | MARY | PATRICIA |
| BUTTERFIELD | SARAH | HARRIET ANNE |
| CABALLERO-HERNANDEZ | MARIA | CHRISTINA CECILIA |
| CAINE | ROBERT | SAMUEL |
| CAMPBELL | JAMES | MICHAEL |
| CAPPELLETTI | DANIELA | CHANTAL |
| CARDONA | STEVEN | MARK |
| CARNAL | OLIVIER | HENRI |
| CARRELL | KEVIN | JOHN |
| CARSLEY | STEFANIE. | |
| CASTALDI | MAURIZIO. | |
| CATOR | JOHN. | |
| CECCHINI | RICARDO | ANTONIO |
| CETTO | ALEJANDRA | MARIA |
| CHA | PI | REN |

| Last name | First name | Middle name/initials |
|---|---|---|
| CHAMBERS | BRIAN | ALLAN |
| CHAMORRO | BARNEY | ROSENDO |
| CHAN | ADRIEL | WENBWO |
| CHAN | CHRISTINE | MEI-AN |
| CHAN | LILLIAN | LAI YIN |
| CHAN | VICKI | WAI KEI |
| CHAN | YIK FAI | KEVIN |
| CHANDLER | RICHARD | JEFFREY |
| CHANG | ELEIN | HAESUN |
| CHAO | APRIL | WAI-PING |
| CHAO | PATRICK | SHIH PAN |
| CHARRINGTON | MICHELE | MARGUERITE |
| CHEN | CHENGQUAN. | |
| CHEN | JANE | LEE |
| CHEN | JEAN | H. |
| CHEN | RAY | TSANJEE |
| CHEN | RWEI-SYUN. | |
| CHEN | TIFFANY. | |
| CHENG | CLEMENT | TUNG JEUN |
| CHEONG | STEPHEN | H. |
| CHEUNG | GRACE | SAMUEL |
| CHEUNG | PEGGY | BIK HING |
| CHEVALIER | VERONICA | TAO |
| CHIA | ZACKARY. | |
| CHIANG | YU-CHENG. | |
| CHIEMCHANYA | PONLERD. | |
| CHIEN | CHIEN-DA. | |
| CHIONG, JR | DANIEL | KOU |
| CHIU | JACQUELINE | SUK-YEE |
| CHOI | ROBIN | USEOK |
| CHOQUETTE | DIANA | KAY |
| CHOU | STANLEY | YU-CHUNG |
| CHOU | WILLY | YU LI |
| CHRIQUI | VINCENT | MAURICE |
| CHRISTOFFEL | ULRICH | CHRISTIAN |
| CHUI | CALVIN | TINLOP |
| CHUN | KYUNG | SIK |
| CHUNG | MICHAEL | CHUN WAI |
| CHUNG | SERIN | SYLVIA |
| CHWALINSKI | OLIVER | ROMAN |
| CIARFELLA | MARK | FREDERIK |
| CINEGE | DAVID. | |
| CIUCCI-ZWICKY | KAREN | LOUISE |
| CLIVE | JAGO | GEORGE ANTHONY |
| CLOUTIER | GUY | ERNEST |
| COCKBURN | MICHAEL | ALAN |
| COENEN | CLAUDIA | CLOTILDE INGRID |
| COHEN | DANIEL. | |
| COLIVAS | THEODORE. | |
| CONDER | ALEXANDRA | FRANCES CLARE |
| CONKLIN | TOR | ODAR |
| CONNOLLY | KATHLEEN | ANN |
| CONNOLLY | MICHELE | LAURENNE |
| COPPARELLI | GINA | MARIA |
| COTTON | ROGER | ALAN |
| COTTON-RUSSELL | JOHN | PHILIP DESMOND E. |
| COURNOYER | ANDRE | REAL |
| CRAIG | GERALD | WAYNE |
| CRAWFORD | ERIC | JAMES |
| CRON | ALEXANDRA | CHASLOTTE ANNA |
| CRONIN | ABBY | LOUISE |
| CROZIER | STEVEN | RICHARD |
| CULSHAW | JAMES | NEWTON THURSTON |
| CUMBERWORTH | JULIE | ANN |
| CUMMING | ROBERT | GORDON |
| CUNNINGHAM | TRACEE | ANN |
| CURTI | ILARIA. | |
| DADABHOY | SIRAJ | AHMED MOHAMED |
| DAEHLER | SYLVIA | E. |
| DALBEY | RUSSELL | THOMAS |
| DALE | HALI | CARLYLE |
| DANE | PHILIP | CLAUDE THEOBOLD OLIVER |
| DAVIDOW | EMILY | ANN |

| Last name | First name | Middle name/initials |
|---|---|---|
| DAVIDSON | JUDITH | RAE |
| DAVIES | DAVID | JOHN |
| DAVIS | KATHLEEN | ANNE |
| DAVIS | PAMELA | ANN |
| DE BAUSSET | ANDRE | MICHEL |
| DE BLANC | BRYAN | JOSEPH |
| DE CHOUDENS | CONSUELO. | |
| DE OLIVEIRA | JASON | WANDERLINO |
| DE SOUSA | ALEXANDRE | RUI IGLESIAS |
| DE WITTE | KATHLEEN. | |
| DEGAWA | MICHIKO. | |
| DEGAWA | SHIGEMI. | |
| DEGEN | NICHOLAS | MARK |
| DEGNAN-VENESS | COLEEN | MARIE |
| DELAGE | RACHELLE | MARIE |
| DELEAMONT | PHILIPPE | ALAIN |
| DELFINO | CARLOS | TEOTICO |
| DELGADO | SERGIO | IVAN |
| DELORI | CAROLINE. | |
| DEMEULENAERE | REMI | STEPHANE |
| DEMING-LUTHY | CANDACE. | |
| DENICOURT | MAXIME. | |
| DENT | LAURA | ELIZABETH |
| DEROCHER | MARK | STEWART |
| DEWJI | AZIZUDIN | SADRUDIN |
| DI BIASE | JOHN | FELICE |
| DI BORGO | CHARLES | POZZO |
| DI LULLO | SYLVIE | JENNIFER MICHELE |
| DIANOVA | IRINA | IOSIPHOVNA |
| DIDISHEIM | RAYMOND | OLIVIER |
| DILBERT | CELINA | ELIZABETH |
| DILLER | JOHN | E. |
| DINSDALE | BRIAN | SIDNEY |
| DION | LOUISE | GEORGETTE |
| DIVER | RUTH | LOUISE |
| DOGNIN | JEROME | MARIE |
| DONIS | JAMES | PETER |
| DORAN | JOHN | GERARD |
| DOSTOINOVA | MARIA | I. |
| DOWNS | ALLYSON | ELIZATETH |
| DOYTCHINOVA-APOSTOLOV | ROSSITZA | P. |
| DRAGHICI | ELIDA | MARIA |
| DREYFUS | RAYMOND | VICTOR |
| DROUIN | JERRY | LIONEL |
| DUBLANKO | ANGELA | MAE |
| DUBLER | KONRAD | GREGORY |
| DUBOIS | VIVIANE. | |
| DUBOSSON | LESLIE | MARIE MARGUERITE |
| DUBUC | SERGE. | |
| DUCLERT | CHARLES | BRAXTON |
| DUCLOS | ANNE | LOUISE |
| DUCOR | FLAVIEN | ANDRE CHRISTIAN |
| DUDLER | PATRIZIA. | |
| DUDLEY | SCOTT | JAU |
| DUHAIME | YVON. | |
| DUMAS | ANDREE. | |
| DUNN | EVELYN | LOUISE |
| DUPONT | REBECCA | ANNE |
| DUPONT-BONVIN | CARMEN | VALERIE |
| DUPUCH | PETER | MICHAEL EUGENE |
| DURAN | DARIO | ANTONIO |
| DURRENMATT | MARIE | BETTINA |
| EASLER-GRIEDER | BARBARA | JEAN |
| EAST | ELIZABETH | ANN |
| EASTWOOD | MARY | SUSAN |
| EBANKS | ANTHONY | ROGER |
| EBLE | PETER. | |
| ECHEVARRIA | PEDRO | EDUARDO PUEYO |
| ECHEVERRI-KLEIN | SARAH | ISABELLE |
| EDWARDS VI | BENJAMIN | FRANKLIN |
| EERKENS | JORIS | WILLEM |
| ELDON | MARIA | MARGARITA |
| ELHADDAD | YOUSEF | OSAMA |
| ELLIS | STEPHEN | OLIVER |

| Last name | First name | Middle name/initials |
|---|---|---|
| ELVERDIN | JOSEFINA. | |
| EMMENEGGER | TIM | MAX |
| EMOND | SONYA | NYLE |
| ENGLISH | CINDY | LOU |
| ETGES | JOSEPH | ROBERT |
| FALCO-LARKIN | IVA | SONJA |
| FARKAS | IVO | TIVADAR |
| FAST | RUTH | MIRIAM |
| FAVOT | ANN | MARIE |
| FEATHERSTON | MICHAEL | ROBERT |
| FEAVER | SARAH | ELIZABETH |
| FEGER | LILIAN | DOROTHEE |
| FERBRACHE | BRENDAN | PAUL |
| FICK | STEVEN | FRANCIS |
| FIELER | JEFFREY | RICHARD |
| FISCHER | ALFRED | MARCEL |
| FISHER | CAROL | J. |
| FISHER | STEPHEN | N. |
| FLORANCE | WILLIAM | HOWLAND |
| FLURY | MILAN | JOSEF |
| FLYNN | MEGAN | EILEEN ANNE |
| FORAND-MCHUGH | DORIS | M. |
| FORD | CLAY | ANDREAS PHILIPP |
| FORD | IDEN | PIERCE |
| FORMICA | CARMELO | ANTHONY |
| FOURIE | LYNNE | ANNE |
| FRAMPTON | ALAIN | NOEL MICHEL |
| FRANCO | CHRISTINA | OLYMPIA |
| FRANCOIS | STEPHANIE. | |
| FRANK | GREGORY | E. |
| FRANKEL | ELLA. | |
| FRECHETTE | DANIEL | PAUL |
| FREMAUX | REMY | NICOLAS |
| FRENCK | EMMANUEL. | |
| FRESE | LIKAS | DAVID |
| FRIDRIKSSON-FICK | SIGNY | ANN |
| FUJII | SHOU | EBERHARD |
| FUKADA | SIMON | DAISUKE |
| FUKUDA | MANABU. | |
| FUKUDA | SETSUKO. | |
| FUNK | KURT | ALBERT |
| GAGNE | NANCY | KATHLEEN |
| GALLI-WADE | DEBRA | ELLEN |
| GAMBONI | EMMA | GRACE |
| GAMROTH | BUNNY | DAWN |
| GASSMANN | NORINA | NAOMI |
| GASSMANN | PHILIPP | MATTHIAS |
| GASSNER | RENE. | |
| GEARY-TRUAN | BARBARA | ANNE |
| GEE | ISABELLA | WEN-SUE |
| GEE | JIM | HSING |
| GEISSBUHLER | DAMIEN | MAXIME |
| GERBIER | DANIELLE | F. |
| GFELLER-HESS | MARTINA | ELISABETH |
| GFELLER-HESS | MARTINA | ELISABETH |
| GHAZAL | JACQUELINE | A. |
| GIBSON | DANIEL | PATRICK |
| GIESE | CATHATINA | SARAH |
| GIGER | ANDREW | DANIEL |
| GILES | JENNIFER | G. |
| GILL | JULIE. | |
| GILLETTE | ROBERT | ALLEN |
| GILLIES | JOAN | MARY |
| GISLER | HEINZ | ALEXANDER |
| GIUDICE | HENRY | MANFRED |
| GLASSBERG | DANIEL | MATTHEW |
| GLOMSKI | JACQUELINE | LEE |
| GO | THIAM | HIEN |
| GOEHLICH | CORINNA | REBECCA |
| GOH | WEE ANN | ANTHONY |
| GOLD | DIANA | MANSON |
| GOLD | KARL | R. |
| GOLDBLATT | LAUREN | KIM |
| GOLDENBERG | JEFFREY | MOSES LOUIS |

| Last name | First name | Middle name/initials |
|---|---|---|
| GONSER | LENZ | DANIEL |
| GOODWIN | MEGAN | MARIE |
| GORALEWSKI | EMILY | TEO |
| GOUVERNEUR-PATT | MICHAEL | ANTHONY |
| GOWRYLUK-BOOY | BETHANY | JOY |
| GRAF | EVELYN | LEDOUX |
| GRAND | DEREK | JULIAN |
| GRANDY | JOHN | DAVID |
| GRANT | MARILEE | ANN |
| GRAY | JUNE. | |
| GREEN | RICHARD. | |
| GREENHALGH | JONATHAN. | |
| GREENHALGH | KATARINA. | |
| GREENMAN-FOX | STACEY | BLAIR |
| GRIFFITH | ROBERT | JAMES |
| GRIGG | JOACHIM | JACK |
| GRILLET | LIONEL | HENRY |
| GRIZE | SOFIA | ADRIANA |
| GROSS-OSTERWALDER | SHARON | LOUISE |
| GRUNAUER | DOMINIC | RUDOLF |
| GRUTTER | VANESSA. | |
| GSPONER | REGINA. | |
| GUENTHER | HANNELORE | ELKE |
| GUERRERO | LUCIA. | |
| GUSTAFSON | NICHOLAS | ADAMS |
| GUT | MICHAEL | CHRISTIAN |
| HABICH | HANS. | |
| HADIKUSUMO | STEPHANIE | WAN-HUEI |
| HAHN | LAWRENCE | OTTO ERIC |
| HAINDL | JEFFREY. | |
| HAJI | SHASHEEN. | |
| HALEY | GEORGE | FORDHAM |
| HALL | NICHOLE | PIA |
| HALLER | CHRISTINE. | |
| HALLIER | ROBERT | COLLINGS |
| HAMMOND | PETER | OLIVER |
| HAMMONDS | SHANNON. | |
| HANDLEY-RAVEN | LINDA | LEA |
| HANSON | JOHN | CHARLES |
| HARGET | MICHAEL | JACK |
| HARPIN | ROBERT | ROGER |
| HARRINGTON | KEVIN | KERRY |
| HARRIS | ROBIN | ELLEN |
| HASLER | CANDICE | KAREN |
| HASLER | MARTIN | ALLEN |
| HATAMI | AFSOUN. | |
| HATAMI | LINA. | |
| HAU | JEFFREY | CHUN HEI |
| HAUG | CAROLINE | DOROTHEA |
| HAUSEL | HANS | RUDOLF |
| HAUSER | LESLIE | KIM |
| HAYASHI | YUKO. | |
| HEINECKE | JOHN | SCOTT |
| HENSON-SCHNEE | LAURA | CHANTAL |
| HEPBURN | BARBARA | ROSEMARY |
| HEPBURN | HOWARD | GRAHAM |
| HERMAN | SALLY | PATRICIA. |
| HERTZBERGER | ANTHONY | HENRI LOUIS |
| HIGGINS | ANDREW | JOHN NEVILLE |
| HILLOCK | KIMBERLY | DAWN |
| HIMMELSBACH | STEVEN | EUGENE PAUL |
| HING | JANELLE | MIN |
| HINTERMANN | ELLA | JEAN |
| HINTON | DEBRA | LYNN |
| HIRABAYASHI | MICHIKO. | |
| HIRZEL | ANNELIS | SUZANNE |
| HIS | CHARLES | CHUNG YUNG |
| HNATEK | OSCAR. | |
| HO | BELLA | YUN KUN |
| HO | GAYLORD | CHIWEI |
| HODGE-TURNBULL | ANELTA | CECLIA |
| HOELTSCHI | KEVIN. | |
| HOFSTETTER | SUSAN. | |
| HOHL | ROBERT | ERNST |

| Last name | First name | Middle name/initials |
|---|---|---|
| HOL | WILLEM | ALAN |
| HOLDEN | HEATHER | MARY |
| HOLDEREGGER | EVELYN. | |
| HOLLINGER | CAROLYN | ANNE |
| HOLT | DIANE | FRANCES |
| HONG | KI | CHANG |
| HORISBERGER | GUY | KIMO |
| HOUSE | MARJORIE | REITH |
| HOYLE | ROBERT | HERMAN |
| HSU | CHRISTINE. | |
| HUANG | CHARLES | YUCHUNG |
| HUANG | GLORIA | DIEH YING |
| HUBBARD | ELLEN | SIM KARNOFSKY |
| HUBBARD | PHILIPPE | M. |
| HUBER | MERLIN | ARTHUR |
| HUBER | NIKLAUS | PETER |
| HUBER | SARAH | CARINA |
| HUEVE | ALEXANDRA | MIRJAM |
| HUEVE | FRIEDERIKE | SIMONE |
| HUNERWADEL | PEPE | HENRY |
| HUPPI | ROLAND | SEVERIN |
| HUYNH | PENH | NEANG |
| HWANG | GRACE | SHAO YING |
| HYTOWER | MAL | SUK |
| IM | JIN | HYOUK |
| IMHOFF | GERALD | S. |
| IMHOFF | WENDY | J. |
| IMMOOS | URS | ALOIS |
| INGLIS-POWE | JANE | HELEN |
| IP | KIMBERLEY | TON |
| IRIARTE | AMADO. | |
| IRIARTE | MARIA | CARMEN |
| IRVINE | SUSAN | LYNN |
| ISBELL | DANN | RICHARD |
| ISDELL-CARPENTER | ANTOINETTE. | |
| ISELI | TAMARA | TIFFANY |
| IVES | PAMELA. | |
| JAEGGI-EGGER | BARBARA | YVONNE |
| JANES | CLAIRE | ELIZABETH |
| JANG | EMILY. | |
| JANGKRAJARNG | NUTTORN. | |
| JANZEN | STEVEN | PAUL |
| JARVEY | KATE | LILLY |
| JAUSEL | KEIKO | CHRISTINE |
| JELTSCH | URS. | |
| JEN | SEAN | SHIFONG |
| JENDLY | ANJA. | |
| JENKINS-AUBERT | ANNE-CECILE | ALLIETTE |
| JENSEN | JORGEN | CRISTIAN REESE |
| JENSEN | RICHARD | ALVIN |
| JOHANNESON | SUE | TSEN |
| JOHANNESSEN | JANET | BAKKEN |
| JOHN | LAURA | LYNNE MATTSON |
| JOLLIET | PHILIPPE | SERGE |
| JONES | ANDREAS. | |
| JONES | CAROL | D WEISS |
| JONGBLOED | SEBASTIAAN | WILLEM MICHIEL |
| JONGBLOED | VIOLETTE | ANNE |
| JOOS | CARRIE | FRANCES |
| JOOS | CHRISTIAN | EDOURAD |
| JOPLING | JENNIFER | MARIE |
| JORDAN | JACLYN | DANAE |
| JORGENSEN | RICHARD | ALAN |
| JOSEPH | CAROLYN | ANNE |
| JOYAL | EDWARD | LAWRENCE |
| KADI | MUAZ | YASSIN |
| KAELBERER | PEGGY. | |
| KAHAN | MARCIA. | |
| KAISER | BARBARA | ELIANE |
| KAMAL | RAMMIE | MUSA |
| KANAFANI | MONA | HALABI |
| KAO | HONG | JOHN |
| KAO | MEI-CHIN | CHEN |
| KASPER | RICO. | |

| Last name | First name | Middle name/initials |
|---|---|---|
| KASSER | JUERG | WALTHER |
| KAUFMAN | AISLINN | ERICA |
| KEEFER-BELL | ILA | EUGENIE |
| KEEL | SAMATHA | NICOLE |
| KELLER | ANDREW | MARIO |
| KENDALL | THOMAS | JOHN |
| KERSNAR | JANET | LYNNE |
| KHO | CHRISTINE | ZHEN-BING |
| KICKERT | JAN. | |
| KIENER | CATHERINE | CECILE |
| KIESS | FRANZISKA | SANDRA |
| KIM | ALEX. | |
| KIM | ALEXANDER | DONG |
| KIM | HELEN | HAISEUNG |
| KIM | JAE | MIN |
| KIM | YOO | KYUNG |
| KIMMEL | ERIC | STEPHEN |
| KINAHAN | LAURA | ELLEN |
| KING-OLIVIER | JULIA | WICKLIFFE |
| KITAGAWA | DENISE | MARIE |
| KLASEN | LESLIE | ALISHA |
| KLEMM | MARTIN | OLIVER |
| KLUSER | ALEXANDER | MICHAEL |
| KNAPPE | ALEXANDER | MICHAEL |
| KNECHT | DANIELA | SUSANNE |
| KNIGHT | MARLYSE | SUZANNE |
| KNUTH | SVEN | PHIULIP |
| KOBAYASHI | CORA | MAY |
| KOH | LISA | YI-WEN |
| KOHLER | MARYAM | CHRISTINE |
| KOLEY | DAVID | GABERTHUEL |
| KOLEY | NICOLE | GABEERTHUEEL |
| KONTAK | MARTHA | MARY |
| KOO | WINSTON | WING-HO |
| KOOK | EDITH | MINSOO |
| KOPPENOL-BOUNDS | PATRICIA | LYNN |
| KOSTER | PHENGSAVANH | CINDY |
| KOSTOLIAS | JIMMY. | |
| KRAMER | DAVID | LAWRENCE |
| KUHLEMEYER | MICHELE | ELAINE |
| KUMBALEK | MELINDA | MARY |
| KUNG | WANDA. | |
| KVITA | VALERIE. | |
| KWAN | LOUISA | LAI WAH HO |
| KWAN | SYLVIA | WAI-WAH |
| KWAN BERNASCONI | SUE | SUET PING |
| KWON | DAE | KYOON |
| KWON | HYANGMI. | |
| KWON | JOORHEE. | |
| LA MONTAGNE | CHERYL | EILEEN |
| LA ROCHE | ROGER | GERARD |
| LACHANCE | PAGE | ANNE |
| LAGIER | CYNTHIA | ANN |
| LAI | STEPHEN | CHI YAN |
| LAIDLAW | GEORGE | WILLIAM |
| LAKE-VOUGA | ANNA | LOIS |
| LAKHANI | SAIRA | AMIN |
| LAM | AGNES | BUI-YI |
| LAM | NOEL | CHARLES |
| LAMONTAGNE | PATRICK | PIERRE |
| LAMSON | CYNTHIA. | |
| LANDAU | ROBERT. | |
| LANDI | JOANNA | MARIA |
| LANINI | PHILIPPE. | |
| LAPENSKIE | SHAUN | CHRISTOPER |
| LAPERAL | GERARDO | OLIVERIO VELASCO |
| LAPIERRE | JULIEN. | |
| LARIA | RUTH | MARIE |
| LARSEN | MICHAEL | JOSEPH |
| LASKIN | JANESSA | JOY |
| LATOUR | JEROEN | PIETER PATRICK |
| LAU | VIVIAN. | |
| LAUDER | WALLACE | GEORGE |
| LAURENT | DENNIS. | |

| Last name | First name | Middle name/initials |
|---|---|---|
| LAW | ANNALISE | MARGARET |
| LEBLEBICI | DENIZ | EBRU |
| LECLAIR | FRANCOIS | CLAUDE |
| LEDER | SANDRA | NAOMI |
| LEE | ANDREA | JIN-TUNG |
| LEE | CAROLYN. | |
| LEE | DEBORA | ANN |
| LEE | JAINY | SOOK |
| LEE | JONATHAN | JIAJUN |
| LEE | PATRICK | MAUNG |
| LEE | RICHARD | GRANT |
| LEE | RYAN | WANG HEI |
| LEE | STEVE | KYUNGJAE |
| LELOS | KIRA | JULIANNA |
| LEMENE | LIDIA | AMALIA |
| LENSTRA | LAURA | SIMONET |
| LENSTRA | SENTA | AUGUSTA |
| LEONE | LINDA | CATHRYN |
| LEONG | CHRISTOPHER | WEI-HAO |
| LEPORI | LEONARDO | ARMANDO |
| LERCH | SARAH | ISABELLE |
| LETOVSKY | HINDA. | |
| LEUNG | SANDRA | SHUK BO |
| LEUNG | VERONICA | GRACE |
| LEUTWYLER | HEIDI. | |
| LI | KEFEI. | |
| LI | KRISTINE | KENG YAN |
| LI | LAN. | |
| LIAO | ALBERT | CHENG MAU |
| LICHTMAN | KATHERINE | ANN |
| LIGHTSTONE | PHILLIP. | |
| LIM | BOON | C. |
| LIM | DICKSON | TING CHENG |
| LIMAN | MELISSA | YENNY |
| LIN | JIANYAO. | |
| LIN | MARINA | TING |
| LIN | SHANG | JYH |
| LIN | YEN-CHIH | JULIA |
| LINZ | MARTIN. | |
| LI-SZETO | CECILIA | KWOK-WOON |
| LITTLE | CAROLYN | FRANCES |
| LITWINOW | KAREN | ALEXANDRA |
| LIU | CLAIRE | HWI-MENG TAN |
| LIU | RICHARD | RODNEY |
| LIU | SHENG. | |
| LIVINGSTON | VERISSA. | |
| LLEWELLYN-DURHAM | ANDRE | DANTE GIOVANNI |
| LLOYD-PRICE | HEIDI. | |
| LOESCHE | ERNST | ALEXANDER |
| LOESCHE | EVA. | |
| LONG | OLIVER | TIN LOONG |
| LONG | RICK | LEE |
| LORAM | SEVERINE. | |
| LOU | TAK | PUI |
| LOVELESS | WILLIAM | BLAKE |
| LOW | JUN | HAO |
| LOWE | CHRISTIAN | GARDINER |
| LOWE | TIRASIRI. | |
| LUGINBUEHL | MARK | DAVID |
| LUNG | FUNG | YEE |
| MA | RONGJING. | |
| MA | TERESA | WEI-HSIN |
| MACH | NICOLAS | THIERRY |
| MACHUCA | LINDA | MARICELA |
| MACKINNON | MARTIN | EDWARD |
| MAGUIRE | ISABELLE | S. |
| MAHBUBANI | JHAMAT | PETER |
| MALEENONT | ANN. | |
| MALEENONT | TRACY | ANN |
| MANASSE | DONALD | MICHAEL |
| MARGANI | VIOLA. | |
| MARQUART | ROBERT | ANDREW |
| MARRIN | KNUDSEN | DIANE |
| MARTIG | CHRISTIAN | JOHANN |

| Last name | First name | Middle name/initials |
|---|---|---|
| MARTIN | GIAN | THOMAS |
| MARTINI | JAN. | |
| MASLIN | DOUGLAS | LUKE |
| MASSE | KUNAL. | |
| MATE | THEODORE | EDWARD |
| MATTLI | PETER | ALBERT |
| MAUCH-HALDIMANN | STEFAN | ULRICH |
| MAYER | MARTIN | SEBASTIAN |
| MAYER | NINA | MARLIES |
| MC ADAM | MALCOLM. | |
| MC GOVERN | RACHEL | AMALIA |
| MC QUAIL | FRANCES | MAY FUSON |
| MCCAIN | CLAUDIA | FAYE |
| MCCARTHY | DAVID | JAMES |
| MCCLINTOCK | JAMES | JEFFREY DALE |
| MCDERMONT | SARAH | CHRISTINE |
| MCDONALD | GEORGE | EARL |
| MCDOUGALL-OESER | THERESA | BRIDGET |
| MCEVOY | JAMES | DAVID |
| MCFARLANE | DUNCAN | ROBERTSON |
| MCGRATH | ROBERT | IRVING |
| MCGUINNESS | MRIDULA | JESSIE |
| MCKNIGHT | KATHY | KAY |
| MCLEAN | TIMOTHY | IAN |
| MCLENNAN | SAMUAL | T. |
| MCMAHON | COLTON | THOMAS |
| MCMAHON | JOANNE | LYNNE |
| MCNEILL | TIMOTHY | IAN |
| MCPHAIL | MICHAEL | ALEXANDER |
| MEER-AESCHBACH | IBEATRICE | ERIKA |
| MEIER | ARIANE | INGRID |
| MEIER | KARIN | ANNA |
| MEIER-RIOUX | JOELLE | DOMINIQUE |
| MEILI | ERIC | ANDREW |
| MEISE | FLORIAN | ULRICH |
| MEISSER | DANIEL. | |
| MEISTER | URS | LUKAS |
| MELROSE | JANE. | |
| MENA | PABLO. | |
| MENN | KATHLEEN | LOUISE |
| MENOUD | SAVANNAH. | |
| MERZ BOLT | CHRISTINA | ANN |
| METHERINGHAM | GILLIAN | DIANE |
| MEUWLY | ALAIN | LUC |
| MEYER | CAROL | CLAIRE |
| MEYER | EVAN | SCOTT ROY |
| MEYER | URS | HEINRICH HERMANN |
| MIAO | CHRISTINE | HWA SHAW |
| MICHEL | THERESR | ANNE |
| MIDDLETON | THOMAS. | |
| MILLER | AVIS | DEE |
| MILLER | WILLIAM | ROBERT |
| MILLER-HORN | SHARON | ANN |
| MILOT | MARIELLE | MARIE-JOSEE |
| MIN | JIHONG. | |
| MINDER | JEANNE | CORNELIA |
| MITCHELL | CLAUDE | FRANK |
| MITCHELL | MARY | ANN |
| MOEDERLE | JOHN | MAXWELL |
| MOHL | ANTHONY | S. |
| MONCKTON | PHILIPPA | SUSAN |
| MOORRISSEY | MICHAEL | DAVID |
| MORANO | MICHAEL | JAMES |
| MORELLI | MARIE | LAURE DIANE |
| MORGAN | ANDREW | CRAIG |
| MORGAN | CHRISTOPHER | EVAN |
| MOYAL | NICOLE | VICTORIA |
| MOYER | ANDREW | ALEXANDER |
| MUELLER | CYRIL | JOEL NICOLAS |
| MUELLER | JAN | JESSE |
| MULLER-WIEDERKEHR | CLAUDIA | BEATRICE |
| MURPHY | MARY | PATRICIA |
| MURRAY | LEO | KEVIN |
| MURRAY | MARY | THERESE |

| Last name | First name | Middle name/initials |
|---|---|---|
| MUSCARELLA | ROY | JOSEPH |
| MUSHIN | ANDREW | MICHAEL HINTON |
| MUSHIN | DANIEL | JACOB |
| MYOGA | AKIHITO. | |
| NAEF | PHILIP. | |
| NAIRN | NATHALIE | MICHELE |
| NAKASSATO | SUGAKO. | |
| NAM | YON | OK |
| NANCHEN | ROMANE | LOUISE |
| NARAYANA | ISABELLE. | |
| NEAL | OLIVIER | JOSEPH |
| NEBEL | EVA | MARION |
| NEIHEISEL | EDWARD | JUDE |
| NELSON | MARK | JAN |
| NELSON | STEPHEN | JOHN |
| NEOH | CHERYL | CHIA-CHIN |
| NEUENFELDT | KURT | ALBERT |
| NEUFELD | JEREMY | RUSSELL |
| NEUMANN | SAMANTHA | ROSE |
| NEWMAN | WILLIAM | PATRICK |
| NG | JEWELYN | JOY NOCOM |
| NG | JNET | ENG YEE |
| NG | JONATHAN | MING-EN |
| NG | XIAN-LIOANG | JONATHAN |
| NG | YI | NOEL |
| NICHOLLS | MARY | LOUISE |
| NIEDERMEYER | THOMAS | ALBERT |
| NIELSEN | JACK. | |
| NIELSEN | SYLVIA | NORMA |
| NIEM | TIEN | ING CHYOU |
| NININGER | MICHAEL | ROBERT |
| NORMAN | CAROLINE | BETH |
| NORRIE | EMILIE | RENE CARLSON |
| NUSSBAUM-LAPPING | ALEXANDER | CHANCHAI |
| OATMAN | NATASHA | YVONNE |
| O'BERLE | THIERRY | BENJAMIN |
| O'BRIAN | HUGH | EDWARD |
| O'DAY | KATHLEEN | EVELIGH |
| O'GRADY | ERIN | COLLEEN |
| O'GRADY | KRISTEN | BREANNE |
| O'GRADY | MARLA | JEAN |
| OGUEY | DELPHINE | ELISE |
| ONG | SSONIA | MEI SEE |
| ONO | NORIE. | |
| OOI | CLIR | WEN-YU |
| OPPENHEIMER | CHLOE | ROSE |
| OPRAVIL | JACQUELINE | JOEL |
| ORBEGOSO-KERN | MARIA | CRISTINA |
| OSBORN | ALLAN | GLADSTONE |
| OSLIN | CLYDE | WIELAND |
| OSTERWALDER | LARA | SOPHIA |
| OSTERWALDER | PATRICK. | |
| OSTROM | WALTER | ALLAN |
| OTSU | SHINJI. | |
| OTT | KRISTINN | STEVEN |
| PALUMBO | DOMENICA. | |
| PALUMBO | MICHEL | OSTARIO |
| PAN | ANNA | SHYARU |
| PARADIES | NICOLAS | EMMONS |
| PARES | CONSTANTINO. | |
| PARK | JEREMY | JOONSUK |
| PASCUAL II | BENITO | CARLO TAN |
| PASI | MANUEL | NARSAI |
| PATRICK | PHILIP | K. |
| PATTON | MICHAEL | JAMES |
| PEART | BENJAMIN | ALEXANDER |
| PEDLEY | JOSEPH | WILLIAM |
| PELLOUS | SANDRINE | JARVIS |
| PENG | NEIL. | |
| PERDRISAT | ANNELIESSE. | |
| PERRAULT | LOUISE | OLIVE |
| PERRIN-EMMONS | REBECCA | YVONNE |
| PERRY | JOHN | SCOTT |
| PERSICO | ILIO. | |

| Last name | First name | Middle name/initials |
|---|---|---|
| PERSICO | SHAYN | EMIDIO |
| PERSSON | BENNY | ADAM |
| PERSSON | BENNY | ADAM |
| PETERSEN | CHRISTIANE | FRANCOISE |
| PETIT-FRERE | KEVIN | PATRICK |
| PFEIFFER-GAILLARD | CHRISTINE | ALICE |
| PFLEEGER | JAMES | GORDON |
| PFUNDNER | MYRNA | GREENE |
| PICHE | CLAUDE | AIME |
| PICHETTE | ERIN | MARIE |
| PILIPPI | IAN. | |
| POLONSKY | NICOLE | DONATA |
| POND | ARLETTE | LILIANA |
| POON | MAELENE | CUA |
| PORTER | JOHN | ROBERT |
| PORTER | NICHOLAS | ANTHONY ROBIN |
| PORTER | PHILLIP | WAYNE |
| POWER | STEPHEN | JOSEPH |
| PRETRE | MONICA | HEIDI |
| PRETRE | MONICA | HEIDI |
| PRIMROSE | MARLIN | BLAKE |
| PRUDHOMME | LAWRENCE | A. |
| PURSWANEY | RACHEL. | |
| RAJKAI | KALMAN | L. |
| RAJMON | DAVID. | |
| RASAMNY | WASSIM | RACHID |
| RASMUSSEN | BROOKE | NICHOL |
| REDDEN | MELANIE | AUSTIN |
| REID | BARBARA | ELLEN |
| REIHER | SOPHIE | MICHELLE |
| RETTENBACHER | REGINA. | |
| REY | MALLORIE | CYNTHIA |
| RICHARDSON | ANN. | |
| RICHARDSON | ELMINA | ARLENE |
| RICHARDSON-BRAUN | LYNNDA. | |
| RIEDEL | MICHAEL | GEORGE |
| RIGENDINGER | FRITZ. | |
| RIGHETTI | SABINI | CARLA |
| ROBERT | MICHELLE | ANDREE |
| ROBINSON | DAVID | THORNTON |
| ROBINSON | PHALON | CEDRIC |
| ROE | MATGARET | ALICE |
| ROEBUCK | M | TALI |
| ROGENMOSER | ROBERT. | |
| ROLSTON | BETH | ANN |
| ROMANO | JAMES. | |
| ROMER | MANUEL | ANDREAS |
| RONEY | SARA | F. |
| ROSSEN | STIG. | |
| RUDOLF VON ROHR | EVELYN. | |
| RUETHI-PAULSON | PEGGY | ILEENE |
| RUKAVINA DE VIDOVGRAD | FELIPE | MARIA NIKOLAUS |
| RUNKLE | LOUISE | ELIZABETH |
| RUPP | DANIEL | WISKIRCHEN |
| RUSSELL | DENNIS | GEORGE |
| RUSSELL-DELEAMONT | SUSAN. | |
| RUSSO | JAMIE | SARAH |
| RUTZ-LA PITZ | LOUISE | ALMIRA |
| RYFF-DE LECHE | SYLVIA | AMIKA |
| RYNARD | MATHEW | GARTH |
| SACCONE | STEFANO | MARIA |
| SACZKOWSKI | KATHRYN | ANN |
| SADEGHI | NICOLAS | FRANCOIS ROBERT |
| SADIK | MAHA | MALIK |
| SAGMANLI | KAAN | ERDAL |
| SAKHIA | AAMIR. | |
| SALEM | ROGER. | |
| SAMPSON | JAY | DAVID |
| SANTIAGO | MARILYN | ELEANOR |
| SANTOSO | MARIA. | |
| SARGEANT | MARGARETHA | ROUKENS |
| SASAKI | TOSHIYUKI. | |
| SASPORTAS | LOUIS | JOSEPH |
| SATO | NORIO. | |

| Last name | First name | Middle name/initials |
|---|---|---|
| SAVAGE | GLENDA | A. |
| SAVAGE | GORDON | WAYNE |
| SAVOIE | SYLVIO | M.J. |
| SCANLON | MARY | ANDREA |
| SCHACHTER | ADRIAN. | |
| SCHAEFER | ALEXANDRA | MIRJAM |
| SCHAEFER | JOHANNA | ROS |
| SCHAEFERLE | SALLY | DRAKE |
| SCHAEFERLE | TOM | LYNN |
| SCHAEFERS | EDWARD | RICHARD |
| SCHAEFERS | FRANCIS | CHRISTIAN |
| SCHAEFERS | MARIEL | CATHARINA |
| SCHAEPPI | JURG | ADRIAN |
| SCHAEPPI | KATHARINA | URSULA |
| SCHAEPPI | ROMANO. | |
| SCHAER | ADELHEID | LINA |
| SCHAER | GLORIA | CARMEN |
| SCHAERER | CHERYL | RAYMOND |
| SCHANZ | JUDY | ANN |
| SCHEIDT | JOHANN | WILHELM |
| SCHELL | SUSAN | BARABARA |
| SCHILT-BARTH | PATRICIA | DORIS |
| SCHLATTER | NICOLE. | |
| SCHMID | ROSINE. | |
| SCHMID-PFEIFFER | BARBARA | MARIANNE |
| SCHMID-RIEGER | NICOLE | ELISABET |
| SCHMIDT | ISABELLE. | |
| SCHNELLMANN | ELSA. | |
| SCHNELLMANN | JASMIN | MARY |
| SCHNELLMANN | SANDRA | MAXINE |
| SCHNELLMANN | SHRISTOPH. | |
| SCHONHOLZER | WOLFGANG | OTTO |
| SCHUBEL | GREGORY | BYRON |
| SCHUEPBACH | HEATHER | JO |
| SCHUEPP | RAHEL | KATRIN |
| SCHULTHESS | JOELLE | CHRISTINE |
| SCHWEIZER | BARBARA | CAROLINE |
| SEDCOLE | NICHOLAS | PETER |
| SEHEULT | BRENDA | GERTRUDE |
| SEOL | IRIS. | |
| SEPPI-COTE | BOBBI | ANNE |
| SERRA | MARIA | LAURA |
| SHAFIE | THAAHIRAH | BINTE |
| SHERMAN | EDWAED | DAVID |
| SHIAU | CHING | YEH |
| SHORE | GARY | ALAN |
| SIA | ISABELLE | HUNGWEN |
| SICARD | MARIE | ANNA FRANCOISE |
| SIEGENTHALER-MOCKLIN | JULIETTE | JENNIFER |
| SIELEMANN | DIRK. | |
| SIGRIST | FREDDIE | KEONE |
| SIK | KU | TAY |
| SILBERMAN | ANDREA | JESSICA |
| SIMMONDS | SABINA | CAROLINE |
| SIMPSON | JENNIFER | LYNN |
| SINGHOLKA | NORASEH | ALEXANDER |
| SINNET | BRIAN | MICHAEL |
| SIU | LILIAN | CHI YAN |
| SKARDA | MICHAEL | ROMAN |
| SKILLEN | CHARLES | ROBERT |
| SLAGLE | CHRIS | JAMES |
| SLATER (NEE: BISTRICER) | HADASSAH | RACHEL |
| SMALL | AARON | BRADLEY |
| SMALL | TARA | MICHELLE |
| SMETANA | CHRISTOPHER. | |
| SMIRRA | KARL | HANS R |
| SMITH | ANNE. | |
| SMITH | JAMES | OLIVER HENRY |
| SMITH | THOMAS | FREDERICK |
| SMITH | WENDY | LEIGH |
| SMITHERS | LESLEY | ROSE |
| SMYTH | TERRI | RUTHLYN |
| SNOOKS | SANDRA | LYNN |
| SOBBI | NOOR | M. |

| Last name | First name | Middle name/initials |
|---|---|---|
| SOEDARSONO | CITRA | MUNANDA |
| SOHN | JOANNA | EUN KYUNG |
| SOLLBERGER | ANNEMARIE. | |
| SONNTAG | STEPHEN. | |
| SOUSSANE | JAAFAR. | |
| SOUTHEY | JANE | LORAINE |
| SPENDLOVE | DAVID | SPURR |
| SPETH | DOMINIQUE | MARIE |
| SPINATSCH | NORA | ANNINA |
| SPIROPULOS | JOHN | CHRISTIAN |
| SPREITZER | CHRISTINA | MONIKA BEATRIX |
| SPROAT | SHARON | ANNE |
| ST ARNAUD | DENISE | MARIE FRANCE |
| STADLER | IRENE | CAROL |
| STAEHELIN-VIERMANN | MARGARETHA. | |
| STAEHLI | DAMARIS | DEBORAH |
| STAFFORD | CONOR | MAC LEOD |
| STAGGS | JANE | ELIZABETH |
| STALLA-BOURDILLON | ALINE | DOMINIQUE |
| STALLA-BOURDILLON | MARTIN | JEAN ANTOINE |
| STAUBLI | CHARLES | ANDRE |
| STEELE | JOHN | RICHARD |
| STEENERSON | ROBERT. | |
| STEFKA | MARCO | ANDREA |
| STEHRENBERGER | KEVIN | FELIX |
| STEIN | CLAUDIA | GEORGETTE |
| STEINEGGER | NICOLE | MICHELINE |
| STEPHENS | ROGER | LYNN |
| STEPPER | FRANK | OLIVER |
| STEVENS | VIVIENNE. | |
| STOKES | CHRISTINE | MARGUERITE ANTONIA |
| STOLZKE | SEBASTIAN | PETER |
| STONE | JEFFREY | EARL |
| STOTT | ALISON. | |
| STOUFFER | NATALIE | HEIDI |
| STRASSLE | PATRICIA | LAURA |
| STRAUSS-HEIZMANN | STEFANIE | JOHANNA |
| STREHLER | BONNIE | B. |
| STREHLER | CECILIA | FLORENCE |
| STREPPARAVA | CORINNE | MARIE |
| STREPPARAVA | NICOLE | RITA |
| STRICKER | CLAUDIO | MARC |
| STUDER | NORA. | |
| STUKATOR | ELIZABETH | ANNE |
| STURGEON | DENNIS | CHRISTIAN |
| STUTZ | MARIE | ANNE |
| SU | TSUI | HUA |
| SUESS | FRANK. | |
| SUHM | PATRICK | MANUEL |
| SULLIVAN | DIANE | MARIE |
| SULSER-BREHSE | KATHLEEN | URSULA |
| SUNG | WEN | YANN |
| SUTER | SUSAN. | |
| SWIDERSKI | EDWARD | MICHAEL |
| SYMON | JOHN | LAWRENCE |
| SZEKRENYES | DENISE | MARIE |
| TAN | AARON | KUAN WEI |
| TAN | ANNE-MARIE | HWI-LING |
| TAN | DONG. | |
| TAN | QUINNE | CHI |
| TANDRIONO | SETIONO. | |
| TANG | SHERMAN | CHUNG TAT |
| TARR | PHILIP | EDWARD |
| TARTAKOV | MAZAL | HIZMI |
| TAY | BENJAMIN | HUIMIN |
| TAY | JONATHAN | CHEE-WEI |
| TAY | LESLIE | YAN CHONG |
| TELL | WILHELM. | |
| TEMERTY | MELISSA | ALEXANDRA |
| TENNEY | RICHARD | PAUL |
| TENNYSON | SKYLA. | |
| TEPPER | JONATHON | I. |
| TETREAULT | PIERRE | LUC JEAN |
| THELEN | DAVID | CARL |

| Last name | First name | Middle name/initials |
|---|---|---|
| THEMIG | LINDSEY | NICOLE |
| THNG | DORRYNE | NATALINE |
| THOMAS | BARBARA | LYNNE |
| THOMAS | CHARLOTTE | KELLY |
| THOMAS | HOWARD. | |
| THOMPSON | HEATHER | COLES |
| THORP-BALLARD | ELIZABETH. | |
| THURNHOFER | FRANZ | PETER FERNANDEZ |
| TILBURY | HELEN | SABINE MARIE |
| TISUTHIWONGSE | AKKAPHOL. | |
| TOVEY | NEIL | SUMMERSON |
| TRILLEN | HEIDI | MARY |
| TRIPP | CAROL | JEANNE |
| TROESCH | VIRGINIA | CLAIBORNE |
| TROUBETZKOY | ALEXIS | SERGE |
| TRUJILLO | ANTHONY | BLISS |
| TSAND | WINSTON | CHUEN-ON |
| TSANG | MARTIN | YIU TING |
| TSANG | PRISCILLA | KWAN-YU |
| TSAO | CHRISTINE | CHAO |
| TSUCHIDA | KOHEI. | |
| TSUKAMOTO | KOICHI. | |
| TSUKAMOTO | YOKO. | |
| TURNER | SANDRA | MARGUERITA |
| TYNES | MARTINA | ANNA |
| TZANOS | MARIA | BRITTA |
| UEHLINGER-GEHRIGER | MONICA. | |
| ULIN | ELIZABETH | CARVER |
| ULRICH | WALTER | J. |
| URENDA | IVAN | ELIAS |
| URSPRUNG-IEZZI | ARIANE | LAURA |
| USTRAYKH | ALEXANDER. | |
| VAN HEES | DIRK | WILLIAM |
| VAN MAELE | LOUIS-PHILIPPE | JEAN |
| VAN WAGNER | INGRID | FROMEN |
| VANDER VOST | CECILE | MARIE |
| VARLEY | BRIAN | STANLEY |
| VELLA | SABINA. | |
| VETTERLI-SCHMID | CYNTHIA | CHRISTINE |
| VICTORIO | LEO | GOSECO |
| VICTORIO | MARIA | REMEDIOS CAMPO |
| VIGIE | STEPHEN | OLIVIER |
| VILLESVIK | MARY | MARGARET |
| VISCHER | REBECCA | HELENA |
| VOELLMY-LUDWIG | ANNELIS | YVONNE |
| VOINOV-KIHLER | JULIETTE | NATHACHA |
| VON DEICHMANN | DIETER | ALEXANDER |
| VONECHE | ANNE | CHRISTINE |
| WACKER | MARTINA | PATRICIA |
| WAESPE | JAN. | |
| WAHL | AUDREY | CLAUDE |
| WAI | JOSEPH | YIM |
| WAKEFIELD | ERIN | JULIA |
| WAKELIN | MARK. | |
| WAN | DEBORAH. | |
| WANG | CHUNRONG. | |
| WANG | JACK | CHICHENG |
| WANG | JOHN. | |
| WANG | JUSTIN | OSCAR |
| WANG | MATTHEW | TSENG-JA |
| WANG | PATRICK | TAK YUNG |
| WANNER | VERENA | FRANZISKA |
| WANTSCHEK | LLOYD | CLIFFORD |
| WARD | MATTHEW | PETER |
| WARNER | JESSICA | LYN |
| WARNER | LESLIE | JEAN |
| WASER | ANNA | OLIVIA |
| WATERS | MARY | SIOBHAN |
| WATKINS | LINDA | KAREN |
| WEBER | CHRISTOPHER | ROBERT |
| WEBER | RAINER | ANDREAS |
| WEHBE | MELHAM | RYAN |
| WEHNER | VICKY | LORRAIN |
| WEHRELL | SUSAN | KAY |

| Last name | First name | Middle name/initials |
|---|---|---|
| WEIL | KATHLEEN. | |
| WEINGART | ALAN | DAVID |
| WEINGART | ARLENE. | |
| WEISS | MONICA. | |
| WELD, JR | HOWARD | GEORGE |
| WELLESLEY | MARIANNE | MCDONALD |
| WELLS | EDWARD | BRUCE |
| WELLS | JAMES | EDWARD |
| WELSH-CONTESSOTTO | ERICA | LYNN |
| WENGER | MONICA | RUTH |
| WENTLAND | HELEN | E. |
| WERNER | MARY | MEI-LIN |
| WERNER-MEISSER | ANDREA. | |
| WERNLI-BAUR | SANDRA | MAGDALENA |
| WESTON | SHANE | JOHNSON |
| WHEELER | MARY | ELIZABETH |
| WHITBECK | CHRISTOPHER | W. |
| WHITBECK | CHRISTOPHER | WARD |
| WHITE | ALLISON | STACEY |
| WICHMANN | NICOLE | CHRISTIANE |
| WILBER | HUI SUK | KIM |
| WILDEMANN | JACK | MOORE |
| WILKINS | WILLIAM | THOMAS |
| WILLIAMS | MARILYN | ROSE |
| WILSON | EDYTH | VALERIE |
| WIRZ | DADI. | |
| WISKEMANN | CAROLYN | ELISABETH |
| WITZINGER | MARCUS | ROBERT |
| WOLF | ANGELIKA | U.B. |
| WOLF | JONATHON | THOMAS |
| WONG | CHIN | YEE |
| WONG | EUGENE | QING YAO |
| WONG | MICHAEL | CHI ON |
| WONG | TING TING. | |
| WOOD | LORRAINE | BERKELEY |
| WOODRUM | THOMAS | G. |
| WORDSWORTH | DIANA | LUANN |
| WORTH | TRACEE | LEE |
| WRIGHT | GORDON. | |
| WU | GAN-HONG. | |
| WU | TSUI | LIN |
| WU | YING. | |
| XU | XUEFENG. | |
| YEO | KEVIN | ENG LYE |
| YEUNG | BEN | SIU |
| YI | CHUN | I. |
| YIM | KEVIN | HOWON |
| YOO | EUNICE | HYONG |
| YOO | KYUNG | WON |
| YOON | BERNARD | JUN HYUNG |
| YOSHINO | MICHAEL | STEPHEN |
| YOU | HELEN | HUI YU |
| YOUNG | ALEXANDRA | MARY |
| YOUNG | DARYL | ANN |
| YOUNG | KATHERINE | BELINDA |
| YUDELMAN | JOHN | STANLEY |
| YUN | YANG | JI |
| ZACOUR | MARY | ELEANOR |
| ZAWADSKI | DARIUSZ | ANDRZEJ |
| ZEIDY | HELMY | ABDEL SALAM |
| ZROBACK | JESSE | PETER |
| ZWAHLEN | FLORIAN | LUKAS |
| ZWEIG | YOEL | ELISHA |
| ZWICKY | ALEXANDRA | CATHERINE |

Dated: April 22, 2016.

**Maureen Manieri,**

*Manager Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.*

[FR Doc. 2016–10578 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Kerry Dennis at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense.

*OMB Number:* 1545–2149.

*Regulation Project Number:* TD 9278.

*Abstract:* TD 9278 contains final and temporary regulations that provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible owned by another controlled party. This document also contains final and temporary regulations that modify the regulations under section 861 concerning stewardship expenses to be consistent with the changes made to the regulations under section 482. They provide updated guidance necessary to reflect economic and legal developments since the issuance of the current guidance.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1000.

*Estimated Time per Respondent:* 4 hours, 30 minutes.

*Estimated Total Annual Burden Hours:* 4500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–10573 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, June 22, 2016.

**FOR FURTHER INFORMATION CONTACT:** Theresa Singleton at 1–888–912–1227 or 202–317–3329.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, June 22, 2016, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: May 2, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–10614 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, June 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, June 16, 2016, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: May 2, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–10619 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning allocation and apportionment of deduction for state income.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224 or through the internet at *Sara.L.Covington@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Allocation and Apportionment of Deduction for State Income Taxes.

*OMB Number:* 1545–1224.

*Regulation Project Number:* INTL–112–88.

*Abstract:* This regulation provides guidance on when and how the deduction for state income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 1,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2016.

**Sara Covington,**

*IRS Tax Analyst.*

[FR Doc. 2016–10572 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATE:** The meeting will be held Thursday, June 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1–888–912–1227 or (954) 423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Thursday, June 9, 2016, at 1:00 p.m.. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna

Powers. For more information please contact: Donna Powers at 1–888–912–1227 or (954) 423–7977 or write: TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.* The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: May 2, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–10617 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8594

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8594, Asset Acquisition Statement.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Asset Acquisition Statement.

*OMB Number:* 1545–1021.

*Form Number:* 8594.

*Abstract:* Internal Revenue Code section 1060 requires reporting to the IRS by the buyer and seller of the total consideration paid for assets in an applicable asset acquisition. The information required to be reported includes the amount allocated to goodwill or going concern value. Form 8594 is used to report this information.

*Current Actions:* There have been no changes to the form. However, the agency has updated its estimated number of responses. Business burden is now being reported under 1545–0123, and individual burden is being reported under 1545–0074. Burden estimates for this collection (1545–1021) is for all other filers (estates, trusts, etc.). This change results in a decrease in overall burden hours.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 1,310.

*Estimated Time per Respondent:* 16 hrs., 28 minutes.

*Estimated Total Annual Burden Hours:* 21,563.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2016.

**Tuawana Pinkston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2016–10604 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 11–C

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 11–C, Occupational Tax and Registration Return for Wagering.

**DATES:** Written comments should be received on or before July 5, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Occupational Tax and Registration Return for Wagering.

*OMB Number:* 1545–0236.

*Form Number:* 11–C.

*Abstract:* Form 11–C is used to register persons accepting wagers, as required by Internal Revenue Code section 4412. The IRS uses this form to register the respondent, collect the annual stamp tax imposed by Code section 4411 and to verify that the tax on wagers is reported on Form 730, Monthly Tax Return for Wagers.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 11,500.

*Estimated Time per Respondent:* 7 hours, 4 minutes.

*Estimated Total Annual Burden Hours:* 81,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 2016.

**Tuawana Pinkston,**

*IRS, Reports Clearance Officer.*

[FR Doc. 2016–10606 Filed 5–4–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Open Meeting of the Federal Advisory Committee on Insurance

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces that the Department of the Treasury's Federal Advisory Committee on Insurance (''Committee'') will convene a meeting on Thursday, May 26, 2016, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 1:00–5:00 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

**DATES:** The meeting will be held on Thursday, May 26, 2016, from 1:00–5:00 p.m., Eastern Time.

**ADDRESSES:** The Federal Advisory Committee on Insurance meeting will be held in the Cash Room, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/8fq130?ct=6128d144-9ad5-45f5-910c-c7b44560aae0&RefID=FACI+General+Registration* and fill out a secure online registration form. A valid email address will be required to complete online registration. Note: online registration will close at 11:59 p.m. Eastern Time on Friday, May 20, 2016.

2. Contact the Federal Insurance Office (FIO), at (202) 622–5892, by 5:00 p.m. Eastern Time on Friday, May 20, 2016, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Marcia Wilson, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–8177, or *marcia.wilson@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brett D. Hewitt, Policy Advisor, FIO, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–5892 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

*Public Comment:* Members of the public wishing to comment on the business of the Federal Advisory Committee on Insurance are invited to submit written statements by any of the following methods:

*Electronic Statements*

- Send electronic comments to *faci@treasury.gov.*

*Paper Statements*

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its Web site *http://www.treasury.gov/about/organizational-structure/offices/Pages/Federal-Insurance.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

*Tentative Agenda/Topics for Discussion:* This is a periodic meeting of the Federal Advisory Committee on Insurance. In this meeting, the Committee will discuss a number of issues, including affordability in the National Flood Insurance Program, the globalization of the insurance marketplace, and insights of behavioral economists for the insurance industry. The Committee will also receive updates from its subcommittees.

**Michael T. McRaith,**

*Director, Federal Insurance Office.*

[FR Doc. 2016–10621 Filed 5–4–16; 8:45 am]

**BILLING CODE 4810–25–P**


# FEDERAL REGISTER

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No. 87 May 5, 2016

Part II

## Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedures for Compressors; Proposed Rule

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 431

**[Docket No. EERE–2014–BT–TP–0054]**

**RIN 1904–AD43**

## Energy Conservation Program: Test Procedures for Compressors

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

**ACTION:** Notice of proposed rulemaking and announcement of public meeting.

**SUMMARY:** In this document, the U.S. Department of Energy (DOE) proposes to prescribe new definitions, sampling provisions, and test procedures for compressors in a new subpart of DOE regulations. The proposed test procedure would provide instructions for determining the full-load package isentropic efficiency for certain fixed-speed compressors and the part-load package isentropic efficiency for certain variable-speed compressors based on test methods described in International Organization for Standardization (ISO) Standard 1217:2009, ''Displacement compressors—Acceptance tests,'' (ISO 1217:2009). This document also proposes certain modifications and additions to ISO 1217:2009 to increase the specificity of certain testing methods and improve the repeatability of tested and measured values. In this notice, DOE also announces a public meeting to discuss and receive comments on issues presented in this notice of proposed rulemaking.

**DATES:**

*Comments:* DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than July 5, 2016. See section V, ''Public Participation,'' for details.

*Meeting:* DOE will hold a public meeting on Monday, June 20, 2016 from 9:30 a.m. to 12:00 p.m. in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. Persons may also attend the public meeting via webinar. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. For more information, refer to section V, ''Public Participation,'' near the end of this document.

Interested parties are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Any comments submitted must identify the NOPR for test procedures for compressors, and provide docket number EERE–2014–BT–TP–0054 and/or regulation identifier number (RIN) 1904–AD43. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AirCompressors 2014TP0054@ee.doe.gov* Include the docket number and/or RIN in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disk (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

A link to the docket Web page can be found at: *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/87.* This Web page will contain a link to the docket for this proposed rule on the *www.regulations.gov* site. The *www.regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information about how to submit comments through regulations.gov.

**FOR FURTHER INFORMATION CONTACT:**

Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *compressors@ee.doe.gov.*

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Hariharan@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** DOE proposes to incorporate by reference into part 431 the testing methods contained in certain applicable sections of the following industry standard:

International Organization for Standardization (ISO) 1217:2009, ''Displacement compressors—Acceptance tests,'' sections 2, 3, and 4; subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), 6.2(h); and subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C.

This material is available from the International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, *www.iso.org.* +41 22 749 01 11. It is also available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Suite 600, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to *http://energy.gov/eere/buildings/appliance-and-equipment-standards-program.*

See section IV.M for additional information on this standard.

### Table of Contents

## I. Authority and Background

Compressors are included in the list of ''industrial equipment'' that DOE may determine to include as ''covered equipment,'' and thus establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(L), 6311(2)(A)–(B), 6312(b)). Specifically, DOE issued a Proposed Determination of Coverage (2012 Proposed Determination) that proposed to establish compressors as covered equipment. 77 FR 76972 (Dec. 31, 2012). However, DOE has not yet exercised this authority and thus no Federal energy conservation standards or test procedures for compressors are currently in place. In this document, DOE proposes to establish test procedures for compressors. The following sections discuss DOE's authority to establish test procedures for compressors and relevant background information regarding DOE's consideration of test procedures for this equipment.

### A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended, (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency.[1]

Part C of Title III, which for editorial reasons was codified as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317), establishes the Energy Conservation Program for Certain Industrial Equipment. Under EPCA, DOE may include a type of industrial equipment, including compressors, as covered equipment if it determines that to do so is necessary to carry out the purposes of Part A–1. (42 U.S. 6311(1)(L), 6311(2)(B)(i), and 6312(b)). The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation. (42 U.S.C 6312(a)) In DOE's 2012 Proposed Determination, DOE proposed to determine that because (1) DOE may only prescribe energy conservation standards for covered equipment; and (2) energy conservation standards for compressors would improve the efficiency of such equipment more than would be likely to occur in the absence of standards, including compressors as covered equipment is necessary to carry out the purposes of Part A–1. 77 FR 76972 (Dec. 31, 2012).

Pursuant to EPCA, DOE's energy conservation program for covered equipment consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. Specifically, subject to certain criteria and conditions, EPCA requires DOE to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each type of covered equipment. (42 U.S.C. 6316(a)) Manufacturers of covered equipment must use the prescribed DOE test procedure: (1) As the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s) and 6316(a)) and (2) when making representations to the public regarding the energy use or efficiency of those equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the equipment complies with any relevant standards adopted pursuant to EPCA. (42 U.S.C. 6295(s) and 6316(a))

There are currently no DOE test procedures or energy conservation standards for compressors. However, DOE is currently evaluating whether to establish energy conservation standards for certain categories of compressors. (Docket No. EERE–2014–BT–STD–0040) DOE must first establish a test procedure that measures the energy use, energy efficiency, or estimated operating costs of such equipment, prior to establishing energy conservation standards for such equipment. *See generally* 42 U.S.C. 6295(r) and 6316(a).

EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. (42 U.S.C. 6314) Among other things, EPCA requires that test procedures must be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary of Energy), and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) Furthermore, DOE is required to publish the proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to

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

present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b))

Consistent with EPCA requirements, DOE proposes to prescribe a test procedure for certain categories of compressors to be used with its ongoing energy conservation standards rulemaking for this equipment (Docket No. EERE–2013–BT–STD–0040). The test procedure, if adopted, would include the methods necessary to: (1) Measure certain performance parameters of the compressor (*i.e.,* inlet and discharge pressures, flow rate, and packaged compressor power input); and (2) use the measured results to calculate the package isentropic efficiency [2] of the compressor, inclusive of all compressor-package components. DOE proposes specific test procedures and metrics for fixed-speed versus variable-speed compressors: Full-load efficiency for fixed-speed compressors and a part-load efficiency for variable-speed compressors. DOE also proposes to establish the categories of compressors to which the proposed test method would apply.

If DOE adopts an applicable test procedure, manufacturers would be required to use the adopted test procedure and performance metrics when making representations regarding the energy consumption of covered equipment beginning 180 days after publication of the test procedure final rule in the **Federal Register** (42 U.S.C. 6314(d)) (see section III.F).

*B. Background*

Consistent with DOE's authority under EPCA, as discussed in section I.A, DOE issued the 2012 Proposed Determination that proposed to establish compressors as covered equipment. 77 FR 76972 (Dec. 31, 2012). Subsequently, in February 2014, DOE published a Notice of Public Meeting and Availability of the Framework Document to initiate an energy conservation standard rulemaking for compressors. 79 FR 6839 (Feb. 5, 2014). In the Framework Document, DOE requested feedback from interested parties on multiple issues, including the definition of compressor, characteristics of different compressor categories, and how to test compressor efficiency. DOE held a public meeting to discuss the Framework Document on April 1, 2014, hereafter referred to as the ''Framework public meeting.'' DOE received 15 comments in response to the Framework Document. After the comment period, DOE held interviews with several interested parties to help gather additional information necessary to complete the regulatory analyses that were described in the Framework Document. Those recommendations received from interested parties in both comments on the Framework Document and during the Framework public meeting, as well as feedback provided during the preliminary manufacturer interviews, that are pertinent to the test procedure and performance metric are addressed in this NOPR and reflected in DOE's proposed compressor test procedure.

## II. Summary of the Notice of Proposed Rulemaking

In this test procedure NOPR, DOE proposes to establish a new subpart T to 10 CFR part 431 that would contain, among other things, definitions and a test procedure applicable to compressors. However, DOE proposes to establish test procedures for only a specific subset of compressors. Specifically, this proposed test procedure would apply only to a subset of rotary and reciprocating compressors, as defined in section III.B of this NOPR. DOE intends this proposed test procedure to apply to the same equipment for which DOE is considering adopting energy conservation standards (Docket No. EERE–2014–BT–TP–0054). However, DOE notes that the scope of any energy conservation standards would be established in that rulemaking.

This proposed test procedure prescribes methods for measuring and calculating the energy performance of certain rotary and reciprocating compressors, inclusive of all compressor package components.[3] DOE also proposes to describe the energy performance of certain rotary and reciprocating compressors using package isentropic efficiency. The package isentropic efficiency describes the ratio of the ideal isentropic power required for compression to the actual packaged compressor power input used for the same compression process. DOE proposes to use full-load package isentropic efficiency as the metric for rating certain fixed-speed compressors ($\eta_{isen,FL}$) and part-load package isentropic efficiency as the metric for rating certain variable-speed compressors ($\eta_{isen,PL}$). DOE believes these metrics would provide a representative measurement of the energy performance of the rated compressor under an average cycle of use.

DOE's proposed test method includes measurements of the inlet and discharge pressures, actual volume flow rate, and packaged compressor power input, as well as calculations of the theoretical power necessary for compression—all of which are required to calculate full- or part-load package isentropic efficiency. For reproducible and uniform measurement of these values, DOE proposes to incorporate by reference the test methods established in certain applicable sections of ISO Standard 1217:2009, ''Displacement compressors—Acceptance tests,'' sections 2, 3, and 4; subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), 6.2(h); and subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C; along with certain modifications and additions, as noted in section III.D.2. Members of the compressor industry developed ISO 1217:2009, which contains methods for determining inlet and discharge pressures, actual volume flow rate, and packaged compressor power input for electrically driven packaged displacement compressors. DOE has reviewed the relevant sections of ISO 1217:2009 and has determined that ISO 1217:2009, in conjunction with the additional referenced test methods and calculations proposed in this test procedure (see sections III.D.2 and III.C, respectively), would produce test results that reflect the energy efficiency, energy use, or estimated operating costs of a compressor during a representative average use cycle. (42 U.S.C. 6314(a)(2)) DOE has also reviewed the burdens associated with conducting the proposed test procedure, including ISO 1217:2009 and, based on the results of such analysis, has found that the proposed test procedure would not be unduly burdensome to conduct. (*See* 42 U.S.C. 6314(a)(2)) DOE's analysis of the burdens associated with the proposed test procedure is presented in section IV.B.

DOE also proposes to establish, in subpart B of part 429 of Title 10 of the Code of Federal Regulations, requirements regarding the sampling plan for testing and allowable representations for certain rotary and reciprocating compressors. The proposed sampling plan requirements are similar to those for several other types of commercial and industrial equipment (*e.g.,* pumps) and are appropriate for compressors based on the expected range of measurement

[2] Package isentropic efficiency is defined as the ratio of power required for an ideal isentropic compression process to the actual packaged compressor power input used at a given load point, as determined in accordance with the methods described in sections III.C.4 and III.C.5.

[3] As discussed further in section III.B.2.c, DOE proposes to define air compressors as a ''packaged compressor,'' inclusive of a compression element (''bare compressor''), driver(s), and mechanical equipment to drive the compressor element.

uncertainty and manufacturing tolerances for this equipment (see section III.G). DOE also proposes provisions regarding the representations of energy consumption, energy efficiency, and other relevant metrics manufacturers may make in their manufacturer literature (see section III.F). Any representations of the energy efficiency or energy use of compressors to which an adopted test procedure applies must be made based on the adopted compressor test procedure beginning 180 days after the publication date of any test procedure final rule establishing such procedures. (42 U.S.C. 6314(d))

## III. Discussion

In this NOPR, DOE proposes to place a new compressor test procedure and related definitions into a new subpart T of part 431, add new sampling plans for this equipment in a new section 429.61 of 10 CFR part 429, add a new alternative efficiency determination method (AEDM) for this equipment in 10 CFR 429.70, and add new enforcement provisions for compressors in 10 CFR 429.110 and 134. The proposed subpart T would contain definitions, materials incorporated by reference, and the test procedure applicable to certain classes and configurations of compressors established as a result of this rulemaking, as shown in Table III.1. DOE would also incorporate in subpart T any energy conservation standards for compressors resulting from the concurrent energy conservation standard rulemaking. (*See* Docket No. EERE–2013–BT–STD–0040)

TABLE III.1—SUMMARY OF PROPOSALS IN THIS NOPR, THEIR LOCATION WITHIN THE CODE OF FEDERAL REGULATIONS, AND THE APPLICABLE PREAMBLE DISCUSSION

| Location | Proposal | Summary of Additions | Applicable Preamble Discussion |
|---|---|---|---|
| 10 CFR 429.61 .. | Sampling Plan ..... | Minimum number of compressors to be tested to rate a compressor basic model. | Section III.G |
| 10 CFR 429.110 | Enforcement Provisions. | Method for determining compliance of basic models ..... | Section III.G.3 |
| 10 CFR 431.341 | Purpose and Scope ... | Scope of the proposed compressor regulations ..... | Section III.B |
| 10 CFR 431.342 | Definitions ..... | Definitions pertinent to categorizing and testing of compressors ..... | Section III.B.2 |
| 10 CFR 431.343 | Incorporation by Reference. | Description of industry standards incorporated by reference in the DOE test procedure and related definitions. | Section III.D |
| 10 CFR 431.344 | Test Procedure ..... | Instructions for determining the package isentropic efficiency for applicable categories of compressors. | Sections III.C and III.D |

* **Note:** DOE also proposes minor modifications to 10 CFR 429.2 and 429.70; to apply the general definitions to the equipment-specific provisions proposed for compressors at 10 CFR 429.61 and propose AEDM requirements for compressors, respectively.

The following sections discuss DOE's proposals regarding establishing new testing and sampling requirements for compressors, including A) definition of covered equipment, B) scope of applicability of the test procedure, C) energy-related metrics, D) test method, E) definition of basic model, F) representations of energy use and energy efficiency, and G) sampling plans for testing and AEDMs.

These sections also present any pertinent comments DOE received in response to the February 2014 Framework Document, as well as DOE's responses to those comments.

### *A. Definition of Covered Equipment*

Although a compressor is listed as a type of industrial equipment in EPCA, the term is not defined. (42 U.S.C. 6311(2)(B)(i)) In the Framework Document, DOE requested feedback on a definition for the term ''compressor,'' taken from the International Organization for Standardization (ISO) Technical Report 12942:2012, ''Compressors—Classification—Complementary information to ISO 5390,'' (''ISO/TR 12942:2012''). (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 3). Specifically, ISO Technical Report 12942:2012 defines compressor as a machine or apparatus converting different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure with pressure-increase ratios exceeding 1.1.

In response to the provided definition, the Edison Electric Institute (EEI) supported the use of the ISO/TR 12942:2012 definition. The National Resources Defense Council (NRDC), the Northwest Energy Efficiency Alliance (NEEA), the California Investor Owned Utilities (CA IOUs), the Southern California Gas Company (SCGC), and a joint comment submitted by the American Council for an Energy-Efficiency Economy (ACEEE), the Appliance Standards Awareness Project (APSP), the Northwest Energy Efficiency Alliance (NEEA), and the Alliance to Save Energy (ASE) (hereafter referred to as the Joint Commenters) recommended establishing the pressure ratio that defines compressors to align with the maximum ratio that will eventually be proposed for the DOE's energy conservation standards rulemaking for fans and blowers (''Fans and Blowers Rule,'' Docket No. EERE–2013–BT–STD–0006, EEI, No. 0012 at p. 3; NRDC, No. 0019 at p. 1; NEEA, No. 0040 at p. 23; CA IOUs, No. 0018 at p. 2; SCGC, No. 0018 at p. 2; and Joint Comment, No. 0016 at p. 1) The Compressed Air and Gas Institute (CAGI) commented that the pressure ratio was too low and suggested using a ratio of 2.5. (CAGI, No. 0009 at p. 1; CAGI, No. 0040 at p.2)

DOE agrees with the recommendations from interested parties suggesting alignment of the pressure ratio used to define compressors with any maximum pressure ratio adopted for fans and blowers. That is, DOE believes that, in order to ensure comprehensive and equitable coverage of equipment (*i.e.,* prevent gaps in coverage and double coverage by two rules) it is critical that the maximum pressure ratio applicable to fans and blowers be mutually exclusive with the minimum pressure ratio proposed to define compressors.

Although DOE intends to align the maximum pressure ratio for fans and blowers with the minimum pressure ratio for compressors, DOE notes that the Fans and Blowers Rules are currently in progress and that DOE has not issued a notice of proposed rulemaking for either a test procedure or energy conservation standards. As a result, DOE has not yet offered any formal proposals for a limiting maximum pressure ratio for fans and blowers.

However, DOE discussed the use of pressure ratio limits in the Framework Document for its Fans and Blowers Rule. Specifically, DOE discussed a definition for the term ''blower,'' as ''an axial or centrifugal fan with a ''specific ratio,[4] '' between 1.11 and 1.20'' (Docket No. EERE–2013–BT–STD–0006–0001 at p. 9).

DOE received comments in response to its discussion of specific ratio limits in the Fans and Blowers Rule Framework Document. Specifically, Ingersoll-Rand supported use of an upper limit of 25 kJ/kg for equipment being considered as a part of the Fans and Blowers Rule (Docket No. EERE–2013–BT–STD–0006–0153 at p. 6). DOE notes that ISO 13349:2010[5] also defines fans based on a maximum energy limit of 25 kJ/kg of air and indicates that 25 kJ/kg is equivalent to a specific ratio of 1.3. The CA IOUs, in response to the Fans and Blowers Framework Document, commented that they were aware of the ongoing compressors rulemaking, and that the respective pressure ratio limits of each rule should be aligned in order to prevent gaps in coverage (''Fans and Blowers Rule,'' Docket No. EERE–2013–BT–STD–0006–0011 at p. 3).

Additionally, DOE notes that, following the completion of the Framework comment period, an ASRAC Working Group was established to negotiate proposed energy conservation standards for fans and blowers. 80 FR 17359 (Apr. 1, 2015). Ultimately this Working Group concluded its negotiations on September 3, 2015, with a supportive vote on several recommendations (''a term sheet'') for DOE regarding the testing and regulation this equipment. (Docket No. EERE–2013–BT–STD–0006, No. 179) Although the Working Group's term sheet did not explicitly include an upper limit on pressure ratio, the working group did discuss, and come to ''general agreement'' on a ''maximum fan energy limit of 25 kJ/kg'' (approximately 1.3 pressure ratio) as the appropriate cutoff to distinguish between fans and compressors. (Docket No. EERE–2013–BT–STD–0006; Public Meeting, No. 84 at p. 11).

As discussed previously, DOE agrees with the recommendations from NRDC, NEEA, CA IOUs, SCGC and the Joint Commenters, suggesting alignment of the pressure ratio used to define compressors with any maximum pressure ratio adopted for fans and blowers. Consequently, DOE proposes to incorporate into its definition of a compressor, a pressure ratio limit of greater than 1.3. DOE believes that, based on the most recent Fans and Blowers Rule public information (discussed above), a pressure ratio limit of 1.3 is the most appropriate cutoff to distinguish between fans and compressors, and this cutoff limit meets the intent of definitional alignment between the Fans and Blowers Rule and this rulemaking.

DOE notes that it is proposing to limit the definition of a compressor using pressure ratio, rather than fan energy (in kJ/kg), as fan energy is not a commonly used parameter in the compressor industry and DOE is unaware of any compressor industry test standards that specify the calculation of such a parameter. Alternatively, pressure ratio is a commonly used, and well understood, parameter in the compressor industry, and is easily derived from test methods contained in common industry standards, such as ISO 1217:2009.

In addition to the lower pressure ratio limit of ''greater than 1.3'', DOE proposes to base the remainder of its compressor definition on the ISO 12942:2012 definition of a compressor; which was discussed in the Compressors Framework Document and supported in previously discussed comments submitted by EEI.

Ultimately, DOE proposes to define a *compressor* as a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure and has a pressure ratio[6] greater than 1.3.

DOE notes that proposing a pressure ratio of greater than 1.3, DOE intends to align the minimum pressure ratio for compressors to the maximum ratio proposed in the fans and blowers rule and create a continuous spectrum of coverage between the two equipment types. However, as discussed previously, the fans and blowers rulemaking is still in progress, and the limit of 25 kJ/kg (approximately a 1.3 pressure ratio) discussed during Working Group negotiations has not been proposed by DOE and is subject to change. As such, DOE reiterates that the primary intent of proposing a pressure ratio greater than 1.3 is to align with the fans and blowers rule and creates a continuous spectrum of coverage between the two equipment types. If the fans and blowers rulemaking ultimately proposes and adopts an upper limit other than 25 kJ/kg, DOE may alter the pressure ratio threshold of greater than 1.3 referenced in the compressor definition, in order to achieve the original intent of this proposal, either through this rulemaking, the fan and blowers rulemaking, or other subsequent rulemakings.

In order to objectively and unambiguously determine whether equipment meets the definition of compressor, DOE also proposes to define the term ''pressure ratio.'' DOE proposes to define pressure ratio as the ratio of discharge pressure to inlet pressure, as determined at full-load operating pressure. This definition allows DOE to establish quantitatively which equipment meet the pressure ratio requirement proposed in the definition of compressor.

This definition of pressure ratio relies on the terms discharge pressure and inlet pressure. Definitions and methods to calculate the discharge pressure and inlet pressure are established in ISO 1217:2009, certain sections of which DOE proposes to incorporate by reference (see section III.D). DOE also notes that in this NOPR DOE proposes methods to identify full-load operating pressure; such methods are discussed further in section III.D.2.i.

DOE requests comment on the proposed definitions for compressor and pressure ratio, as well as the definitions referenced in ISO 1217:2009.

DOE requests comment on the proposed lower limit of pressure ratio for compressors of ''greater than 1.3.''

### *B. Scope of Applicability of the Test Procedure*

#### 1. Summary of Scope of Applicability

DOE notes that while the definition of compressor, as proposed in section III.A, is broad, the categories of compressors to which the proposed test procedure applies would be limited to a more narrow range of equipment. Specifically, after consideration of feedback from interested parties, as well as DOE research, DOE proposes to limit the applicability of this test procedure to compressors that meet the following criteria:

- Are air compressors, as defined in section III.B.2;
- Are rotary or reciprocating compressors, as defined in section III.B.3;

[4] Specific ratio is defined in ISO 13349:2010 as the total pressure at the outlet of the fan over the total inlet pressure. This term is synonymous to pressure ratio, as discussed in this document.

[5] ISO 13349:2010 Fans—Vocabulary and definitions of categories.

[6] DOE proposes to use terminology consistent with ISO 1217:2009 in describing the ratio of discharge to inlet pressures as ''pressure ratio,'' as opposed to ''pressure-increase ratio,'' which is the term used in some other industry documents. However, for the purpose of this document ''pressure-increase ratio'' and ''pressure ratio'' are synonymous.

• Are driven by a brushless electric motor, as defined in section III.B.4;

• Are distributed in commerce with a compressor motor nominal horsepower greater than or equal to 1 and less than or equal to 500 horsepower (hp) as defined in section III.B.5; and

• Operate at a full-load operating pressure of greater than or equal to 31 and less than or equal to 225 pounds per square inch gauge (psig), as defined in section III.B.6.

In this test procedure NOPR, DOE proposes to limit the applicability of the test procedure to compressor equipment being analyzed in the energy conservation standard. However, DOE notes that the broad definition of compressor provides DOE with flexibility to consider establishing test procedures and energy conservation standards for compressors outside the scope of this test procedure in the future.

2. Equipment System Boundary and Application

a. Equipment System Boundary

In the Framework Document for the compressor standards rulemaking, DOE considered three options for the equipment system boundary, based on the three different ways in which compressors are distributed in commerce: (1) As a bare compressor; (2) as a bare compressor, inclusive of driver(s) and mechanical equipment to drive the bare compressor; and (3) as a bare compressor, inclusive of driver(s) and mechanical equipment to drive the bare compressor, as well as all secondary equipment, componentry, and air conveyance equipment (*i.e.,* a compressed air system (CAS)). DOE requested comment regarding the feasibility of covering each boundary level of compressor equipment.

In the Framework Document, DOE proposed no formal definitions for these equipment configurations. However, DOE described the term ''bare compressor'' as a ''singular machine responsible for the change in air pressure, which is sometimes referred to as an 'air end,' and which is the compression chamber where air is compressed.'' DOE specifically noted that this term would be exclusive of any other devices, such as an electric motor. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 6).

With respect to the ''a bare compressor, inclusive of driver(s) and mechanical equipment to drive the bare compressor '' option (a compressor package), DOE described a configuration of compressor components that includes ''a driver, such as an electric motor, and may include other equipment, such as gears, drains, air treatment (filtering) equipment, onboard controls, etc.'' DOE noted that this ''configuration is considered the single largest piece of equipment brought to market by an individual manufacturer.'' [7]

With respect to the ''a bare compressor, inclusive of driver(s) and mechanical equipment to drive the bare compressor, as well as all secondary equipment, componentry, and air conveyance equipment (*i.e.,* a CAS)'' option, DOE described a system ''inclusive of all componentry that would be attached and would include components starting from the air intake and including the final 'point-of-use.' '' DOE noted that under this option, ''the compressor could include the many configuration packages that could be attached such as the distribution (piping) network, air-treatment systems, sequencers, storage tanks, and any end-use equipment (*e.g.,* pneumatic tools).'' (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 7).

In the Framework Document, DOE requested comment on the different equipment system boundary options. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 11). In response, Saylor-Beall commented that ''while it might be possible to rate the air compressor package, attention needs to be given to the entire compressed air system of the end user.'' (Saylor-Beall, No. 0003 at p. 2)[8] Alternatively, Jenny Compressors (''Jenny'') stated that ''covering the entire 'CAS' may prove nearly impossible since many systems include components from many different manufacturers, and no two systems are the same.'' (Jenny, No. 0005 at p. 2) CAGI and the Joint Commenters agreed that DOE should cover the compressor package as part of this rulemaking. (CAGI, No. 0009 at p. 3; Joint Comment, No. 0016 at p. 2) The Joint Commenters also stated that, if DOE covers the compressor package, DOE would need to ensure companies that assemble packages from purchased components are also subject to proposals in this rulemaking. (Joint Comment, No. 0016 at p. 2–3)

DOE considered these comments and reviewed the pros and cons of each equipment system boundary option. The following paragraphs discuss DOE's finding and conclusions.

DOE considers covering a bare compressor to represent significantly lower energy savings compared to the other two equipment system boundary options. Logically, because a bare compressor is a subset of the compressor package and CAS, any energy savings available in the bare compressor would also be available in the compressor package and CAS options. Additionally, some energy savings opportunities are related to the ability to optimize a bare compressor relative to other components of the compressor package or CAS. Covering the bare compressor only would forgo the opportunity to realize those additional savings opportunities. Furthermore, some of those additional components have a significant impact on the energy consumption of the bare compressor in the field and are required for the bare compressor to function as intended. Consequently, DOE believes that determining the energy performance of the bare compressor alone would not be representative of the energy consumption of the equipment under typical use conditions. For these reasons, DOE does not propose to include bare compressors within the scope of applicability of this test procedure.

DOE also understands that, while the CAS represents the largest available energy savings, including the CAS in the scope of applicability of this rulemaking has significant drawbacks:

• Often a CAS is unique to a specific installation;

• Each CAS may include equipment from several different manufacturers; and

• A single CAS can include several different compressors, of different categories, which may all have different full-load operating pressures.

Implementing a broader, CAS-based approach to regulating compressor efficiency would require DOE to (1) establish a methodology for measuring losses in any arbitrary air-distribution network; and (2) assess what certification, compliance, and enforcement practices would be required for a potentially unlimited, and extremely variable, number of system designs. For these reasons, DOE does not propose to establish the scope of applicability of this test procedure to include CAS.

Based on the considerations stated above, at this time, DOE proposes to establish test procedures only for

[7] Ibid.

[8] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop test procedures for pumps (Docket No. EERE–2013–BT–TP–0055, which is maintained at *www.regulations.gov*). This particular notation refers to a comment: (1) Submitted by HI; (2) appearing in document number 8 of the docket; and (3) appearing on page 4 of that document. This final rule also contains comments submitted in response to the pumps ECS rulemaking (Docket No. EERE–2011–BT–STD–0031) and such comments will be identified with that docket number.

compressor packages, which contain bare compressors, driver(s), mechanical equipment to drive the bare compressor, and any ancillary equipment. DOE believes that determining the energy performance of compressors as a ''compressor package'' is the most representative of the energy consumption of the equipment under an average cycle of use.

b. Application

Broadly, compressors are used to compress a wide variety of gases, including, among others, air, natural gas, and refrigerants. In the Framework Document, DOE requested comment on limiting the scope to only ''air compressors'' and stated that information gathered to that point indicated that non-air compressing equipment accounted for a relatively small fraction of the overall compressors market, in terms of both shipments and annual energy consumption. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 4). In response, DOE received conflicting feedback on the topic from interested parties. The Edison Electric Institute (EEI) recommended covering all compressor categories regardless of the gas that is compressed because natural gas compressor energy use is projected to increase, while CAGI stated that DOE should cover only air compressors. (EEI, No. 0012 at p. 1–2; CAGI, No. 0009 at p. 1) The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) requested that compressors used in heating, ventilation, and air-conditioning (HVAC) equipment be specifically excluded. (AHRI No. 0015, at p. 1)

After the publication of the Framework Document, DOE announced several new initiatives to modernize the country's natural gas transmission and distribution infrastructure, including one to explore establishing efficiency standards for natural gas compressors.[9] As part of that effort, DOE published a Request for Information (RFI), on August 5, 2014, to help determine both the feasibility of energy conservation standards for natural gas compressors and whether they are similar enough to air compressors to be considered within the scope of this rulemaking. 79 FR 45377 (Aug. 5, 2014). Additionally, DOE announced the availability of a preliminary, high-level description of the market and available technology for natural gas compressors. (Docket No. EERE–2014–BT–STD–0051, No. 5). DOE held a public meeting on December 17, 2014, to present and seek comment on the content of that data. Based upon the feedback DOE received in response to the RFI and the NODA, DOE has determined that natural gas compressors are a unique style of compressors that serve different applications and market utility, which would necessitate unique test procedures and standards. As such, DOE opted to consider natural gas compressors separately from air compressors. (Docket No. EERE–2014–BT–STD–0051)

Regarding refrigerant compressors, DOE considers refrigerant compressors to have the same basic function as air compressors in that they both compress a working fluid to a higher pressure, but with the working fluid of refrigerant compressors being refrigerant instead of air. Refrigerant compressors are typically used in heating, ventilation, air-conditioning and refrigeration (HVACR) equipment. Similar to natural gas compressors, DOE has determined that refrigerant compressors serve a specific and unique application and also necessitate unique test procedures and standards. As such, DOE has opted not to consider refrigerant compressors in this rulemaking.

Furthermore, DOE's research found no large market segments or applications for compressor equipment used with gases other than air, natural gas, and refrigerant. Information gathered during confidential manufacturer interviews also indicated that non-air and non-natural gas compressing equipment represented relatively low sales volume and annual energy consumption. Accordingly, for the forgoing reasons, DOE proposes to establish test procedures only for air compressors in this rulemaking.

c. Definition of Air Compressor

DOE proposes to define the term ''air compressor'' as a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment.

The first clause of this definition the application of the compressor. The portion of the definition that states, ''. . . a compressor designed to compress air that has an inlet open to the atmosphere or other source of air,'' describes what is commonly known as an air compressor and establishes that this definition includes air compressors only. DOE includes language regarding the compressor inlet as a secondary identifier of air compressors that focuses on features, so that the definition is not entirely reliant on assessment of design objectives. DOE notes that if this definition were to be adopted, DOE would refer to manufacturer literature, including operation and installation manuals, and any other representations made by the manufacturer when determining design intent.

The second clause of this definition discusses the equipment system boundary. Specifically, the portion of the definition which states, ''. . . made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment.'' This clause describes the components that must be to be a regulated air compressor and subject to the proposed test procedure. These specific components are discussed and defined in section III.B.2.d.

DOE also notes that the proposed definition of air compressor is similar to the European Union's (EU's) Ecodesign Lot 31 Draft Standard of ''basic package compressor,'' the ISO 1217:2009 definition of ''packaged compressor,'' and DOE's own ''compressor package'' definition from the Framework Document, each of which is presented in the following paragraphs. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 6).

EU Lot 31 Definition of ''Basic Package Compressor''

Basic package compressor means a compressor made up of compression element ('air end'), electric motor(s) and transmission or coupling to drive the compression element, and which is fully piped and wired internally, including ancillary and auxiliary items of equipment that is considered essential for safe operation and required for functioning as intended; (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 3).

ISO 1217:2009 Definition of ''Packaged Compressor''

Packaged compressor means a compressor with prime mover, transmission, fully piped and wired internally, including ancillary and auxiliary items of equipment and being stationary or mobile (portable unit) where these are within the scope of supply.

Framework Document Definition of ''Compressor Package''

Compressor package refers to the bare compressor plus a driver, such as an electric motor, and may include ancillary equipment such as gears, drains, air-treatment (filtering) equipment, onboard controls, etc. A

[9] See: *http://energy.gov/articles/department-energy-announces-steps-help-modernize-natural-gas-infrastructure*

compressor package is considered the single largest piece of equipment brought to market by an individual manufacturer. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 6).

d. Definition of Air Compressor Components

In order to explicitly establish the applicable components included in an air compressor, as defined, DOE must also define the terms ''bare compressor,'' ''driver,'' and ''mechanical equipment.'' The following sections discuss DOE's proposed definitions for those terms.

Definition of ''Bare Compressor''

In the Framework Document, DOE described a ''bare compressor'' as ''[a] singular machine responsible for the change in air pressure and is sometimes referred to as an ''air end,'' which is the compression chamber where air is compressed.''

In this test procedure NOPR, DOE proposes a similar definition for ''bare compressor.'' However, DOE's proposed definition expands upon and clarifies the discussion presented in the Framework Document to reference several specific design characteristics of bare compressors. Specifically, DOE proposes to include specific language from the definition for mechanical compressor included in ISO/TR 12942:2012 [10] to define the term bare compressor. DOE's proposed definition of ''bare compressor'' reads as follows:

Bare compressor [11] means the compression element and auxiliary devices (*e.g.,* inlet and outlet valves, seals, lubrication system, and gas flow paths) required for performing the gas compression process, but does not include the driver; speed-adjusting gear(s); gas processing apparatuses and piping; or compressor equipment packaging and mounting facilities and enclosures.

Definition of Driver

As discussed previously, another fundamental element of an air compressor is the driver, which provides mechanical power to drive a bare compressor. Examples include an electric motor, internal combustion engine, or gas turbine. In the Framework Document, DOE described and used the term driver, but did not offer a specific definition. In the recent pumps test procedure final rule, DOE defined the term, as it applies to pumps. 81 FR 4086 (Jan. 25, 2016). Specifically, the pumps test procedure final rule defines driver as ''the machine providing mechanical input to drive a bare pump directly or through the use of mechanical equipment. Examples include, but are not limited to, an electric motor, internal combustion engine, or gas/steam turbine.'' *Id.* Due to the similarities between the equipment categories (*i.e.,* equipment typically driven by electric motors and sometimes accompanied with variable frequency drives), in this NOPR, DOE proposes a definition for ''driver'' that is similar the one proposed in the pumps test procedure NOPR. DOE proposes a definition for the term ''driver'' to mean the machine providing mechanical input to drive a bare compressor directly or through the use of mechanical equipment.

Definition of Mechanical Equipment

An air compressor, as defined, may include mechanical equipment that serves to transfer energy from a driver to the bare compressor. In DOE's pumps test procedure final rule, DOE adopted a definition for mechanical equipment as ''any component of a pump that transfers energy from a driver to a bare pump.'' 81 FR 4086 (Jan. 25, 2016). Again, due to the similarities between the equipment categories (*i.e.,* equipment typically driven by electric motors and sometimes accompanied with variable frequency drives), DOE believes such a definition is also applicable to compressors and, as a result, in this NOPR, DOE proposes a definition for the term mechanical equipment as follows:

*Mechanical equipment* means any component of an air compressor that transfers energy from the driver to the bare compressor.

Definition of Ancillary Equipment

DOE believes that the energy consumption of all components distributed in commerce with an air compressor should be considered when evaluating the energy performance of the air compressor. Consequently, DOE proposes to define ancillary equipment as any equipment distributed in commerce with an air compressor that is not a bare compressor, driver, or mechanical equipment. DOE notes that ancillary equipment would be considered to be part of a given air compressor model, regardless of whether the ancillary equipment is physically attached to the bare compressor, driver, or mechanical equipment at the time when the air compressor is distributed in commerce.

DOE requests comment on its proposed definition of air compressor and its use in limiting the scope of applicability of this test procedure.

DOE requests comment on the proposed definitions for bare compressor, driver, and mechanical equipment.

DOE requests comment on the proposed definition of ancillary equipment, and whether a comprehensive list of potential ancillary equipment is more appropriate. If a comprehensive list of potential ancillary equipment is preferred, DOE requests information on what equipment should be on that list.

DOE requests comment on its position that all ancillary equipment distributed in commerce with an air compressor be installed when testing to evaluate the energy performance of the air compressor. DOE requests comment on a potential alternative approach, in which DOE could generate a list of specific ancillary equipment that must be installed to ensure that the test result is representative of compressor performance; equipment on this list would not be optional, regardless of how that compressor model is distributed in commerce. If the alternative approach is preferred, DOE requests comments on what ancillary equipment be required to be installed to representatively measure compressor energy performance and how to evaluate compressor performance if an air compressor is distributed in commerce without certain items on the list.

3. Compression Principle

Compressor equipment can use a variety of different compression mechanisms in order to increase the pressure of the gas. The three main compressor categories each rely on a different compression principle and include rotary compressors, reciprocating compressors, and dynamic compressors. In the Framework Document, DOE offered definitions for each of these compressor equipment categories as follows:

[10] The definition of ''mechanical compressor'' in ISO 12942:2012 includes ''compressor machine constituting essentially one or several working members movable in compression chambers and common built-in mechanism for conversion of external energy supply motion of the driver to the required working member motion, and being operable by supply of external mechanical energy from the power output shaft, or motion rod or piston of the driver or speed-adjusting driving gear. NOTE 1 The mechanical compressor contains necessary auxiliary devices for performing the gas compression process in the working chambers: applicable gas inlet and outlet valves, gas flow paths, seals, lubrication system, capacity control means, measuring instruments etc., but it does not contain driver, speed-adjusting gear, gas processing apparatuses and piping or compressor equipment packaging and mounting facilities and enclosures.''

[11] The compressors industry frequently uses the term ''airend'' or ''air end'' to refer to the bare compressor. DOE uses ''bare compressor'' in the regulatory text of this proposed rule but notes that, for the purposes of this rulemaking, it considers the terms to be synonymous.

Dynamic compressor means a compressor in which the increase in gas pressure is achieved continuously by increasing the kinetic energy of the working fluid in the flow path of the equipment due to acceleration to high velocities by mechanical action of blades placed on a rapid rotating wheel and further transformation of the kinetic energy into potential energy by successive deceleration of the working fluid flow rate and associated pressure increase.

Rotary compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes or its forced discharge are performed cyclically by rotation of one or several rotors in a compressor casing.

Reciprocating compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes are performed cyclically by straight-line alternating movements of a moving member(s) in a compression chamber(s).

In the Framework Document, DOE requested comment on which compression categories should be considered for inclusion in the scope of DOE's rulemaking efforts. In response, several interested parties agreed that DOE should cover all three compressor categories. (Joint Comment, No. 0016 at p. 2; CAGI, No. 0009 at p. 1) Scales commented that DOE should focus on centrifugal and rotary screw compressors above 350 hp. (W. Scales, No. 0020 at p. 1) DOE also received annual shipments data, differentiated by these compressor categories, in industry stakeholder submittals.

In response to the submitted comments, DOE researched the characteristics, typical usage and applications, and available test methods for the different compressor categories. DOE research indicated that dynamic compressors are typically larger in horsepower than positive displacement compressors, and commonly engineered specifically for a unique customer or application. In addition, DOE found that the standard international test procedure for dynamic compressors, ISO 5389, is considered too complicated and not widely used by industry. As a result of the specialization of dynamic compressor equipment and the complexity of the industry test procedure, very little application and performance data are publicly available, which makes it difficult for DOE to assess the feasibility or representativeness of ISO 5389 or other test procedures for this equipment. In addition, due to the unique industry test procedure and applications of dynamic compressors, DOE believes it is most appropriate to apply a unique test procedure to such equipment. Conversely, ISO 1217:2009 is applicable to both rotary and reciprocating compressors and is currently widely used by the industry for testing and verifying equipment performance. For further details on ISO 1217:2009 see section III.D.

Based on the shipments data submitted by interested parties in response to the Framework Document, DOE also estimated the overall size of the air compressors market for each configuration. The shipments data for 2013 provided to DOE suggest that rotary and reciprocating compressors account for the majority of the air compressors market by units shipped. By contrast, dynamic compressors account for fewer than 300 total units shipped, or roughly one percent of the total market. Because rotary and reciprocating compressors can be tested in the same manner and represent the majority of the market, DOE is electing to consider a test procedure that is applicable only to rotary and reciprocating compressors. DOE may create test procedures for dynamic compressors in the future and notes that, due to the differences from rotary and reciprocating compressors, it would be most appropriate to address the test procedure for dynamic compressors as part of a separate rulemaking.

To establish the applicability of the test procedure proposed in this NOPR, DOE proposes the following definitions for rotary and reciprocating compressors, which are consistent with those discussed in the Framework Document:

Rotary compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes or its forced discharge are performed cyclically by rotation of one or several rotors in a compressor casing. This definition for rotary compressor is consistent with the definition included in ISO/TR 12942:2012 and is currently used within the compressor industry.

Reciprocating compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes are performed cyclically by straight-line alternating movements of a moving member(s) in a compression chamber(s). This definition for reciprocating compressor is consistent with the definition included in ISO/TR 12942:2012 and is currently used within the compressor industry.

To support the previous definitions, DOE also proposes to define the term positive displacement compressor as a compressor in which the admission and diminution of successive volumes of the gaseous medium are performed periodically by forced expansion and diminution of a closed space(s) in a working chamber(s) by means of displacement of a moving member(s) or by displacement and forced discharge of the gaseous medium into the high-pressure area. This definition for positive displacement compressor is consistent with the definition included in ISO/TR 12942:2012 and is currently used within the compressor industry.

DOE requests comment on its proposed definitions of rotary compressor, reciprocating compressor, and positive displacement compressor and their use in defining the scope of applicability of this test procedure.

4. Styles of Drivers

a. Electric Motor- and Engine-Driven Compressors

Compressors can be powered using several different kinds of drivers, commonly including electric motors and internal combustion engines. Electric motor-driven equipment may use either single-phase or three-phase electric motors. Engine-driven [12] compressors can be powered by using different kinds of fuels, commonly including diesel, gasoline, and natural gas. In the Framework Document, DOE considered covering all compressors regardless of driver design and requested comments from interested parties.

DOE received varying comments regarding the inclusion of engine-driven compressors. Jenny, the Association of Equipment Manufacturers (AEM), and Sullair recommended excluding engine-driven compressors due to the burden imposed by current emissions regulations and overall low energy consumption by these products. (Jenny, No. 0005 at p. 2; AEM, No. 0011 at p. 1–2; Sullair, No. 0013 at p. 2) EEI and the CA IOUs urged DOE to include engine-driven compressors to avoid creating a market trend towards engine-driven compressors. (EEI, No. 0012 at p. 2–3; CA IOUs, No. 0018 at p. 2) The joint Commenters recommended that DOE examine engine-driven compressors to evaluate possible energy savings but noted that generally they are used in low-duty cycle applications. (Joint Comment, No. 0016 at p. 2)

In response to comments submitted by interested parties, DOE investigated engine-driven air compressors and

[12] For the purposes of this document, the term ''engine'' means ''combustion engine,'' equipment which can convert chemical energy into mechanical energy by combusting fuel in the presence of air.

found that they are generally portable and designed to be used in environments where access to electricity is limited or non-existent, particularly at the current or voltage levels required by comparable electric motor-driven compressors. Engine-driven air compressors are also typically used as on-demand units, with a low duty cycle and annual energy consumption. Additionally, engine-driven air compressors, by nature of their portability, are difficult to optimize for a specific set of operating conditions, which may affect their efficiency relative to a stationary unit that is designed or selected with a specific load profile in mind. Consequently, engine-driven and electric motor-driven air compressors do not serve the same applications or utility in the marketplace and are not mutual substitutes.

DOE is aware that engine-driven air compressors are currently covered by the Environmental Protection Agency's Tier 4 emissions regulations (40 CFR 1039). DOE understands that these Tier 4 regulations have resulted in market-wide redesigns for the engines typically used in these compressors, which has required compressor manufacturers to redesign some aspects of the bare compressor as well. DOE recognizes that any regulations established for engine-driven compressors may result in incrementally more burdensome testing requirements for such equipment and potential design changes that conflict with those required for compliance with Tier 4 regulations.

Additionally, the industry standard test method proposed for incorporation into this test procedure, Annex C of ISO 1217:2009, is the most widely-used test method for determining performance of electric motor-driven compressors. However, Annex C of ISO 1217:2009 does not apply to engine-driven compressors. DOE notes that Annex D of ISO 1217:2009, which is not proposed for incorporation into this test procedure, is intended to address engine-driven compressors. However, unlike Annex C of ISO 1217:2009, DOE currently lacks testing and performance data related to Annex D of ISO 1217:2009. Consequently, DOE is unable to verify the repeatability and applicability of Annex D of ISO 1217:2009 at this time.

Due to the lack of testing and performance data from Annex D of ISO 1217:2009, as well as the difference in market, application, and applicable industry test procedure; DOE proposes to exclude engine-driven air compressors from the scope of applicability of the test procedure proposed in this rulemaking. However, DOE may consider a test procedure for engine-driven compressors as part of a future rulemaking.

b. Styles of Electric Motor

Motors used in compressors broadly fall into two categories: brushed and brushless. Brushed motors perform ''commutation''—changing the direction of the electric field as the motor's rotor turns—using a sliding electrical contact, or ''brush.'' Brushless motor technologies may vary widely in how they accomplish commutation, but have in common the absence of brushes.

DOE is aware that some small compressors intended for very low duty cycle applications may be manufactured with motors which use brushes. Although brushes are simple to control and inexpensive to construct, they are rarely used in applications with significant operating hours for several reasons. First, brushes generally are less efficient than brushless technology, and are therefore suitable only for applications with low duty cycles. Second, brushes wear and require replacement at regular intervals, which may result in costly downtime in an industrial process. Third, brushes may create electrical arcing, rendering them unsuitable for certain industrial environments where combustible or explosive gases or dusts may exist. Finally, brushes may create more noise than brushless technology, and quieter equipment is often viewed as an important and attractive attribute by an end-user. All of these factors limit the applications suitable for compressors manufactured with brushed motors. However, DOE recognizes there is a unique market segment in which brushed motors are appropriate, such as specific applications in which operating life and durability are not important criteria. As a result, DOE believes that any test procedure designed for compressors sold with brushed electric motors would require a unique load profile in order to accurately reflect a representative average use cycle, as required by EPCA. (42 U.S.C. 6314(a)(2)) DOE also notes that, because compressors sold with brushed motors play a specialized and minor role in the compressors market, they are not associated with significant energy consumption. Consequently, DOE proposes to limit the scope of the test procedure to only those compressors that are driven by brushless motors. DOE may consider separate test procedures or energy conservation standards for compressors sold with brushed electric motors as part of a separate rulemaking.

For the purposes of establishing the applicability of this test procedure rulemaking, DOE proposes to define a brushless electric motor as a machine that converts electrical power into rotational mechanical power without use of sliding electrical contacts. DOE considers brushless motors to include, but not be limited to, what are commonly known as induction, brushless DC, permanent magnet, electrically commutated, and reluctance motors. The term brushless motors would not include what are commonly known as brushed DC and universal motors.

DOE requests comment on its proposal to establish test procedures for only brushless electric motor-driven equipment and on its proposed definition of brushless electric motor.

5. Compressor Capacity (Compressor Motor Nominal Horsepower)

Compressors are sold in a very wide range of capacities. Compressor capacity refers to the overall rate at which a compressor can perform work. Although the ultimate end-user requirement is a specific output volume flow rate of air at a certain pressure, industry typically describes compressor capacity in terms of the ''nominal'' horsepower of the motor. As a result, in this rulemaking, DOE proposes to consider compressor capacity in terms of the ''nominal'' horsepower of the motor with which the compressor is distributed in commerce.

DOE recognizes that although the term nominal motor horsepower is commonly used within the compressor industry, it is not explicitly defined in ISO 1217:2009. To alleviate any ambiguity associated with these terms, DOE proposes to define the term ''compressor motor nominal horsepower'' to mean the motor horsepower of the electric motor, as determined in accordance with the applicable procedures in subpart B and subpart X of part 431, with which the rated air compressor is distributed in commerce.

In the Framework Document, DOE discussed limiting the scope of applicability based on compressor capacity as measured in horsepower (hp) to units with capacities of between 1 to 500 hp in order to align the scope of compressor standards with the scope of DOE's electric motors standards. *See* 10 CFR 431.25. Commenters generally recommended expanding the scope to cover compressors larger than 500 hp, in order to capture the maximum possible energy savings that may result from the combined impacts of this test procedure rulemaking and the associated energy conservation standard rulemaking. (EEI,

No. 0012 at p. 3; Joint Comment, No. 0016 at p. 2; Natural Resource Defense Council (NRDC), No. 0019 at p. 1; CA IOUs, No. 0018 at p. 2) Jenny and the Joint Commenters also recommended that the lower hp limit should be increased due to the low annual energy usage of compressors under 10 hp. (Jenny, No. 0005 at p. 3; Joint Comment, No. 0016 at p. 2)

DOE considered the comments of interested parties regarding the range of equipment capacities considered in this test procedure rulemaking. Shipment data, broken down by rated capacity and compressor style (*i.e.*, rotary, reciprocating, and dynamic) indicate that units above 400 hp represent less than 1 percent of the rotary market and virtually none of the reciprocating market. Although it is possible to build positive displacement compressors above 500 hp, shipments are very low and the equipment is typically custom-ordered. DOE notes that, above 500 hp, dynamic compressors are the dominant choice for industrial compressed air service. However, as discussed previously in section III.B.3, the proposed test procedure would not apply to dynamic compressors. Additionally, less performance data is available on units with capacities greater than 500 hp and therefore it is difficult to determine the suitability of the proposed test procedure provisions to such large equipment. Further, testing such large capacity equipment may require more specialized equipment that is less commonly available and would increase the burden associated with conducting the test procedure. Regarding the lower end of the capacity range (*i.e.*, 1 hp), DOE notes that available shipment data indicates that compressors 10 hp and below, while consuming less power on a per-unit basis, account for more than a quarter of fixed-speed, rotary units shipped. DOE believes the proposed test procedures are suitable for measuring the performance of such units, and would not preclude the possibility of cost effective energy savings without performing analysis. As a result, DOE proposes limiting the scope of this test procedure to air compressors with a compressor motor nominal horsepower of greater than or equal to 1 and less than or equal to 500 hp. Based on available shipment data, DOE's proposal is expected to cover nearly the entirety of the rotary and reciprocating compressor market.

DOE requests comment on its proposed definition of compressor motor nominal horsepower. Additionally, DOE seeks comment on whether motors not currently subject to the test procedure requirements in subpart B and subpart X of part 431 are incorporated into air compressors within the scope of this proposed test procedure. If so, DOE requests comment on how prevalent these motors are, and whether the test methods described in subpart B and subpart X of part 431 would be applicable to determine the compressor motor nominal horsepower of such motors. If the test methods described in subpart B and subpart X of 10 CFR part 431 are not applicable to motors not subject to DOE's current Federal test procedures for small electric or electric motors, DOE requests comment on what test methods could be used to determine their compressor motor nominal horsepower.

DOE requests comment on the proposal to include only compressors with a compressor motor nominal horsepower of greater than or equal to 1 and less than or equal to 500 within the scope of this test procedure.

6. Output Pressure Range

DOE also proposes in this NOPR to limit the applicability of the test procedure based on the full-load operating pressure of the equipment. Specifically, DOE proposes that the test procedure only be applicable to compressors with full-load operating pressures greater than or equal to 31 psig and less than or equal to 225 psig. DOE believes this range represents the majority of the reciprocating and rotary compressor market. In the Framework Document, DOE discussed limiting the scope of this initial compressor test procedure based on the full-load operating pressure of the compressors. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 8). However, in the Framework Document, DOE used the comparable terms ''absolute discharge pressure'' and ''absolute gauge output pressure.'' (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 19). DOE also notes that the full-load operating pressure is related to the pressure ratio, discussed previously in section III.A, but describes the absolute increase in pressure, whereas the pressure ratio represents the pressure increase expressed as a multiple of the inlet pressure of the compressor.

In response to the Framework Document, CAGI noted that industry generally considers compressors to have a pressure ratio of greater than 2.5. (CAGI, No. 0009 at p. 1) In a separate submission, CAGI provided the following more detailed breakdown of the rotary compressors market:

- Approximately 4.4 to 30 pounds per square inch gauge (psig) (pressure ratio greater than 1.3 and less than or equal to 3.0): The compressors industry generally refers to these products as blowers—a term DOE is considering defining as part of its fans and blowers rulemaking (Docket No. EERE–2013–BT–STD–0006). The majority of these units are typically distributed in commerce as bare compressors and do not include a driver, mechanical equipment, or controls.
- 31 to 79 psig (pressure ratio greater than 3.1 and less than or equal to 6.4): There are relatively few compressed air applications in this pressure range, contributing to both low product shipment volume and low annual energy consumption.
- 80 to 139 psig (pressure ratio greater than 6.4 and less than or equal to 10.5): This range represents the majority of general compressed air applications, shipments, and annual energy use.
- 140 to 215 psig (pressure ratio greater than 10.5 and less than or equal to 15.6): This range represents certain specialized applications, relatively lower sales volumes and annual energy consumption when compared to the 80 to 139 psig rotary compressor segment.
- Greater than 215 psig (pressure ratio greater than 15.6): This range represents even more specialized applications, which require highly engineered rotary compressors that vary based on each application.

(CAGI, No. 0030 at p. 4)

DOE did not receive any additional information that separated the market of reciprocating compressors by pressure. According to the Lot 31 preparatory study final report,[13] single- and two-stage reciprocating compressors typically operate from 0.8 to 12 bar (12 to 174 psig; pressure ratio 1.8 to 13), and multi-stage reciprocating compressors typically operate from 12 to 700 bar (174 to 10,152 psig; pressure ratio 13 to 701). However, based on market research and discussions with various compressor manufacturers, DOE believes that pressure ranges for reciprocating compressors are similar to rotary compressors.

Based on DOE's research and information from commenters, DOE proposes to apply the test procedure to compressors with full-load operating pressures of between 31 and 225 psig (pressure ratios greater than ~3.1 and less than or equal to 16.3). DOE notes that while some commenters suggested an upper limit of 215 psig, full-load operating pressure values may be

[13] For copies of the EU Lot 31 draft regulation: *www.regulations.gov/conentStreamer?document=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf.*

generated differently by each manufacturer and it is not clear that they are completely comparable between manufacturers.[14] For example, a product listed at 215 psig from one manufacturer may compete with a product listed at 217 psig from another, which may compete with one listed at 212 psig from a third. Although DOE's proposed test procedure seeks to eliminate this issue (*see specifically*, section III.D.2.i), DOE must still account for the current lack of consistent pressure rating methodology in the compressor industry. As a result, DOE proposes to adopt an upper limit of 225 psig to include the majority of non-special purpose equipment DOE could identify on the market. Compressor equipment with full-load operating pressures below 31 psig and above 225 psig generally serve applications that do not often overlap with the 31–225 psig compressor market and do not represent a significant volume of sales. DOE notes that equipment with full-load operating pressures below 31 psig and above 225 psig may still meet the proposed definition of air compressor. DOE may consider extending test procedure applicability to these compressors in a future rulemaking.

DOE requests comment on its characterization of the rotary compressor market by pressure ranges, and whether the reciprocating compressor market is similarly characterized.

As the full-load operating pressure would be used to determine the applicability of the proposed test procedure, it is important that the full-load operating pressure be established consistently amongst compressor models. To that end, DOE proposes to establish a specific definition and procedure for determining full-load operating pressure for applicable compressors, which is based on the maximum full-flow operating pressure. Specifically, DOE proposes to define the term full-load operating pressure as follows:

Full-load operating pressure means the represented value of discharge pressure, which must be greater than or equal to 90 percent and less than or equal to 100 percent of the maximum full-flow operating pressure. The term full-load operating pressure is commonly used in the compressors industry to characterize compressor output air pressure and appears as a listed parameter on CAGI's voluntary performance verification data sheets. Additionally, the EU Lot 31 draft standard [15] characterizes compressor output pressure using a nearly identical term, ''full load outlet pressure.'' DOE proposes this definition of full-load operating pressure in order to characterize compressor output pressure in a manner consistent with both the U.S. industry and the European standard, and to ensure reproducible and comparable representations among the different manufacturers and models. Specifically, DOE understands the full-load operating pressure to be a nominal term at which manufacturers elect to produce ratings. For example, the CAGI datasheets define the term as ''the operating pressure at which the capacity and electrical consumption were measured for this data sheet.'' [16] Therefore, DOE is defining the term ''full-load operating pressure'' to be a nominal, self-declared value that is within a certain range of the actual, measured maximum full-flow operating pressure.

While DOE understands the need to provide manufacturers some discretion with regard to the selection of the full-load operating pressure, specifying that the selected nominal value is within 10 percent of the actual, tested maximum full-flow operating pressure ensures that the self-declared value is in fact representative of the equipment's capacity and provides better consistency and comparability among ratings. As the proposed definition of full-load operating pressure references the maximum full-flow operating pressure, DOE also proposes a definition and test method (discussed in section III.D.2.i) for maximum full-flow operating pressure. Specifically, the maximum full-flow operating pressure is defined as the maximum discharge pressure at which the compressor is capable of operating as determined in accordance with the methods described in the applicable section of the compressor test procedure.[17] This is the actual maximum operating pressure of the equipment, consistent with the CAGI definition of the term, which describes the maximum full-flow operating pressure as maximum pressure attainable at full flow, usually the unload pressure setting for load/no load control or the maximum pressure attainable before capacity control begins. In the case of the term full-load operating pressure, there is a corresponding flow term, full-load actual volume flow rate, which DOE proposes to define as the actual volume flow rate of the compressor at the full-load operating pressure. The full-load actual volume flow rate is a dependent value and is determined through measurement at the full-load operating pressure, as determined in section III.D.2.i.

The proposed definition of full-load actual volume flow rate mentions the actual volume flow rate of the equipment; therefore, DOE must also define the term actual volume flow rate. ISO 1217:2009 defines a similar term, actual volume flow rate of a compressor, as the actual volume flow rate of gas, compressed and delivered at the standard discharge point, referred to conditions of total temperature, total pressure and composition prevailing at the standard inlet point.[18] Assuming, as proposed, this test procedure applies only to air compressors, DOE's proposes the following, similar definition:

*Actual volume flow rate* means the volume flow rate of air, compressed and delivered at the standard discharge point, referred to conditions of total temperature, total pressure and composition prevailing at the standard inlet point.

DOE notes that the terms standard discharge point, total temperature, total pressure, and [gas] composition are explicitly defined in ISO 1217:2009, and DOE proposes to incorporate these definitions by reference. DOE also notes that the term ''referred to,'' which is common compressor industry parlance, is synonymous with the term ''normalized to.'' In both cases, the objective is to characterize measured values with respect to a common reference point so that they may be more easily compared. In this case, the reference point is the measured atmospheric conditions at the compressor inlet point. The compressor industry describes this practice as ''referring'' the values to inlet conditions. In the interest of harmonization with the definition supplied in ISO 1217:2009, DOE proposes to keep the term ''referred to'' in its definition of actual volume flow rate.

DOE also proposes that actual volume flow rate be measured in accordance

[14] DOE notes that there is no universally accepted procedure for establishing full-load operating pressure and, thus, no assurances that values are comparable.

[15] *http://www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf.*

[16] See, for example, *http://www.cagi.org/pdfs/Fixed%20Speed%20Datasheet%2010-11%20rev8.pdf.*

[17] In the definition proposed in section 10 CFR 431.344, this language refers to the appropriate section number of the regulatory text as it would appear in the Code of Federal Regulations.

[18] This language also describes the parameter called ''corrected volume flow rate,'' which works out to be equivalent to ''actual volume flow rate'' and is addressed in this section.

with section C.4.2.1 of annex C of ISO 1217:2009. DOE notes that section C.4.2.1 of annex C of ISO 1217:2009 refers to a parameter called ''corrected volume flow rate;'' for the purposes of this test procedure, DOE proposes that the terms corrected volume flow rate and actual volume flow rate be deemed equivalent and synonymous. Section C.4.2.1 of annex C of ISO 1217:2009 also includes a correction factor for shaft speed, which is clarified in section C.4.2.2 of annex C of ISO 1217:2009 as ''only required when the electric motor drive is not supplied.'' As described in section III.B.2, DOE is proposing to establish test procedures only for compressor packages, which always include a driver (*i.e.,* electric motor). Therefore, DOE proposes to specify that the correction factor for shaft speed in section C.4.2.1 of annex C of ISO 1217:2009 is not to be used.

DOE requests comment on the proposed definitions of full-load operating pressure, maximum full-flow operating pressure, and full-load actual volume flow rate, and actual volume flow rate.

DOE requests comment on the proposal to include only compressors with a full-load operating pressure greater than or equal to 31 psig and less than or equal to 225 psig within the scope of this test procedure.

*C. Energy-Related Metrics*

1. Specific Input Power and Isentropic Efficiency

In the Framework Document, DOE discussed the two most common metrics used in the compressor industry today to describe the performance of air compressors: package specific power and package isentropic efficiency. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 10–11). Package specific power is the compressor power input at a given load point, divided by the actual volume flow rate at the same load point, as determined in accordance with the methods described in section III.C.1. Further discussion of the relevant portions of ISO 1217:2009 and DOE's proposal to incorporate it by reference is found in section III.D of this document. DOE notes that section C.4.4 of annex C of ISO 1217:2009 refers to ''specific energy consumption.'' For the purposes of this test procedure, the terms specific energy consumption and package specific power are interchangeable.

Package isentropic efficiency is the ratio of power required for an ideal isentropic compression process at a given load point [19] to the actual packaged compressor power input used at the same load point, as determined in accordance with the methods described in section III.C.4 and III.C.5.

The two metrics under consideration provide similar but different information. Package specific power provides users with a way to directly calculate the power required to deliver a particular flow rate of air; this metric is currently used by the CAGI Voluntary Performance Verification Program to characterize compressor performance.[20] However, package specific power calculations are only valid at the output pressure at which a unit is tested and cannot be used to compare units operating at different pressures.

Package isentropic efficiency measures how efficiently a compressor package delivers a given flow rate of air. Package isentropic efficiency is relative to an ideal isentropic process and therefore can be used to compare units across a wide range of pressures. DOE notes that the EU has adopted package isentropic efficiency as the regulatory metric in their draft air compressor regulation.[21]

In the Framework Document, DOE requested feedback regarding both metrics and which would be more appropriate for any potential compressors energy conservation standard. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 11). The Joint Commenters and NRDC commented that both package specific power and package isentropic efficiency should be considered to provide end users with the most information possible when making purchasing decisions. (Joint Comment, No. 0016 at p. 3; NRDC, No. 0019 at p.1; and NRDC, No. 0019 at p. 2) The CA IOUs recommended that a part-load test metric be used to assist in the design optimization of compressor systems with multiple compressors. (CA IOUs, No. 0018 at p. 3)

The following section discusses DOE's selected metric and DOE's rationale for selecting it.

2. Selected Metric: Package Isentropic Efficiency

After careful consideration of Framework Document comments and additional feedback received during interviews with manufacturers, DOE proposes to adopt package isentropic efficiency as the representative metric for describing the energy performance of certain compressors.

However, DOE notes that package isentropic efficiency, as introduced in section III.C.1, is a generic metric applicable to all load points. Therefore, DOE must define a load point (or load points) for the purpose of determining a reproducible and comparable efficiency rating for each compressor model. Kaeser corroborated this idea in its comment, and stated that ISO 1217:2009 provides instructions for how to perform testing but does not specify at what points to perform said tests. (Kaeser Compressors, No. 0040 at p. 94) In relation to load points and the proposed metric, NEEA requested that the test procedure account for variable-speed compressors, while the CA IOUs recommended that DOE include a part-load efficiency metric. (NEEA, No. 0040 at p. 92; and CA IOUs, No. 0018 at p. 3). DOE agrees that part-load performance may be valuable for users of variable-speed compressors. However, DOE believes that a part-load performance metric would not be applicable to all fixed-speed compressors, as many of these compressors are not designed to operate at part-load.

Consequently, DOE proposes to establish two versions of package isentropic efficiency: full-load package isentropic efficiency and part-load package isentropic efficiency. Full-load package isentropic efficiency would apply only to fixed-speed compressors, whereas part-load package isentropic efficiency would apply only to variable-speed compressors. Full-load isentropic efficiency is evaluated at a single load point, while part-load isentropic efficiency is a weighted composite of performance at multiple load points (or rating points). This structure follows the structure of the draft EU compressors regulation and is consistent with the previously discussed interested party comments. DOE believes these metrics and load points provide the best representation of energy consumption for fixed- and variable-speed equipment, respectively.

Equations 1 and 2 describe the full- and part-load package isentropic efficiency. Further details on the calculation of these metrics are contained in sections III.C.4 and III.C.5. Further details on load points and weighting are discussed in section III.C.3.

[19] Or a weighted average of several, specified load points.

[20] *http://cagi.org/performance-verification/overview.aspx.*

[21] Available at: *http://www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf.*

$$\eta_{isen,FL} = \frac{P_{isen,100\%}}{P_{real,100\%}} \quad \textbf{Eq. 1}$$

Where:

$\eta_{isen,FL}$ = package isentropic efficiency at full-load operating pressure,

$P_{isen,100\%}$ = isentropic power required for compression at full-load operating pressure, and

$P_{real,100\%}$ = packaged compressor power input at full-load operating pressure.

$$\eta_{isen,PL} = \sum_{i} \omega_i \frac{P_{isen,i}}{P_{real,i}} \quad \textbf{Eq. 2}$$

Where:

$\eta_{isen,PL}$ = part-load package isentropic efficiency,

$\omega_i$ = weighting factor for rating point i,

$P_{isen,i}$ = isentropic power required for compression at rating point i,

$P_{real,i}$ = packaged compressor power input at rating point i, and

i = selected rating points.

In order to clearly separate the two groups of compressors, DOE proposes the following definitions for fixed-speed and variable-speed compressors.

*Fixed-speed compressor* means an air compressor that is not capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor flow rate.

*Variable-speed compressor* means an air compressor that is capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor actual volume flow rate.

The proposed definition for fixed-speed compressor encompasses compressors that use single speed and multi-speed drivers. Both definitions are based on the definitions for non-continuous control and continuous control, respectively, as adopted in DOE's pumps test procedure final rule, due to the similarities between compressors and pumps. 81 FR 4086 (Jan. 25, 2016).

The following section discusses load points for both full-load and part-load package isentropic efficiency.

3. Load Points and Weighting Factors for Calculating Full-Load and Part-Load Isentropic Efficiency

DOE reviewed the load points and weighting factors used by current industry programs. For fixed-speed compressors, the CAGI Performance Verification Program specifies testing at two load points: (1) flow rate at full-load operating pressure and (2) zero flow rate. In contrast, the European Union's draft air compressors regulation [22] specifies testing fixed-speed compressors only at full-load.

For variable-speed compressors, the CAGI Performance Verification Program references Annex E of ISO 1217:2009 and specifies testing at a minimum of six load points:

- maximum volume flow rate,
- three or more volume flow rates evenly spaced between the minimum and maximum volume flow rate,
- minimum volume flow rate, and
- no-load power.

In contrast, the European Union's draft air compressors regulation [23] specifies testing variable-speed compressors at only three designated load points; 40, 70, and 100 percent of the flow rate measured at full-load operating pressure (or maximum flow rate).

DOE believes that the EU's draft approach of requiring testing at only three load points would reduce the burden of testing while still providing an accurate representation of the unit's part-load performance. Further, by stipulating specific load points for testing rather than evenly spaced load points, the EU method ensures that all variable-speed compressors are tested at the same load points, resulting in simple and accurate comparisons across equipment models. Consequently, DOE proposes to adopt the same load profiles for fixed-speed and variable-speed compressors as those published in the draft EU air compressors regulation. These load points are summarized in Table III.2.

TABLE III.2—LOAD PROFILES BASED ON COMPRESSOR CONFIGURATION

| Compressor configuration | Load profile | Load points |
|---|---|---|
| Fixed-speed compressors | Full-Load | Maximum flow rate. |
| Variable-speed compressors | Part-Load | 40, 70, and 100 percent of maximum flow rate. |

As first discussed in section III.C.2, and shown in equation 2, the part-load package isentropic efficiency metric requires a weighting factor for each load point in order to calculate the final part-load package isentropic efficiency. These weighting factors are meant to represent the percentage of operating time the compressor is operating at each load point. The draft EU air compressors regulation, after which DOE modeled its proposed part-load efficiency calculation, specifies weights of 25, 50, and 25 percent; at load points of 40, 70, and 100 percent of maximum flow, respectively. DOE notes that the CAGI Performance Verification Program does not use a weighted average part-load metric, and thus does not provide weighting factors.

DOE found no other weighting factors currently in use within the compressor industry. Additionally, DOE was unable to find real-world, representative load

[22] Available at: *http://www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf.*

[23] Available at: *http://www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf.*

profile data for equipment in the field. In the absence of representative load profile data, DOE proposes adopting the EU load weighting factors, which would allow for direct and equitable comparisons between equipment, since the weighting factors would be applicable to all variable-speed equipment. In addition, DOE believes these weighting factors adequately represent the operating range of variable-speed compressors and would not be unduly burdensome to conduct, since compressor manufacturers may already perform such testing in support of compliance with the EU regulations. Table III.3 summarizes DOE's proposal for weighting factors for the part-load package isentropic efficiency metric.

TABLE III.3—WEIGHT VALUES FOR SPECIFIED PART-SPEED COMPRESSOR LOAD PROFILE

| Load point (percent of maximum flow rate) | Weighting factors ($\omega_i$ as specified in equation 6) |
|---|---|
| 40 | 0.25 |
| 70 | 0.50 |
| 100 | 0.25 |

DOE requests comment on the proposed load points and weighting factors for package isentropic efficiency for both fixed-speed and variable-speed compressors.

4. Full-Load Isentropic Efficiency

As discussed in section III.C.2, DOE proposes to rate fixed-speed compressors with the full-load isentropic efficiency metric. This section discusses, in detail, the formulas needed to calculate full-load isentropic efficiency for fixed-speed compressors. DOE notes that certain inputs to these formulas are measured or calculated using ISO 1217:2009, certain sections of which DOE proposes to incorporate by reference (see section III.D). For these inputs, DOE has referenced the specific locations within ISO 1217:2009 where those values or procedures may be found. Complete details on ISO 1217:2009, and DOE's justification for its use in this test procedure, are discussed in section III.D.

As discussed in section III.C.3, full-load package isentropic efficiency is calculated at one load point: full-load operating pressure. The equation for full-load package isentropic efficiency is as follows:

$$\eta_{isen,FL} = \eta_{isen,100\%} = \frac{P_{isen,100\%}}{P_{real,100\%}} \quad \textbf{Eq. 3}$$

Where:

$\eta_{isen,FL} = \eta_{isen,100\%}$ = package isentropic efficiency at full-load operating pressure and 100 percent of full-load actual volume flow rate,

$P_{real,100\%}$ = packaged compressor power input at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined from equation 4,[24] and

$P_{isen,100\%}$ = isentropic power required for compression at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined from equation 5.

As referenced in equation 3, the packaged compressor power input at full-load operating pressure and 100 percent of full-load actual volume flow rate is determined in accordance with equation 4:

$$P_{real,100\%} = K_5 \cdot P_{PR,100\%} \quad \textbf{Eq. 4}$$

Where:

$K_5$ = correction factor for inlet pressure and pressure ratio, as determined in section C.4.3.2 of annex C to ISO 1217:2009 at a contractual inlet pressure of 100 kPa,[25] and

$P_{PR,100\%}$ = packaged compressor power input reading at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section C.2.4 of annex C to ISO 1217:2009 (watts).

The isentropic power required for compression at full-load operating pressure and 100 percent of full-load actual volume flow rate ($P_{isen,100\%}$), shown in equation 5, is evaluated using measurements taken while the unit is operating at full-load operating pressure:

$$P_{isen,100\%} = \dot{V}_{1\_m3/s} \cdot p_1 \frac{\kappa}{(\kappa - 1)} \cdot \left[ \left( \frac{p_2}{p_1} \right)^{\frac{\kappa - 1}{\kappa}} - 1 \right] \quad \textbf{Eq. 5}$$

[24] The correction factor for the shaft speed ($K_4$) in section C.4.3.1 of annex C in ISO 1217:2009 is not applicable to this test procedure because the electric motor drive is included in the package, and it is therefore omitted from this equation.

[25] The correction factor for inlet pressure uses contractual values for inlet pressure. Since a contractual value is not applicable to this test procedure, DOE proposes to use a value of 100 kPa from annex F in ISO 1217:2009.

Where:

$V_{1\_m3/s}$ = corrected volume flow rate at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section C.4.2.1 of annex C of ISO 1217:2009 (cubic meters per second) with no corrections made for shaft speed,

$p_1$ = Atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009 (Pa),

$p_2$ = discharge pressure at full-load operating pressure and 100 percent of full-load actual volume flow rate, determined in accordance with section 5.2 of ISO 1217:2009 (Pa), and

$\kappa$ = isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.[26]

DOE requests comment on its proposed definition for full-load package isentropic efficiency, and its use as the metric for fixed-speed compressors.

5. Part-Load Isentropic Efficiency

As discussed in section III.C.2, DOE proposes to rate variable-speed compressors with the part-load package isentropic efficiency metric. This section discusses, in detail, the formulas needed to calculate part-load isentropic efficiency for fixed-speed compressors. DOE notes that certain inputs to these formulas are measured or calculated using ISO 1217:2009, certain sections of which DOE proposes to incorporate by reference. For these inputs, DOE has referenced the specific location within ISO 1217:2009 where that value or calculation procedure is found. However, complete details on ISO 1217:2009, and DOE's justification for its use in this test procedure, are discussed in section III.D.

As discussed in section III.C.3, part-load package isentropic efficiency is calculated using a weighted average of three load points: 40, 70, and 100 percent of maximum flow rate. The equation for part-load package isentropic efficiency is as follows:

$$\eta_{isen,PL} = \omega_{40\%} \times \eta_{isen,40\%} + \omega_{70\%} \times \eta_{isen,70\%} + \omega_{100\%} \times \eta_{isen,100\%} \quad \textbf{Eq. 6}$$

Where:

$\eta_{isen,PL}$ = part-load package isentropic efficiency for a variable-speed compressor,

$\eta_{isen,\ 100\%}$ = package isentropic efficiency at full-load operating pressure, as determined in equation 3,

$\eta_{isen,70\%}$ = package isentropic efficiency at 70 percent of full-load actual volume flow rate, as determined in equation 7,

$\eta_{isen,40\%}$ = package isentropic efficiency at 40 percent of full-load actual volume flow rate, as determined in equation 9,

$\omega_{40\%}$ = weighting at 40 percent of full-load actual volume flow rate (0.25), as described in section III.C.3,

$\omega_{70\%}$ = weighting at 70 percent of full-load actual volume flow rate (0.5), as described in section III.C.3, and

$\omega_{100\%}$ = weighting at 100 percent of full-load actual volume flow rate (0.25), as described in section III.C.3.

The equation for full-load package isentropic efficiency is the same as noted in III.C.4, above (equation 3 through equation 5). Package isentropic efficiency at 40 and 70 percent of full-load actual volume flow rate are defined as follows:

$$\eta_{isen,70\%} = \frac{P_{isen,70\%}}{P_{real,70\%}} \quad \textbf{Eq. 7}$$

Where:

$\eta_{isen,70\%}$ = package isentropic efficiency at 70 percent of maximum flow rate,

$P_{isen,70\%}$ = isentropic power required for compression at 70 percent of full-load actual volume flow rate, as determined in equation 11, and

$P_{real,70\%}$ = packaged compressor power input at 70 percent of full-load actual volume flow rate, as determined from equation 8.[27]

$$P_{real,70\%} = K_5 \cdot P_{PR,70\%} \quad \textbf{Eq. 8}$$

Where:

$K_5$= correction factor for inlet pressure and pressure ratio, as determined in section C.4.3.2 of annex C to ISO 1217:2009 at a contractual inlet pressure of 100 kPa,[28] and

$P_{PR,70\%}$= packaged compressor power input reading at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section C.2.4 of annex C to ISO 1217:2009 (watts).

$$\eta_{isen,40\%} = \frac{P_{isen,40\%}}{P_{real,40\%}} \quad \textbf{Eq. 9}$$

Where:

$\eta_{isen,40\%}$ = package isentropic efficiency at 40 percent of full-load actual volume flow rate,

$P_{isen,40\%}$ = isentropic power required for compression at 40 percent of full-load actual volume flow rate, as determined in equation 12, and

[26] The isentropic exponent of air has some limited variability with atmospheric conditions. DOE chose a fixed value of 1.400 to align with the EU Lot 31 proposed metric calculations.

[27] The correction factor for the shaft speed ($K_4$) in section C.4.3.1 of annex C in ISO 1217:2009 is not applicable to this test procedure because the electric motor drive is included in the package, and it is therefore omitted from this equation.

[28] The correction factor for inlet pressure uses contractual values for inlet pressure. Since a contractual value is not applicable to this test procedure, a value of 100 kPa from annex F in ISO 1217:2009 is used.

$P_{real,40\%}$ = packaged compressor power input at 40 percent of full-load actual volume flow rate, as determined from equation 10.[29]

$$P_{real,40\%} = K_5 \cdot P_{PR,40\%} \quad \textbf{Eq. 10}$$

Where:

$K_5$ = correction factor for inlet pressure and pressure ratio, as determined in section C.4.3.2 of annex C to ISO 1217:2009 at a contractual inlet pressure of 100 kPa,[30] and

$P_{PR,40\%}$ = packaged compressor power input reading at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section C.2.4 of annex C to ISO 1217:2009 (watts).

Finally, $P_{isen,70\%}$, and $P_{isen,40\%}$ would then be calculated using values measured at each of the designated rating points, as shown in equations 11 and 12 respectively:

$$P_{isen,70\%} = \dot{V}_{1\_m3/s} \cdot p_1 \frac{\kappa}{(\kappa - 1)} \cdot \left[ \left( \frac{p_2}{p_1} \right)^{\frac{\kappa - 1}{\kappa}} - 1 \right] \quad \textbf{Eq. 11}$$

Where:

$\dot{V}_{1\_m3/s}$ = corrected volume flow rate at 70 percent of full-load actual volume flow rate, as determined in section C.4.2.1 of annex C of ISO 1217:2009 (cubic meters per second) with no corrections made for shaft speed,

$p_1$ = Atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009 (Pa),

$p_2$ = discharge pressure at 70 percent of full-load actual volume flow rate, determined in accordance with section 5.2 of ISO 1217:2009 (Pa), and

$\kappa$ = isentropic exponent (ratio of specific heats) of air, which for the purposes of this test procedure is 1.400.[31]

$$P_{isen,40\%} = \dot{V}_{1\_m3/s} \cdot p_1 \frac{\kappa}{(\kappa - 1)} \cdot \left[ \left( \frac{p_2}{p_1} \right)^{\frac{\kappa - 1}{\kappa}} - 1 \right] \quad \textbf{Eq. 12}$$

Where:

$\dot{V}_{1\_m3/s}$ = corrected volume flow rate at 40 percent of full-load actual volume flow rate, as determined in section C.4.2.1 of annex C of ISO 1217:2009 (cubic meters per second) with no corrections made for shaft speed,

$p_1$ = Atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009 (Pa),

$p_2$ = discharge pressure at 40 percent of full-load actual volume flow rate, determined in accordance with section 5.2 of ISO 1217:2009 (Pa), and

$\kappa$ = isentropic exponent (ratio of specific heats) of air, which for the purposes of this test procedure is 1.400.[32]

DOE requests comment on its proposed definition for part-load package isentropic efficiency, and its use as the metric for variable-speed compressors.

*D. Test Method*

This section discusses DOE's proposal for a test method to measure, in a standardized and reproducible manner, all quantities needed to determine package isentropic efficiency. These quantities are: Inlet and discharge pressures, flow rate, and packaged compressor power input at given load point(s). Specifically, DOE proposes to incorporate by reference the test methods contained in certain, applicable sections of ISO 1217:2009 as the basis for the compressors test procedure. However, DOE notes that several modifications and additions to ISO 1217:2009 are required to determine the package isentropic efficiency of applicable compressors and improve the repeatability of ratings. These proposals are discussed in sections III.D.1 and III.D.2.

1. Referenced Industry Test Method

In the Framework Document, DOE noted the need to establish a test method capable of reliably measuring compressor performance for determining compliance with energy conservation standards. DOE stated that it was considering two industry standards (ISO 1217:2009 and ISO 5389:2005) as the basis for DOE's compressor test procedure. DOE requested comments from interested parties on the potential use of several test procedures, including ISO 1217:2009, as a basis for the development of a DOE test procedure. (Docket No. EERE–2013–BT–STD–0040, No. 1 at p. 12).

In response to the Framework Document, The Joint Commenters, CAGI, and the CA IOUs all recommended using ISO 1217:2009 for compressor package testing. (CAGI, No. 0009 at p. 3; Joint Comment, No. 0016 at p. 3; and CA IOUs, No. 0018 at p. 3) CAGI further commented during the Framework Public Meeting that it would evaluate ISO 1217:2009 to determine if additional changes were necessary. (CAGI, No. 0040 at p. 92) Ingersoll-Rand cautioned that ISO 1217:2009 may require changes in order to measure package isentropic efficiency but provided no specific recommendations regarding these changes. (Ingersoll-Rand, No. 0040 at p. 90) DOE agrees with Ingersoll-Rand, and DOE has proposed specific methods for calculating package isentropic

[29] The correction factor for the shaft speed ($K_4$) in section C.4.3.1 of annex C in ISO 1217:2009 is not applicable to this test procedure because the electric motor drive is included in the package, and it is therefore omitted from this equation.

[30] The correction factor for inlet pressure uses contractual values for inlet pressure. Since a contractual value is not applicable to this test procedure, a value of 100 kPa from annex F in ISO 1217:2009 is used.

[31] The isentropic exponent of air has some limited variability with atmospheric conditions. DOE chose a fixed value of 1.400 to align with the EU Lot 31 proposed metric calculations.

[32] The isentropic exponent of air has some limited variability with atmospheric conditions. DOE chose a fixed value of 1.400 to align with the EU Lot 31 proposed metric calculations.

efficiency, as discussed in sections III.C.4 and III.C.5. DOE's proposal uses the methods and results of ISO 1217:2009 as a basis for their proposed test procedure, but provides additional calculations and provisions that are necessary for determining package isentropic efficiency.

In response to the comments regarding the use of ISO 1217:2009, DOE reviewed ISO 1217:2009 and ultimately determined that it (1) is the most widely used test standard in the compressor industry for evaluating positive displacement compressor performance; and (2) it attempts to define uniform methods for conducting laboratory tests to determine the inlet and discharge pressures, flow rate, and packaged compressor power input at a given load point—all of which are required to calculate part- and full-load package isentropic efficiency (as defined sections III.C.4 and III.C.5). ISO 1217:2009 also contains certain specifications regarding test equipment, instrument accuracy, and test tolerances. However, as discussed previously, DOE notes that several modifications and additions to ISO 1217:2009 are required to determine the package isentropic efficiency of applicable compressors and improve the repeatability and reproducibility of ratings.

Generally, in DOE's view, ISO 1217:2009 is an appropriate industry testing standard for evaluating performance of applicable compressors. However, DOE notes that ISO 1217:2009 is written as a customer acceptance test. As such, DOE believes that several modifications and additions to ISO 1217:2009 are required in order to provide the specificity and repeatability required by DOE. These proposed modifications are discussed in detail in section III.D.2. Furthermore, DOE notes that ISO 1217:2009 provides both ''complete'' and ''simplified'' test methods for a variety of compressor categories, only some of which are within the scope of applicability of DOE's proposed test procedure. As such, DOE proposes to incorporate by reference only the sections of ISO 1217:2009 that are relevant to the equipment within the scope of applicability of DOE's proposed test procedure. The specific sections proposed for incorporation, and well as the specific proposed modifications, are discussed further in III.D.2.

Ultimately, by incorporating by reference much of ISO 1217:2009 into the proposed DOE test procedure, DOE believes that the resulting DOE test procedure will remain closely aligned with existing and widely used industry procedures and limit testing burden on manufacturers.

2. Modifications, Additions, and Exclusions to ISO 1217:2009

As discussed previously, DOE believes that certain modifications, additions, and exclusions are necessary to ensure repeatable and reproducible test results and provide measurement methods and testing equipment specifications for the entire scope of compressors that DOE would address as part of this proposal. These specific modifications, additions and exceptions are discussed in the following sections III.D.2.a through III.D.2.i.

a. Sections Not Included in DOE's Incorporation by Reference

While DOE proposes to incorporate by reference certain, applicable sections of ISO 1217:2009 as the basis for its compressor test procedure, DOE notes that the following sections, subsections, and annexes of the standard are not applicable to DOE's regulatory framework:

- Sections 1, 7, 8 and 9, in their entirety;
- Section 6, in its entirety (except subsections 6.2(g), and 6.2(h), which would be incorporated by reference);
- Subsections 5.1, 5.5, 5.7, and 5.8;
- Annexes A, B, D, E, F, and G in their entirety; and
- Sections C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1 and C.4.5 of Annex C.

Specifically, section 1 of ISO 1217:2009, titled ''Scope,'' discusses the scope of applicability of ISO 1217:2009. However, the scope discussed in section 1 of ISO 1217:2009 does not align with the specific proposed scope of applicability for DOE's test procedure, as established in section III.B of this notice.

Section 7 of ISO 1217:2009 is titled ''Uncertainty of measurement'' and simply refers the reader to Annex G for information on uncertainty of measurement. Section 7 of ISO 1217:2009 is not called upon by any other sections of ISO 1217:2009 relevant to the testing of compressors within the scope of this rulemaking. Section 8 of ISO 1217:2009 is titled ''Comparison of test results with specified values'' and discusses how to compare test results with contractually guaranteed performance values. Such methods would not be required for testing and rating compressors in accordance with DOE's proposed test procedure. Furthermore, in section III.G, DOE proposes its own sampling and enforcement criteria for compressors included in the scope of applicability of this proposed test procedure.

Section 9, titled ''Test report,'' contains requirements regarding the generation of a test report. These requirements are not relevant to the testing and rating of compressors in accordance with DOE's proposed procedure. Accordingly, DOE is not proposing to incorporate these sections of ISO 1217:2009 by reference.

Section 6 of ISO 1217:2009 is titled ''Test procedures'' and discusses procedures for a compressor acceptance test. However, DOE proposes to incorporate by reference much of Annex C to ISO 1217:2009, titled ''Simplified acceptance test for electrically driven packaged displacement compressors.'' Both Section 6 and Annex C of ISO 1217:2009 provide methods to calculate discharge pressure, inlet pressure, flow rate, and packaged compressor power input at a given load point. However, the methods contained in Annex C are more specifically optimized for the categories of compressors within the scope of applicability of this rulemaking, and are more widely used in the compressor industry. As a result, DOE proposes to incorporate by reference the methods prescribed in Annex C to ISO 1217:2009, and not to incorporate by reference section 6 of ISO 1217:2009, with the following exceptions:

- DOE proposes to incorporate by reference sections 6.2(g), and 6.2(h) of ISO 1217:2009, as they contain important testing configuration information that is not supplied in Annex C to ISO 1217:2009.
- DOE proposes not to incorporate by reference sections C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1 and C.4.5 of Annex C to ISO 1217:2009, as these subsection provide instructions that are not relevant to the testing and rating of compressors in accordance with DOE's proposed procedure.

Subsection 5.1 of ISO 1217:2009 contains general statements related to measuring equipment, methods and accuracy; however, DOE finds most of the statements and instructions in this subsection to be general and ambiguous in nature. To avoid any confusion, DOE proposes not to incorporate by reference subsection 5.1 of ISO 1217:2009. Subsections 5.5 and 5.8 to ISO 1217:2009 provide instructions for how to measure quantities not relevant to DOE proposed test procedures. As a result, DOE proposes not to incorporate by reference subsections 5.5 and 5.8 of ISO 1217:2009. Subsection 5.7 provides instruction for how to measure power and energy; however, this information is also provided in Annex C to ISO 1217:2009. As discussed previously, DOE proposes to use the methods

established in Annex C rather than Section 5. Consequently, DOE proposes not to incorporate by reference subsection 5.7 of ISO 1217:2009.

Annex A to ISO 1217:2009, ''Acceptance test for liquid-ring compressors;'' annex B to ISO 1217:2009, ''Simplified acceptance test for bare compressors;'' and annex D to ISO 1217:2009, ''Simplified acceptance test for internal combustion engine-driven packaged displacement compressors;'' are not required for, or applicable to, testing compressors within the proposed scope of this rulemaking. As such, DOE proposes to not incorporate annexes A, B, and D to ISO 1217:2009 by reference.

Annex E to ISO 1217:2009, titled ''Acceptance test for electrically driven packaged displacement variable speed drive compressors,'' is currently used by CAGI to evaluate variable-speed compressors for their performance verification program. This annex stipulates a specific set of load points and states that a variable-speed compressor should be tested at each load point using the methods established in annex C of ISO 1217:2009. However, the load points identified in annex E are not the same as the variable-speed load points proposed by DOE in section III.C.3. Consequently, it is not necessary for DOE to include annex E within this proposed test procedure, and DOE is not proposing to incorporate annex E to ISO 1217:2009 by reference.

Annex F to ISO 1217:2009 is titled ''Reference conditions'' and provides informative standard inlet conditions for a compressor test. However, DOE proposes to explicitly provide applicable standard inlet conditions in section III.D.2.c. Annex G to ISO 1217:2009 is not called upon by any other sections of ISO 1217:2009 relevant to the testing compressors within the scope of this rulemaking. As such, DOE proposes to not incorporate annexes F or G to ISO 1217:2009 by reference.

After considering the sections and subsections listed in this section, and based on the reasoning provided, DOE ultimately proposes to incorporate by reference the following sections and subsections of ISO 1217:2009:

- Sections 2, 3, and 4;
- Subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), 6.2(h); and
- Subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C.

DOE requests comment on its proposal to incorporate by reference certain applicable sections of ISO 1217:2009 as the basis of the DOE test procedure for compressors. DOE requests comment on the proposal not to incorporate by reference specific sections and annexes as explained in this section.

b. Terminology

DOE notes that, although section 3.4.1 of ISO 1217:2009 defines the term ''actual volume flow rate,'' the term ''corrected volume flow rate'' is used throughout the standard to refer to the same quantity. To clarify, DOE is proposing to use the term ''actual volume flow rate'' exclusively and to note that, where the ISO 1217:2009 refers to ''corrected volume flow rate'' the term would be deemed equivalent and synonymous with the term ''actual volume flow rate.''

c. Testing Conditions

Subsection 6.2 of ISO 1217:2009 specifies test arrangements and accuracy requirements for testing compressors. However, as previously discussed, DOE finds that the information contained in this subsection is not sufficient to produce accurate and repeatable test results. As such DOE proposes to not incorporate the majority of this subsection by reference. Rather, DOE proposes to adopt several requirements regarding the ambient testing conditions and input power characteristics.

Ambient Conditions

DOE notes that section 6.2(d) of ISO 1217:2009 states that ''test conditions shall be as close as reasonably possible to the conditions of guarantee. . .If no inlet conditions have been agreed, then the provisions of Annex F shall apply.'' Because DOE is proposing to establish a performance test, rather than a customer acceptance test (*i.e.,* there are no applicable conditions of guarantee), DOE proposes to not incorporate section 6.2(d) of ISO 1217:2009 by reference into its proposed test procedure. However, DOE recognizes that ambient conditions may affect test results; as such DOE proposes to specify relevant ambient test conditions as part of this test procedure, rather than rely on specification contained in ISO 1217:2009.

DOE understands that the CAGI Performance Verification Program specifies that testing should occur with an ambient air temperature of 80–90 °F. DOE proposes to adopt this range of ambient air temperature (and specify that the range is inclusive of the endpoints) to remain consistent with current industry practices. DOE also proposes not to require certain ambient condition requirements for inlet pressure or relative humidity, as corrections for differences in these values are accounted for in ISO 1217:2009. Finally, DOE proposes to specify that the inlet of the compressor under test must be open to ambient conditions and intake ambient air during testing.

DOE requests comment regarding the proposed ambient conditions required for testing, and if they are sufficient to produce repeatable and reproducible test results.

Power Supply Characteristics

DOE notes that ISO 1217:2009 does not specify the power supply characteristics required for testing. Because packaged compressor power input is a component of the proposed metric, measuring power is an important element of the test. The characteristics of the power supplied to the compressor will affect the repeatability and reproducibility of the measured packaged compressor power input. As a result, to ensure accurate and repeatable measurement of packaged compressor power input, DOE also proposes to specify nominal characteristics of the power supply. Namely, DOE proposes nominal values for voltage, frequency, voltage unbalance, and total harmonic distortion, as well as tolerances for each of these values that must be maintained at the input terminals to the compressor equipment.

To determine the appropriate power supply characteristics for testing compressors, DOE examined applicable test methods for similar equipment (*i.e.,* equipment typically driven by electric motors and sometimes accompanied with variable frequency drives). DOE reviewed the recently published pumps test procedure final rule, which adopts specific requirements for the voltage, frequency, voltage unbalance, and total harmonic distortion when testing pumps in accordance with the DOE test procedure. These requirements are shown in Table III.4. DOE believes that, because compressors utilize similar electrical equipment (*i.e.,* electric motors and drives) to pumps, such requirements should also apply when testing compressors.

TABLE III.4—PROPOSED POWER SUPPLY REQUIREMENTS FOR COMPRESSORS

| Characteristic | Tolerance |
|---|---|
| Voltage | ±5 percent of the rated value of the motor |
| Frequency | ±1 percent of the rated value of the motor |
| Voltage Unbalance | ±3 percent of the rated value of the motor |

TABLE III.4—PROPOSED POWER SUPPLY REQUIREMENTS FOR COMPRESSORS—Continued

| Characteristic | Tolerance |
|---|---|
| Total Harmonic Distortion. | ≤12 percent |

DOE notes that, as discussed at length in the pumps test procedure final rule, these power supply requirements are generally consistent with the requirements and operating conditions for other, similar commercial equipment (*i.e.,* that operate with electric motors and sometimes variable frequency drives) and with relevant industry test standards. In addition, DOE noted in the January 2016 general pumps test procedure final rule that these requirements are generally available on the national electric power grid and, therefore, not unduly burdensome to conduct. 81 FR 4086 (Jan. 25, 2016). DOE believes the requirements, by extension, would present a similarly low level of burden with respect to compressors.

DOE requests comment on the proposed voltage, frequency, voltage unbalance, and total harmonic distortion requirements when performing a compressor test. Specifically, DOE requests comments on whether these tolerances can be achieved in typical compressor test labs, or whether specialized power supplies or power conditioning equipment would be required.

d. Equipment Configuration

ISO 1217:2009 does not specify how a unit under test should be configured for testing. As a result, DOE proposes to specify how equipment is to be configured to ensure repeatable results when conducting the DOE test procedure.

The proposed definition for an air compressor includes ancillary equipment, and therefore DOE proposes to specify that all ancillary equipment that is distributed in commerce with the compressor must be present and installed for all tests.

The proposed definition for an air compressor also specifies that the air compressor has an inlet open to the atmosphere or other source of air. In addition, DOE is proposing ambient conditions for testing. Because an air compressor may have an inlet open to an ''other source of air,'' DOE proposes to specify that the inlet of the compressor under test must be open to the atmosphere and take in ambient air for all tests.

DOE requests comment on the proposed equipment configuration that the inlet of the air compressor under test be open to the atmosphere and take in ambient air, and whether all air compressors can be configured and tested in this manner.

Finally, DOE notes that air compressors often require setup prior to testing. DOE proposes that a unit under test must be set up according to all manufacturer instructions for normal operation. Instructions from the manufacturer may include instructions on verifying oil levels and/or filling the unit with oil for lubrication, checking and connecting loose internal electrical connections, ensuring the bottom of the unit is closed from ambient air and in contact with the floor as intended, or installing forklift cover holes.

DOE requests comment on the proposed requirements for equipment configuration.

e. Data Collection and Sampling

To ensure the repeatability of test data and results, the DOE compressor test procedure should provide instructions about how to sample and collect data at each load point such that the collected data is taken at stabilized conditions that accurately and precisely represent the performance of the compressor at that load point. Section 6.2(i) of ISO 1217:2009 states that ''before readings are taken, the compressor shall be run long enough to ensure that steady-state conditions are reached so that no systematic changes occur in the instrument readings during the test.'' However, ISO 1217:2009 does not clearly define, in a repeatable way, what steady-state conditions are, and how a test operator would know definitively that steady-state has been reached. As a result, DOE proposes to require that measurements be taken at steady-state conditions, which are achieved when the difference between two consecutive, unique, power measurements, taken at least 10 seconds apart and no more than 60 seconds apart and measured per section C.2.4 of Annex C to ISO 1217:2009, is less than or equal to 300 watts. DOE believes that this requirement is sufficient to ensure the measurement is accurate and precise for either manually or digitally recorded data points. Additionally, DOE understands that a similar 300-watt stability requirement is currently the standard industry practice.

With regards to data sampling and frequency, section 6.2(k) of ISO 1217:2009 states that ''for each load, a sufficient number of readings shall be taken to indicate that steady-state conditions have been reached. The number of readings and the intervals shall be chosen to obtain the required accuracy.'' Due to the lack of specificity regarding the number and interval of data points required, DOE proposes to not incorporate section 6.2(k) of ISO 1217:2009 by reference into its proposed test procedure. Instead, DOE proposes that formal data recordings used to determine package isentropic efficiency, package specific power, and pressure ratio consist of at least 16 unique measurements, collected over a minimum time of 15 minutes. Each consecutive measurement must be spaced no more than 60 seconds apart, and not less than 10 seconds apart. To ensure that the compressor remains at steady state throughout the test, the difference in packaged compressor power input between the maximum and minimum measurement during the 15-minute data recording time period must be less than or equal to 300 watts, as measured per section C.2.4 of Annex C to ISO 1217:2009. DOE proposes that all the unique measurements taken in each 15-minute data recording time period must meet the requirements in this section; if one or more measurements in each data recording time period do not meet the requirements, then a new data recording of at least 16 new unique measurements collected over a minimum time of 15 minutes must be performed.

DOE requests comment regarding the proposed data collection requirements.

f. Allowable Deviations From Specified Load Points

DOE notes that Tables C.1 and C.2 of Annex C to ISO 1217:2009 specify maximum deviations from specified values of discharge pressures during an acceptance test and maximum deviations in volume flow rate at specified conditions permissible at test, respectively. DOE proposes to specify that when performing the DOE test procedure for package isentropic efficiency, the values listed in Tables C.1 and C.2 of Annex C of ISO 1217:2009 would serve as the maximum allowable deviations from the discharge pressure and volume flow rate load points specified in the proposed test procedure.[33]

DOE requests comment on the allowable deviations in Tables C.1 and C.2 of Annex C of ISO 1217:2009. Specifically, DOE requests comment on whether air compressors are able to

[33] DOE notes that Table C.2 of Annex C of ISO 1217:2009 uses the term ''volume flow rate.'' For the purposes of the proposed DOE test procedure, the term ''volume flow rate'' in Table C.2 will be considered synonymous with the ''actual volume flow rate'' of the compressor under test.

control discharge pressure and volume flow rate with more precision than as specified from values in Tables C.1 and C.2 of Annex C of ISO 1217:2009.

g. Calculations and Rounding

DOE notes that ISO 1217:2009 does not specify how to round values when performing calculations or making representations. DOE recognizes that the order and manner in which values are rounded can affect the resulting value, and, for consistency, it is important that all represented values of package isentropic efficiency, package specific power, actual volume flow rate, and full-load operating pressure be represented consistently across the compressor industry. DOE proposes to require that all calculations be performed with the raw measured data, to ensure accuracy. DOE also proposes that the package isentropic efficiency be rounded and represented to the nearest 0.001,[34] package specific power be rounded and represented to the nearest 0.01 kilowatt per 100 cubic feet per minute, pressure ratio be rounded and represented to the nearest 0.1, actual volume flow rate be rounded and represented to the nearest 0.1 acfm, and full-load operating pressure be rounded and represented to the nearest 1 psig.

h. Measurement Equipment

Packaged Compressor Power Input

DOE reviewed section C.2.4 of annex C to ISO 1217:2009 ''Measurement of packaged compressor power input'' and found that it did not contain clear and explicit tolerance requirements for equipment used to measure the power supplied to the compressor under test. In the absence of tolerance requirements established by the compressor industry, DOE evaluated accuracy requirements for electrical measurement equipment for similar commercial and industrial equipment—specifically, pumps. DOE considers commercial and industrial pumps to be similar and relevant, as these pumps are typically driven by the same electric motors and variable-frequency drives (if present) as compressors and have similar power supply requirements.

In the pumps test procedure final rule, DOE adopted specific requirements for electrical measurement equipment used to measure input power to the motor, continuous controls, or non-continuous controls. Specifically, DOE specified that the electrical measurement equipment in such cases must be capable of measuring true RMS current, true RMS voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency and have an accuracy level of ±2.0 percent of the measured value when measured at the fundamental supply source frequency. DOE noted that such characteristics and requirements are consistent with other, similar industry test standards for applicable motors and controls and are necessary for determining compliance with the pump power supply requirements, which are the same as those proposed in section III.D.2.c for compressors.

DOE notes that several interested parties commented throughout the pumps rulemaking that such measurement equipment was necessary due to the potential impact of the continuous control on line harmonics and other equipment on the circuit. (Docket No. EERE–2011–BT–STD–0031, CA IOUs, Framework public meeting transcript No. 19 at p. 236; Docket No. EERE–2011–BT–STD–0031, HI, No. 25 at p. 35; Docket No. EERE–2013–BT–TP–0055, AHRI, No. 11 at pp. 1–2) AHRI also indicated that any harmonics in the power system can affect the measured performance of the pump when tested with a motor or motor and continuous or non-continuous control. (Docket No. EERE–2013–BT–TP–0055, AHRI, No. 11 at pp. 1–2) DOE believes that, similarly, such equipment is necessary to accurately measure the input power to the compressors that would be subject to this test procedure.

DOE also recognizes that current and voltage instrument transformers can be used in conjunction with electrical measurement equipment to measure current and voltage. Usage of instrument transformers can introduce additional losses and errors to the measurement system. Section C.2.4 of annex C to ISO 1217:2009 recognizes this potential for losses and errors and states that ''current and voltage transformers shall be chosen to operate as near to their rated loads as possible so that their ratio error is minimized.'' However, this section does not specify precisely how to combine the individual errors of each transformer to determine the combined accuracy of the measurement system. To clarify this ambiguity, DOE reviewed applicable industry test procedures related to electrical power measurement. Section C.4.1 of AHRI 1210–2011 indicates that combined accuracy should be calculated by multiplying the accuracies of individual instruments. In contrast, section 5.7.2 of CSA C838–2013 indicates that if all components of the power measuring system cannot be calibrated together as a system, the total error must be calculated from the square root of the sum of the squares of all the errors. DOE understands that it is more accurate to combine independent accuracies (*i.e.,* uncertainties or errors) by summing them in quadrature.[35] DOE therefore proposes to use the root sum of squares to calculate the combined accuracy of multiple instruments used in a single measurement, consistent with conventional error propagation methods.[36]

Therefore, in this NOPR, DOE proposes that the electrical measurement equipment used when measuring the input power to the compressor must be capable of measuring true RMS current, true RMS voltage, and real power up to at least the 40th harmonic of fundamental supply source frequency and have a combined instrument accuracy level of ±2.0 percent of the measured value when measured at the fundamental supply source frequency. Combined instrument accuracy would be calculated by summing the individual accuracies in quadrature.

DOE requests comment regarding the proposed packaged compressor power input measurement equipment requirements.

Pressure Measurement

DOE reviewed section 5.2 of ISO 1217:2009, ''Measurement of Pressure,'' and concluded that certain language contained in this section requires clarification in order to achieve unambiguous, reproducible, and repeatable pressure measurements. Specifically, section 5.2.1 of ISO 1217:2009 states that ''Connecting piping shall be leak-free, as short as possible, of sufficient diameter and arranged so as to avoid blockage by dirt or condensed liquid.'' While DOE recognizes the intent of this instruction, DOE prefers to provide quantitative instructions and measurements to determine if equipment is ''leak-free and of sufficient diameter'' and a quantitative definition of the term ''short as possible.'' Additionally, DOE finds the following terms and instruction to be ambiguous: ''tightness shall be tested and all leaks eliminated;''

[34] DOE's proposal is consistent with CAGI's current performance verification datasheet practice, which expresses energy consumption to three significant digits.

[35] National Institute of Standards and Technology (NIST) Guidelines for Evaluating and Expressing the Uncertainty of NIST Measurement Results (*http://physics.nist.gov/Pubs/guidelines/sec5.html,* accessed September 8, 2015).

[36] DOE notes that section G.2.5.2 of Annex G to ISO 1217 also directs uncertainties to be summed in quadrature. However, Annex G to ISO 1217:2009 is not directly referenced by the applicable power measurement section of ISO 1217:2009 (section C.2.4 of Annex C), and therefore DOE is not proposing to incorporate Annex G by reference.

''mounted so that they are not susceptible to disturbing vibrations;'' ''pressure waves in the inlet pipe or the discharge pipe are found to exceed 10% of the prevailing average absolute pressure, the piping installation shall be corrected before proceeding with the test;'' ''pressure and temperature conditions similar to those prevailing during the test;'' ''shall be corrected for the gravitational acceleration at the location of the instrument;'' ''a receiver with inlet throttling shall be provided between the pressure tap and the instrument;'' and ''Oscillations of gauges shall not be reduced by throttling with a valve placed before the instrument, however, a restricting orifice may be used.''

In an effort to address some of those ambiguities, DOE proposes several requirements related to measurement of pressure in this test procedure NOPR. First, DOE proposes to require that discharge piping must be equal in diameter to the discharge orifice of the compressor package, and extend in length a distance of at least 15 times that diameter with no transitions or turns. Second, DOE proposes to require that the pressure tap be placed in the discharge pipe, between 2'' and 6'' away from the discharge, at the highest point of the cross section of the pipe.

DOE requests comment to help clarify these ambiguities contained in section 5.2.1 of ISO 1217:2009. Specifically, DOE requests potential quantitative explanations and instructions related to the following items: pressure tap installation locations; methods to verify ''leak-free'' pipe connections; ''short as possible'' and of ''sufficient diameter''; testing ''tightness''; mounting instruments so that the unit is ''not susceptible to disturbing vibrations''; how and where to test for ''pressure waves'' and how the piping installation can be ''corrected;'' how to calibrate transmitters and gauges under ''pressure and temperature conditions similar to those prevailing during the test''; how to correct dead-weight gauges for ''gravitational acceleration at the location of the instrument''; where to install ''a receiver with inlet throttling'' to correct for flow pulsations; and how a restricting orifice may be used to reduce oscillation of gauges. Finally, DOE requests comment on its proposals regarding discharge piping and pressure taps.

Additionally DOE proposes to clarify that any measurement of pressure used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.2 of ISO 1217:2009.

Temperature Measurement

DOE reviewed section 5.3 of ISO 1217:2009 and proposes that any measurement of temperature meet the requirements of this section. Additionally, DOE notes that any measurement of temperature used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.3 of ISO 1217:2009.

Density Measurement

DOE reviewed ISO 1217:2009 and notes that it does not provide accuracy requirements for measurement of density, which may be measured to support the calculation of actual volume flow rate. In the absence of accuracy requirements established in ISO 1217:2009, DOE proposes any measurement of density must have an accuracy of ±1.0 percent of the measured value.

DOE requests comment regarding the proposed density measurement equipment requirements.

i. Determination of Maximum Full-Flow Operating Pressure, Full-Load Operating Pressure, and Full-Load Actual Volume Flow Rate

As part of this test procedure, DOE proposes to specify the load points for testing based on the actual volume flow rate at full-load operating pressure of the unit (full-load actual volume flow rate as discussed previously in section III.C.2). However, ISO 1217:2009 does not provide a method to determine full-load operating pressure of the tested unit. Rather, ISO 1217:2009 relies on manufacturer-specified full-load operating pressures. Similarly, CAGI specifies a ''maximum full flow operating pressure,'' which is explained on the CAGI data sheets as ''the maximum pressure attainable at full flow, usually the unload pressure setting for load/no load control or the maximum pressure attainable before capacity control begins.'' CAGI data sheets also specify a ''full load operating pressure,'' which is defined as ''the operating pressure at which the capacity and electrical consumption were measured for this data sheet.'' The CAGI specifications demonstrate that compressor manufacturers typically make performance representations at this nominal full-load operating pressure condition, rather than at the actual tested maximum operating pressure of the unit.

In order to have a reproducible and repeatable test procedure and ensure comparability of test results, DOE prefers to rely on objective rating point(s) determined through repeatable testing methods, as opposed to ''nominal'' values or arbitrarily selected rating conditions. Doing so allows for accurate comparison between compressors from different manufacturers and ensures reproducible testing for all equipment. However, DOE recognizes that testing at the actual tested maximum full-flow operating pressure may increase variability in test results and may be a less representative rating condition, as it is representative of the unload pressure just before the compressor shuts off. DOE also acknowledges that manufacturers may design their compressors to operate optimally at a nominal full-load operating pressure slightly less than the tested maximum. Further, DOE recognizes that the preponderance of manufacturer test data and performance information, such as CAGI performance data, exists at such nominal full-load operating pressure conditions and it would be extremely burdensome to retest all compressors to evaluate performance at the maximum full-load operating pressure instead of the nominal full-load operating pressure.

Based on all of these considerations, DOE developed a quantitative and standardized method to determine the full-load operating pressure, while still preserving sufficient flexibility to allow most manufacturers to select an appropriate and representative full-load operating pressure within a narrow range. That is, DOE proposes to include a specific test method to determine the maximum full-flow operating pressure of the equipment, which is representative of the maximum discharge pressure at full-flow (*i.e.,* the maximum discharge pressure attainable before capacity control begins, including unloading for load/no load controls), as described in this section. DOE proposes to allow manufacturers to specify the full-load operating pressure that would be used for subsequent testing and determination of full-load actual volume flow rate, specific power, and package isentropic efficiency, provided the specified value is greater than or equal to 90 percent and less than or equal to 100 percent of the maximum full-flow operating pressure. That is, DOE would allow manufacturers to self-declare the full-load operating pressure as between 90 and 100 percent of the measured maximum full-flow operating pressure. The full-load operating pressure would then be used to determine the full-load actual volume flow rate, specific power, and package

isentropic efficiency values for that compressor model.

DOE reviewed CAGI performance data to determine an appropriate range for manufacturer self-declared full-load operating pressure, based on maximum full-flow operating pressure. DOE found that 94 percent of units had a full-load operating pressure in the proposed range of 90 to 100 percent of the maximum full-flow operating pressure. Additionally, DOE found that 59 percent of units had a full-load operating pressure within a narrower range of 95 to 100 percent of the maximum full-flow operating pressure.

DOE requests comment on the proposal to allow manufacturers to self-declare the full-load operating pressure between 90 and 100 percent of the measured maximum full-flow operating pressure, and whether a smaller or larger range should be used.

Therefore, DOE proposes a test procedure to determine maximum full-flow operating pressure for both fixed- and variable-speed compressors. As no industry standard method exists, the method DOE proposes to determine maximum full-flow operating pressure is based on DOE's current understanding of typical compressor operation.

DOE proposes that, if units are distributed in commerce by the manufacturer equipped with any mechanism to adjust the maximum discharge pressure limit, to adjust this mechanism to the maximum pressure allowed for normal operation, according to the manufacturer's operating instructions for these mechanisms. Mechanisms to adjust discharge pressure may include, but are not limited to, onboard digital or analog controls and user-adjustable inlet valves.

DOE proposes that all tested discharge pressures must be within the manufacturer's specified safe operating range of the compressor. Specifically, DOE proposes that the test must not violate any manufacturer-provided motor-operational guidelines for normal use, including any restriction on instantaneous and continuous input power draw and output shaft power (*e.g.,* electric rating and service factor limits).

DOE also proposes to require that the unit be tested at the maximum driver speed throughout the determination of maximum full-flow operating pressure and full-load operating pressure. For variable-speed compressors, this means that no speed reduction is allowed during testing to determine maximum full-flow operating pressure; speed reduction is still allowed when conducting the remainder of the test procedure to determine package isentropic efficiency, package specific power, and other relevant parameters at the load points specified in section III.C.3. If the unit being tested is a fixed-speed compressor with a multi-speed driver, then all testing would occur at the maximum driver operating speed.

DOE proposes measuring discharge pressure according to the methods described in section 5.2 of ISO 1217:2009; compressor discharge pressure would be expressed in pounds per square inch, gauge (''psig''), in reference to ambient conditions, and reported to the nearest integer. Targeted discharge pressure test points would be specified in integer values only; and maximum allowable measured deviation from the targeted discharge pressure at each load point would be ±1 psig. DOE notes that the ±1 psig deviation tolerance established for this test method differs from, and is typically more stringent than, the discharge pressure deviation tolerances specified in the tests for full-load and part-load isentropic efficiency that are discussed in sections III.C.4 and III.C.5. However, this method requires discharge pressure to be measured in increments of 2 psig, and as a result, a fixed tolerance of ±1 psig is the largest practical tolerance that can still effectively differentiate the discrete pressure test point increments.

DOE proposes that data recording (at each tested point) be conducted under steady-state conditions, which are achieved when the difference between two consecutive, unique, packaged compressor power input reading measurements, taken at a minimum of 10 seconds apart and measured per section C.2.4 of Annex C to ISO 1217:2009, is equal to or less than 300 watts.

For the test methods discussed in this section, DOE proposes that each data recording consist of a minimum of two unique measurements collected at a minimum of 10 seconds apart, and that the unique measurements be averaged. DOE also proposes that each consecutive measurement meet the stabilization requirement discussed in the previous paragraph. Finally, DOE notes that the data recording requirements proposed in this paragraph differ from those specified in the tests for full-load and part-load isentropic efficiency that are discussed in sections III.C.4 and III.C.5. DOE believes that two unique measurements, collected at a minimum of 10 seconds apart, are sufficient to characterize discharge pressure and actual volume flow rate, while the more burdensome 16 unique measurements, collected over a minimum time of 15 minutes, is required to sufficiently characterize compressor input power and ultimately isentropic efficiency.

DOE proposes that the unit under test shall be set up so that back-pressure on the unit can be adjusted (*e.g.,* by valves) incrementally, causing the measured discharge pressure to change, until the compressor is in an unloaded condition. DOE proposes to consider a unit to be in an unloaded condition if capacity controls on the unit automatically reduce the actual volume flow rate from the compressor (*e.g.,* shutting the motor off, or unloading by adjusting valves).

As explained in section III.B.6, maximum full-flow operating pressure is defined conceptually as the maximum discharge pressure at which a compressor is capable of operating. Consequently, the practical goal of this method is to identify the maximum achievable discharge pressure before capacity controls begin. This method achieves this goal by increasing the discharge pressure by increments of 2 psig, by adjusting the system back-pressure, while the unit is operating at full-speed until the unit goes into an unloaded condition.

DOE proposes to begin the test method by adjusting the system back-pressure to 90 percent of the certified maximum full-flow operating pressure (rounded to the nearest integer), or to 90 percent of an advertised or known maximum full-flow operating pressure (rounded to the nearest integer) if there is no certified value, or to 75 psig if there is no advertised or known value. DOE chose 75 psig as a potential starting discharge pressure because it was the lowest full-load operating pressure advertised of all available CAGI performance data. DOE propose to then allow the unit to remain at this setting for 15 minutes to allow the unit to thermally stabilize. This stabilization period allows time for elements within the unit under test to reach intended operating conditions (*e.g.,* lubricant temperature, and thermal expansion of compression element). After this stabilization period, measurements for discharge pressure and actual volume flow rate are taken, as specified in this section.

DOE proposes to then increase discharge pressure of the system (by adjusting the back-pressure of the system) by 2 psig, and allow the unit to remain at this setting for 2 minutes. The specified two minute time period is to allow time for the unit to reach steady-state and to ensure that the unit will not enter an unloaded condition, which may not occur immediately after

increasing the discharge pressure. After 2 minutes, if the unit is not in an unloaded condition, measurements for discharge pressure and actual volume flow rate are taken, as specified in this section. DOE proposes to then iteratively increase discharge pressure in increments of 2 psig, allow the compressor to stabilize, and then record the discharge pressure and actual volume flow rate, until the unit reaches an unloaded condition. The maximum discharge pressure recorded over all the test points that does not initiate the compressor capacity controls is the maximum full-flow operating pressure.

As described previously the representative value of full-load operating pressure would then be determined, by the manufacturer, as a value greater than or equal to 90 and less than or equal to 100 percent of the maximum full-flow operating pressure and the full-load actual volume flow rate would be the resultant actual volume flow rate measured at the full-load operating pressure.

DOE requests comment on the proposed method for determining maximum full-flow operating pressure, full-load operating pressure, and full-load actual volume flow rate of a compressor.

DOE requests comment regarding whether any more specific instructions would be required to determine the maximum full-flow operating pressure for variable-speed compressors in addition to the proposal that testing is to be conducted at maximum speed, and no speed reduction is allowed during the test.

*E. Definition of Basic Model*

In the course of regulating products and equipment, DOE has developed the concept of a basic model to allow manufacturers to group similar equipment to minimize testing burden, provided all representations regarding the energy use of compressors within that basic model are identical and based on the most consumptive unit. *See* 76 FR 12422, 12423 (Mar. 7, 2011).[37] In that rulemaking, DOE established that manufacturers may elect to group similar individual models within the same equipment class into the same basic model to reduce testing burden, provided all representations regarding the energy use of individual models within that basic model are identical and based on the most consumptive unit. See 76 FR 12422, 12423 (Mar. 7, 2011). However, DOE notes that manufacturers make the decision to group models together with the understanding that there is increased risk associated with such model consolidation due to the potential for an expanded impact from a finding of noncompliance. Consolidation of models within a single basic model results in such increased risk because DOE compliance on a basic model basis. *Id.*

In keeping with this practice, in this rulemaking DOE proposes a definition of basic model for compressors that defines the compressor models on which manufacturers must conduct testing to demonstrate compliance with any future energy conservation standard for compressors, while still enabling manufacturers to group individual models to reduce the burden of testing. For this rulemaking, DOE proposes to establish a definition of basic model that is similar to other commercial and industrial equipment. Specifically, DOE proposes to define a compressor basic model to include all units of a class of compressors manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or pneumatic) characteristics that affect energy consumption and energy efficiency. DOE notes that the requirement of ''essentially identical electrical . . . characteristics'' means that models with different compressor motor nominal horsepower ratings must be classified as separate basic models.

Furthermore, DOE is aware that identical bare compressor, mechanical equipment, and driver combinations may be distributed in commerce with a variety of ancillary equipment, in a variety of configurations, depending on customer requirements. If these variations in ancillary equipment impact the energy use or energy efficiency characteristics of the compressor, then each variation would typically constitute a different basic model. However, as discussed previously, manufacturers may elect to group individual models of compressors into the same basic model to reduce testing burden, provided all representations regarding the energy use of individual models within that basic model are identical and based on the energy performance of most consumptive unit, except that individual models cannot be grouped to span equipment classes or compressor motor nominal horsepower.

DOE requests comment on the proposed definition of a basic model for compressors.

*F. Representations of Energy Use and Energy Efficiency*

As noted previously, manufacturers of any compressors within the proposed scope of applicability of this rulemaking would be required to use the test procedure established through this rulemaking, if adopted, when determining the represented efficiency or energy use of their equipment. Specifically, 42 U.S.C. 6314(d) requires that ''no manufacturer . . . may make any representation . . . respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.''

DOE is proposing a test procedure for compressors that would provide a method to calculate full-load and part-load isentropic efficiency for fixed-speed and variable-speed compressors, respectively. As such, and consistent with EPCA, DOE proposes that, beginning 180 days after the publication in the **Federal Register** of any final rule adopting a final test procedure for compressors, all representations of full-load and part-load isentropic efficiency of applicable compressors must be made in accordance with the adopted test procedure. DOE notes that representations include those to DOE as well as any other representations, including those made on the equipment packaging or in marketing materials.

However, with respect to representations of compressor performance, generally, DOE understands that manufacturers often make representations (graphically or in numerical form) of various metrics, including, for example, package specific power at various load points, actual volume flow rate at various load points, and discharge pressure. DOE does not propose to limit the type of representations manufacturers may make with regard to their equipment performance. However, DOE proposes to require that such values be generated using methods consistent with the DOE test procedure.

Specifically, DOE proposes that any representations of $\eta_{isen,FL}$ and $\eta_{isen,PL}$, as defined in section III.C, must be made

[37] These provisions allow manufacturers to group individual models with essentially identical, but not exactly the same, energy performance characteristics into a basic model to reduce testing burden. Under DOE's certification requirements, all the individual models within a basic model identified in a certification report as being the same basic model must have the same certified efficiency rating and use the same test data underlying the certified rating. The Compliance Certification and Enforcement final rule also establishes that the efficiency rating of a basic model must be based on the least efficient or most energy consuming individual model (*i.e.,* put another way, all individual models within a basic model must be at least as energy efficient as the certified rating). 76 FR at 12428–29 (March 7, 2011).

according to the DOE test procedure. Furthermore, DOE proposes that the parameters $\eta_{isen,40}$ and $\eta_{isen,70}$, as precursors to the final part-load isentropic efficiency metric, $\eta_{isen,PL}$, must be generated based on the same data, applicable test procedure provisions, and sampling plans.

Additionally, DOE proposes that any representations of the full-load actual volume flow rate, full-load operating pressure, or pressure ratio also must be measured according to the DOE test procedure and sampling plans. DOE notes that these values are key characteristics of compressor performance and are used to determine how to apply the proposed test procedure and the scope of the proposed test procedure to certain compressors. In addition, DOE notes that the attainable efficiency of compressors varies with volume flow rate (*i.e.,* compressors with lower flow rates typically achieve lower efficiencies than compressors with higher flow rates). Consequently, DOE believes that accurate, reproducible, and repeatable representations of these metrics would lead to more meaningful, valuable, and comparable metrics for customers and end-users of this equipment.

DOE understands that, for variable-speed compressors, manufacturers often make representations (graphically or in numerical form) of package isentropic efficiency and package specific power as functions of flow rate or rotational speed. DOE proposes to allow manufacturers to continue making these representations. However, DOE notes that graphical or numerical representations of package isentropic efficiency or package specific power at 40, 70, and 100 percent of the full-load actual volume flow rate must represent values measured in accordance with the DOE test procedure. DOE also notes that graphical or numerical representations of these metrics at any other load points must be generated using methods consistent with the DOE test procedure.

DOE requests comment on its proposal regarding applicable representations of energy and non-energy metrics for compressors.

DOE requests comment on any additional metrics that manufacturers often use when making representations of compressor energy use or efficiency.

### *G. Sampling Plans for Tested Data and AEDMs*

DOE must provide uniform methods for manufacturers to determine representative values of energy- and non-energy-related metrics, for each basic model. *See* 42 U.S.C. 6314(a)(2). These representative values are used when making public representations (as discussed in section III.F) and when determining compliance with prescribed energy conservation standards. DOE proposes that manufacturers may use either a statistical sampling plan of tested data, in accordance with proposed section 10 CFR 429.61, or an alternative efficiency determination method (AEDM) in accordance with proposed amendments to section 10 CFR 429.70. The following two sections discuss sampling plans and AEDMs.

#### 1. Statistical Sampling Plan

DOE provides, in subpart B to 10 CFR part 429, sampling plans for all covered equipment. As mentioned previously, the purpose of a statistical sampling plan is to provide a method to determine a representative value of energy- and non-energy-related metrics, for each basic model. For compressors, DOE proposes to adopt statistical sampling plans similar to those used for other commercial and industrial equipment, such as pumps, as DOE believes that the variations in testing experienced in other mechanical commercial equipment would be similar to compressors. These requirements would be added in a new section 10 CFR 429.61.

Under this proposal, for purposes of certification testing, the determination that a basic model complies with the applicable energy conservation standard would be based on testing conducted using the proposed DOE test procedure and sampling plan. The general sampling requirement currently applicable to all covered products and equipment provides that a sample of sufficient size must be randomly selected and tested to ensure compliance and that, unless otherwise specified, a minimum of two units must be tested to certify a basic model as compliant. 10 CFR 429.11(b)

DOE proposes to apply this same minimum sample size requirement to compressors. Thus, if a statistical sampling plan is used, DOE proposes that a sample of sufficient size be selected to ensure compliance and that at least two units must be tested to determine the representative values of applicable metrics for each basic model. Manufacturers may need to test a sample of more than two units depending on the variability of their sample, as provided by the statistical sampling plan. Specifically, DOE proposes to establish sampling plans for the following energy and non-energy metrics:

- Full-load package isentropic efficiency (energy metric),
- Part-load package isentropic efficiency (energy metric),
- Package specific power (energy metric),
- Full-load actual volume flow rate (non-energy metric),
- Full-load operating pressure (non-energy metric), and
- Pressure ratio (non-energy metric).

The details of the sampling plan vary based on whether the metric is an energy metric or a non-energy metric. For the energy metrics, DOE employs a statistical process to account for variability in testing and manufacture, as is done with most other covered products and equipment. For many other types of commercial and industrial equipment, such as pumps, DOE has adopted an upper confidence limit (UCL) and lower confidence limit (LCL) of 0.95; which are divided by a de-rating factor of 1.05 and 0.95, respectively. DOE believes that compressors would realize similar performance variability to such other commercial and industrial equipment. Therefore, DOE proposes to adopt a confidence limit of 0.95 and a de-rating factor of 0.95 for package isentropic efficiency, for compressors as part of this test procedure.

For non-energy metrics and package specific power (an optional energy metric) DOE proposes that the represented value be the arithmetic mean of the measured value for each unit. DOE believes this more simplified approach is appropriate, since such values are not used to determine compliance of the basic model and, therefore, accounting for variability and allowing for conservative ratings is not as important. The proposed sampling details for each metric are discussed in the following subsections.

DOE proposes the following sampling plan provisions be incorporated into new 10 CFR 429.61:

Part- or Full-Load Package Isentropic Efficiency

For each basic model of compressor selected for testing, a sample of sufficient size must be randomly selected and tested to ensure that any value of the full- or part-load package isentropic efficiency or other measure of energy consumption of a basic model for which customers would favor higher values is less than or equal to the lower of the following two values:

(1) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and $\bar{x}$ is the sample mean; n is the number of samples; and $x_i$ is the measured value for the $i^{th}$ sample;

(2) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with n–1 degrees of freedom (from appendix A of subpart B).

In addition, DOE also allows for determination of package isentropic efficiency through application of an AEDM, as discussed in section III.G.1.b.

Package Specific Power

The representative value of package specific power of a basic model must be either the mean of the package specific power measured for each tested unit, or as determined through application of an AEDM pursuant to the requirements proposed in section III.G.1.b.

Full-Load Actual Volume Flow Rate

The representative value of full-load actual volume flow rate of a basic model must be either the mean of the full-load actual volume flow rate measured for each tested unit, or as determined through application of an AEDM pursuant to the requirements proposed in section III.G.1.b.

Full-Load Operating Pressure

The representative value of full-load operating pressure of a basic model must be either the mean of the full-load operating pressure measured for each tested unit, or as determined through application of an AEDM pursuant to the requirements proposed in section III.G.1.b.

Pressure Ratio

The representative value of the pressure ratio of a basic model must be either the mean of the pressure ratio for each tested unit, or as determined through application of an AEDM pursuant to the requirements proposed in section III.G.1.b.

DOE requests comment on the proposed sampling plan for certification of compressor models.

b. Records Retention Requirements

Consistent with provisions for other commercial and industrial equipment, DOE notes the applicability of certain requirements regarding retention of certain information related to the testing and certification of compressors, which are detailed under 10 CFR 429.71. Generally, manufacturers must establish, maintain, and retain certification and test information, including underlying test data for all certification testing for two years from date on which the compressor is discontinued in commerce.

2. Alternative Efficiency Determination Methods

a. Background

Pursuant to the requirements of 10 CFR 429.70, DOE may permit use of an alternative efficiency determination method in lieu of testing for equipment for which testing burden may be considerable and for which performance may be well predicted by such alternative methods. Although specific requirements vary by product or equipment, use of an AEDM entails development of a mathematical model that estimates energy efficiency or energy consumption characteristics of the basic model, as would be measured by the applicable DOE test procedure. The AEDM must be based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data. A manufacturer must perform validation of an AEDM by demonstrating that performance, as predicted by the AEDM, is in agreement with performance as measured by actual testing in accordance with the applicable DOE test procedure. The validation procedure and requirements, including the statistical tolerance, number of basic models, and number of units tested vary by product.

Once developed, an AEDM may be used to certify performance of untested basic models in lieu of physical testing. However, use of an AEDM for any basic model is always at the option of the manufacturer. One potential advantage of AEDM use is that it may free a manufacturer from the burden of physical testing. One potential risk is that the AEDM may not perfectly predict performance, and the manufacturer could be found responsible for having an invalid rating for the equipment in question or for having distributed a noncompliant basic model of compressor. The manufacturer, by using an AEDM, bears the responsibility and risk of the validity of the ratings.

During confidential interviews, several manufacturers noted that testing compressors is, in fact, costly and complex, and that in at least some cases, compressor performance could be reliably extrapolated using modeling. Therefore, in this NOPR, DOE proposes to accommodate the application of AEDMs to determine performance ratings for compressors and proposes regulatory language that is consistent with most other commercial and industrial equipment that have AEDM provisions. The specific details are discussed in sections III.G.2.b through III.G.2.e.

b. Basic Criteria Any AEDM Must Satisfy

A manufacturer may not use an AEDM to determine the values of metrics unless the following three criteria are met:

(1) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the basic model as measured by the applicable DOE test procedure;

(2) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(3) The manufacturer has validated the AEDM, in accordance with the applicable validation requirements for such equipment (discussed in section III.G.2.c of this notice).

c. Validation

Validation is the process by which a manufacturer demonstrates that an AEDM meets DOE's requirements for use as a certification tool by physically testing a certain number and style of compressor models and comparing the test results to the output of the AEDM. Before using an AEDM, a manufacturer must validate the AEDM's accuracy and reliability as follows:

Number of Tested Units Required for Validation

A manufacturer must select a minimum number of basic models from each validation class to which the AEDM applies (validation classes are groupings of products based on equipment classes used for AEDM validation). The Department proposes the validation classes listed in Table III.5 be applicable to compressors. To validate an AEDM, the specified number of basic models from each validation class must be tested in accordance with the DOE test procedure and sampling plan in effect at the time those basic models used for validation are distributed in commerce. Testing may be conducted at a manufacturer's testing facility or a third-party testing facility. The resulting rating is directly compared to the result from the AEDM to determine the AEDM's validity. A manufacturer may develop multiple

AEDMs per validation class, and each AEDM may span multiple validation classes; however, the minimum number of basic models must be validated per validation class for every AEDM a manufacturer chooses to develop. An AEDM may be applied to any basic model within the applicable validation classes at the manufacturer's discretion. All documentation of testing, the AEDM results, and subsequent comparisons to the AEDM would be required to be maintained as part of both the test data underlying the certified rating and the AEDM validation package pursuant to 10 CFR 429.71.

TABLE III.5—PROPOSED AEDM VALIDATION CLASSES FOR COMPRESSORS

| Validation class | Minimum number of distinct basic models that must be tested |
|---|---|
| Rotary, Fixed-speed .. | 2 Basic Models. |
| Rotary, Variable-speed. | 2 Basic Models. |
| Reciprocating, Fixed-speed. | 2 Basic Models. |
| Reciprocating, Variable-speed. | 2 Basic Models. |

Tolerances for Validation

DOE proposes that the AEDM-predicted result for a basic model must be (for energy consumption metrics) equal to or greater than 95 percent or (for energy efficiency metrics) less than or equal to 105 percent of the tested results for that same model. Additionally, the predicted energy efficiency for each basic model calculated by applying the AEDM must meet or exceed the applicable federal energy conservation standard DOE adopts for compressors.

d. Records Retention Requirements

Consistent with provisions for other commercial and industrial equipment, DOE also proposes requirements regarding retention of certain information related to validation and use of an AEDM to certify equipment. Specifically, any manufacturer using an AEDM to generate representative values must provide to DOE upon request records showing (1) the AEDM, itself, and any mathematical modeling, engineering or statistical analysis, or computer simulation that forms the AEDM's basis; (2) equipment information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to section III.G.2.b; and (3) equipment information and AEDM calculations for each basic model to which the AEDM has been applied.

e. Additional AEDM Requirements

Consistent with provisions for other commercial and industrial equipment, DOE proposes to require that, if requested by DOE, a manufacturer must perform at least one of the following activities: (1) conduct a simulation before a DOE representative to predict the performance of particular basic models of the equipment to which the AEDM was applied; (2) provide analysis of previous simulations conducted by the manufacturer; and (3) conduct certification testing of basic model(s) selected by DOE.

In addition, DOE notes that, when making representations of values other than package isentropic efficiency based on the output of an AEDM, all other representations regarding package specific power, full-load actual volume flow rate, full-load operating pressure, and pressure ratio would be required to be based on the same AEDM results used to generate the represented value of package isentropic efficiency.

DOE requests feedback regarding all aspects of its proposal to permit use of an AEDM for compressors, and any data or information comparing modeled performance with the results of physical testing.

3. Enforcement Provisions

Enforcement provisions govern the process DOE would follow when performing its own assessment of basic model compliance with standards, as described under 10 CFR 429.110. In this NOPR, DOE is proposing to adopt similar requirements to those applied to other industrial equipment, specifically pumps. In the pumps test procedure final rule, DOE adopted provisions stating that DOE would assess compliance of any basic models undergoing enforcement testing based on the arithmetic mean of up to four units. 81 FR 4086 (Jan. 25, 2016). Therefore, for compressors, DOE proposes to use, when determining performance for a specific basic model, the arithmetic mean of a sample not to exceed four units.

In addition, when determining compliance for enforcement purposes, DOE proposes to adopt provisions that specify how DOE would determine the full-load operating pressure for the purposes of measuring the full-load actual volume flow rate, isentropic efficiency, specific power, and pressure ratio for any tested equipment. In addition, DOE proposes a method for determining the appropriate standard level for any tested equipment based on the tested full-load actual volume flow rate. Specifically, to verify the full-load operating pressure certified by the manufacturer, DOE proposes to perform the same procedure being proposed (see section III.D.2.i) for determining the maximum full-flow operating pressure of each unit tested, except that DOE would begin searching for maximum full-flow operating pressure at the manufacturer's certified value of full-load operating pressure prior to increasing discharge pressure. As DOE has proposed to allow manufacturers to self-declare a full-load operating pressure value of between 90 and 100 percent (inclusive) of the measured maximum full-flow operating pressure, DOE proposes to compare the measured value(s) of maximum full-flow operating pressure from a sample of one or more units to the certified value of full-load operating pressure. If a sample of more than one units is used, DOE proposes to calculate the mean of the measurements. If the certified value of full-load operating pressure is greater than or equal to 90 and less than or equal to 100 percent of the maximum full-flow operating pressure determined through DOE's testing (*i.e.,* within the tolerance allowed by DOE in the test procedure), then DOE would use the certified value of full-load operating pressure certified by the manufacturer as the basis for determining full-load actual volume flow rate, isentropic efficiency, and other applicable values. Otherwise, DOE would use the maximum full flow operating pressure as the basis for determining the full-load actual volume flow rate, isentropic efficiency, and other applicable values. That is, if the certified value of full-load operating pressure is found to be valid, DOE will set the compressor under test to that operating pressure to determine the full-load actual volume flow rate, isentropic efficiency, specific power, and pressure ratio in accordance with the DOE test procedure. If the certified full-load operating pressure is found to be invalid, DOE will use the measured maximum full-flow operating pressure resulting from DOE's testing as the basis for determining the full-load actual volume flow rate, isentropic efficiency, specific power, and pressure ratio for any tested equipment.

Similarly, DOE proposes a procedure to verify the full-load actual volume flow rate of any certified equipment and determine the applicable full-load actual volume flow rate DOE will use when determining the standard level for any tested equipment. Specifically, DOE proposes to use the full-load actual volume flow rate determined based on

verification of full-load operating pressure and compare such value to the certified value of full-load actual volume flow rate certified by the manufacturer. If DOE found the full-load operating pressure to be valid, DOE will use the full-load actual volume flow rate determined at the full-load operating pressure certified by the manufacturer. If the full-load operating pressure was found to be invalid, DOE will use the actual volume flow rate measured at the maximum full flow operating pressure as the full-load actual volume flow rate. DOE would compare the measured full-load actual volume flow rate (determined at the applicable operating pressure) from an appropriately sized sample to the certified value of full-load actual volume flow rate. If the full-load actual volume flow rate measured be DOE is within the allowances of the certified full-load actual volume flow rate specified in Table III.6, then DOE would use the manufacturer-certified value of full-load actual volume flow rate as the basis for determining the standard level for tested equipment. Otherwise, DOE would use the measured actual volume flow rate resulting from DOE's testing when determining the standard level for tested equipment. DOE believes such an approach would result in more reproducible and equitable rating of equipment and compliance determinations among DOE, manufacturers, and test labs.

TABLE III.6—ENFORCEMENT ALLOWANCES FOR FULL-LOAD ACTUAL VOLUME FLOW RATE

| Manufacturer certified full-load actual volume flow rate ($m^3/s$) $\times 10^{-3}$ | Allowable percent of the certified full-load actual volume flow rate (%) |
|---|---|
| 0 < and ≤ 8.3 ..... | ±7 |
| 8.3 < and ≤ 25 ..... | ±6 |
| 25 < and ≤ 250 ..... | ±5 |
| > 250 ..... | ±4 |

DOE requests comment on its proposal to conduct enforcement proceedings using performance calculated as the arithmetic mean of a tested sample, not to exceed four units. In addition, DOE requests comment on its proposed provisions that specify how DOE would determine the full-load operating pressure for determination of the full-load actual volume flow rate, isentropic efficiency, specific power, pressure ratio, and the appropriate standard level (if applicable) for any tested equipment.

## IV. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866*

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

### *B. Review Under the Regulatory Flexibility Act*

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

DOE reviewed this proposed rule, which would establish new test procedures for compressors, under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE tentatively concludes that the proposed rule, if adopted, would not result in a significant impact on a substantial number of small entities. DOE notes that certification of compressors models is not currently required because energy conservation standards do not currently exist for compressors. That is, any burden associated with testing compressors in accordance with the requirements of this test procedure would not be required until the promulgation of any energy conservation standards for compressors. On this basis, DOE maintains that the proposed test procedure has no incremental burden associated with it and a final regulatory flexibility analysis is not required. The factual basis is set forth below.

1. Small Business Determination

For the compressors manufacturing industry, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as small businesses for the purpose of the statute. DOE used the SBA's size standards to determine whether any small entities would be required to comply with the rule. The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Compressor manufacturers are classified under NAICS 333912, ''Air and Gas Compressor Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

a. Methodology for Estimating the Number of Small Entities

To estimate the number of small business manufacturers of equipment applicable to by this rulemaking, DOE conducted a market survey using available public information. DOE's research involved industry trade association membership directories (including CAGI), individual company and online retailer Web sites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture products applicable to this rulemaking. DOE presented its list to manufacturers in MIA interviews and asked industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer products applicable to this rulemaking, do not meet the definition of a small business, or are foreign-owned and operated.

b. Air Compressor Industry Structure and Nature of Competition

DOE identified a total of 37 manufacturers of applicable air compressor products sold in the United States. Seventeen of these manufacturers met the 500-employee threshold defined by the SBA to qualify as a small business, but only 13 were domestic companies. All 13 domestic small businesses manufacture reciprocating air compressors, while

only five of the 13 manufacture rotary air compressors.

Within the air compressor industry, manufacturers can be classified into two categories; original equipment manufacturers (OEMs) and compressor packagers. OEMs manufacturer their own air-ends and assemble them with other components to create complete package air compressors. Packagers assemble motors and other accessories with air-ends purchased from other companies, resulting in a complete air compressor.

Within the rotary air compressor industry, DOE identified 20 manufacturers; 15 are OEMs and five are packagers of compressors. Of the 20 total manufacturers, seven large OEMs supply approximately 80 percent of shipments and revenues. Of the five domestic small rotary air compressor businesses identified, DOE's research indicates that two are OEMs and three are packagers.

The reciprocating air compressor market has a significantly different structure than the rotary market. The reciprocating market is highly fragmented, consisting of approximately 16 large and 17 small OEMs and packagers. Five of the 16 large businesses are members of CAGI. Eight of the 16 large manufacturers are believed to be packagers. Of the 18 identified small businesses, 13 are domestic. DOE notes that some interviewed manufacturers stated that there are potentially a large number of domestic small reciprocating air compressor manufacturers who assemble compressor packages from nearly complete components. These unidentified small manufacturers are not members of CAGI and typically have a limited marketing presence. DOE was not able to identify these small businesses. Based on this information, it is possible that DOE's list of 13 small domestic players may not include all small U.S. manufacturers in the industry. Of the 13 identified domestic reciprocating air compressor manufacturers, three are believed to be OEMs and 10 are believed to be packagers.

Table IV.1 presents both the total number of domestic small businesses offering products in each equipment class grouping as well as the breakdown between domestic small business OEMs and domestic small business packagers.

TABLE IV.1—NUMBER OF DOMESTIC SMALL BUSINESSES MANUFACTURING AIR COMPRESSORS BY EQUIPMENT CLASS GROUPING

| Equipment class grouping | Number of domestic small original equipment manufacturers | Number of domestic small packagers | Total number of domestic small businesses |
|---|---|---|---|
| Rotary Air Compressors | 2 | 3 | 5 |
| Reciprocating Air Compressors | 3 | 10 | 13 |
| Total | 3 | 10 | *13 |

*"Total" may not equal the sum of the other rows because one manufacturer may participate in both markets but does not get counted twice.

2. Burden of Conducting the Proposed DOE Compressor Test Procedure

Compressors would be newly regulated equipment—accordingly, DOE currently has no test procedures or standards for this equipment. As such, compressors within the scope of DOE's proposal would be required to be tested, and this may result in an accompanying burden on the manufacturers of those compressors. As discussed in the proposed sampling provisions in section III.F, this test procedure would require manufacturers to either test at least two units of each compressor model, or use an AEDM to develop a certified rating.

DOE notes that certification of compressors models is not currently required because energy conservation standards do not currently exist for compressors. That is, any burden associated with testing compressors in accordance with the requirements of this test procedure would not be required until the promulgation of any energy conservation standards for compressors. On this basis, DOE maintains that the proposed test procedure has no incremental burden associated with it and a final regulatory flexibility analysis is not required.

DOE also notes that EPCA requires manufacturers of covered equipment to use the DOE test procedure, if applicable, to make representations regarding energy efficiency or energy use of their equipment. As such, DOE is also estimating the burden of testing to determine the potential burden to manufacturers of updating associated literature or marketing materials. However, DOE notes that making representations in marketing literature regarding the energy efficiency or energy use of applicable compressor models is voluntary. As such, manufacturers that do not currently make representations of energy efficiency or energy use may continue to elect not to do so; thus incurring no additional burden.

During its market survey, DOE performed research and requested information regarding the energy efficiency or energy use representations currently being made by manufacturers of compressors. DOE found that for rotary compressors, the majority of those making any representation of energy efficiency or energy use were manufacturers already participating in CAGI's voluntary Performance Verification Program. Of the small businesses identified by DOE, only one manufacturer currently participates in this program.

Both the CAGI Performance Verification Program and the test procedure proposed in this NOPR are based on the same industry test procedure, ISO 1217:2009. DOE believes the modifications to ISO 1217:2009 (as described in section III.D.2 of this document) do not represent significant changes and would not result in any incremental burden for those manufacturers already performing testing as part of CAGI's program. Consequently, DOE believes that manufacturers participating in the CAGI Performance Verification Program would not incur any incremental burden associated with conducting DOE's proposed test procedure.

For manufacturers of rotary compressor equipment that make representations of compressor energy use or energy efficiency but are not currently participating in CAGI's program, DOE's research indicates such manufacturers typically test to ISO 1217:2009 using internal test facilities, rather than utilizing a third-party laboratory, as specified by the CAGI program. As such, DOE believes that the

proposed use of ISO 1217:2009, including any modifications, would not result in any incremental burden for manufacturers of rotary compressors that do not participate in CAGI's program.

However, DOE notes that CAGI's voluntary performance verification program does not include provisions for the testing and certification of reciprocating compressors. Furthermore, DOE's research indicates that manufacturers of reciprocating compressors do not typically make representations of the energy efficiency or energy use of their equipment.

Based on its research and discussions presented in this section, DOE believes that the proposed test procedure does not represent a significant incremental burden for any of the identified small entities, and the preparation of a final regulatory flexibility analysis is not required. DOE would transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

However, DOE notes that it has prepared a full assessment of testing and compliance cost, as they related to potential energy conservation standards, in DOE's concurrent compressors energy conservation standard rulemaking (Docket No. EERE–2013–BT–STD–0040). In that rulemaking, DOE assesses costs to both small domestic manufacturers and the industry as a whole.

DOE requests comment on its conclusion that the proposed rule does not have a significant impact on a substantial number of small entities.

### *C. Review Under the Paperwork Reduction Act of 1995*

All collections of information from the public by a Federal agency must receive prior approval from OMB. DOE has established regulations for the certification and recordkeeping requirements for covered consumer products and industrial equipment. 10 CFR part 429, subpart B. DOE published a notice of public meeting and availability of the Framework Document considering energy conservation standards for compressors on February 5, 2014. 79 FR 6839 (Feb. 5, 2014). In an application to renew the OMB information collection approval for DOE's certification and recordkeeping requirements, DOE included an estimated burden for manufacturers of compressors in case DOE ultimately sets energy conservation standards for this equipment. OMB has approved the revised information collection for DOE's certification and recordkeeping requirements. 80 FR 5099 (January 30, 2015). DOE estimated that it would take each respondent approximately 30 hours total per company per year to comply with the certification and recordkeeping requirements based on 20 hours of technician/technical work and 10 hours clerical work to submit the Compliance and Certification Management System templates. This rulemaking would include recordkeeping requirements on manufacturers that are associated with executing and maintaining the test data for this equipment. DOE notes that the certification requirements would be established in a final rule establishing energy conservation standards for compressors. DOE recognizes that recordkeeping burden may vary substantially based on company preferences and practices.

DOE requests comment on the burden estimate to comply with the proposed recordkeeping requirements.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### *D. Review Under the National Environmental Policy Act of 1969*

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for compressors. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would create a new test procedure without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to any rulemaking that creates a new rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it would follow in the development of such regulations. 65 FR 13735 (Mar. 14, 2000). DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products and equipment that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

### *F. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to

review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (Mar. 18, 1997); also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

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

*I. Review Under Executive Order 12630*

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

*J. Review Under Treasury and General Government Appropriations Act, 2001*

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

*K. Review Under Executive Order 13211*

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

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of compressors is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

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

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in ISO Standard 1217:2009, ''Displacement compressors—Acceptance tests,'' sections 2, 3, and 4; subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), 6.2(h); and subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C.

The DOE has evaluated the ISO 1217:2009 standard and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE would consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

*M. Description of Materials Incorporated by Reference*

In this test procedure NOPR, DOE proposes to incorporate by reference the testing methods contained in certain applicable sections of ISO Standard 1217:2009, ''Displacement compressors—Acceptance tests,'' sections 2, 3, and 4; subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), and 6.2(h); and subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C.

Members of the compressors industry developed ISO 1217:2009, which contains methods for determining inlet

and discharge pressures, actual volume flow rate, and packaged compressor power input for electrically driven packaged displacement compressors.

Copies of ISO 1217 can be obtained from the International Organization for Standardization at Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, +41 22 749 01 11, or by going to *www.iso.org.*

## V. Public Participation

### *A. Attendance at Public Meeting*

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site: *https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/58.* Participants are responsible for ensuring their systems are compatible with the webinar software.

### *B. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

### *C. Conduct of Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

### *D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

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

first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

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

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

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

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

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

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

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest. *See* 10 CFR 429.7.

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

### *E. Issues About Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the proposed definitions for compressor and pressure ratio, as well as the definitions referenced in ISO 1217:2009.

2. DOE requests comment on the proposed lower limit of pressure ratio for compressors of ''greater than 1.3.''

3. DOE requests comment on its proposed definition of air compressor and its use in limiting the scope of applicability of this test procedure.

4. DOE requests comment on the proposed definitions for bare compressor, driver, and mechanical equipment.

5. DOE requests comment on the proposed definition of ancillary equipment, and whether a comprehensive list of potential ancillary equipment is more appropriate. If a comprehensive list of potential ancillary equipment is preferred, DOE requests information on what equipment should be on that list.

6. DOE requests comment on its position that all ancillary equipment distributed in commerce with an air compressor be installed when testing to evaluate the energy performance of the air compressor. DOE requests comment on a potential alternative approach, in which DOE could generate a list of specific ancillary equipment that must be installed to ensure that the test result is representative of compressor performance; equipment on this list would not be optional, regardless of how that compressor model is distributed in commerce. If the alternative approach is preferred, DOE requests comments on what ancillary equipment be required to be installed to representatively measure compressor energy performance and how to evaluate compressor performance if an air compressor is distributed in commerce without certain items on the list.

7. DOE requests comment on its proposed definitions of rotary compressor, reciprocating compressor, and positive displacement compressor and their use in defining the scope of applicability of this test procedure.

8. DOE requests comment on its proposal to establish test procedures for only brushless electric motor-driven equipment and on its proposed definition of brushless electric motor.

9. DOE requests comment on its proposed definition of compressor motor nominal horsepower. Additionally, DOE seeks comment on whether motors not covered in subpart B and subpart X of part 431 (''uncovered motors'') are incorporated into air compressors within the scope of this proposed test procedure. If so, DOE requests comment on how prevalent these uncovered motors are, and whether the test methods described in subpart B and subpart X of part 431 would be applicable to determine the compressor motor nominal horsepower of these uncovered motors. If the test methods described in subpart B and subpart X of 10 CFR part 431 are not applicable to uncovered motors, DOE requests comment on what test methods could be used to determine their compressor motor nominal horsepower.

10. DOE requests comment on the proposal to include only compressors with a compressor motor nominal horsepower of greater than or equal to 1 and less than or equal to 500 within the scope of this test procedure.

11. DOE requests comment on its characterization of the rotary compressor market by pressure ranges, and whether the reciprocating compressor market is similarly characterized.

12. DOE requests comment on the proposed definitions of full-load operating pressure, maximum full-flow operating pressure, and full-load actual volume flow rate, and actual volume flow rate.

13. DOE requests comment on the proposal to include only compressors with a full-load operating pressure greater than or equal to 31 psig and less than or equal to 225 psig within the scope of this test procedure.

14. DOE requests comment on the proposed load points and weighting factors for package isentropic efficiency for both fixed-speed and variable-speed compressors.

15. DOE requests comment on its proposed definition for full-load package isentropic efficiency, and its use as the metric for fixed-speed compressors.

16. DOE requests comment on its proposed definition for part-load package isentropic efficiency, and its use as the metric for variable-speed compressors.

17. DOE requests comment on its proposal to incorporate by reference certain applicable sections of ISO 1217: 2009 as the basis of the DOE test procedure for compressors. DOE requests comment on the proposal not to incorporate by reference specific sections and annexes as explained in this section.

18. DOE requests comment regarding the proposed ambient conditions required for testing, and if they are sufficient to produce repeatable and reproducible test results.

19. DOE requests comment on the proposed voltage, frequency, voltage unbalance, and total harmonic distortion requirements when performing a compressor test. Specifically, DOE requests comments on whether these tolerances can be achieved in typical compressor test labs, or whether specialized power supplies or power conditioning equipment would be required.

20. DOE requests comment on the proposed equipment configuration: That the inlet of the air compressor under test be open to the atmosphere and take in ambient air, and whether all air compressors can be configured and tested in this manner.

21. DOE requests comment on the proposed requirements for equipment configuration.

22. DOE requests comment regarding the proposed packaged compressor power input measurement equipment requirements.

23. DOE requests comment to help clarify these ambiguities contained in section 5.2.1 of ISO 1217:2009. Specifically, DOE requests potential quantitative explanations and instructions related to the following items: Pressure tap installation locations; methods to verify ''leak-free'' pipe connections; ''short as possible'' and of ''sufficient diameter''; testing ''tightness''; mounting instruments so that the unit is ''not susceptible to disturbing vibrations''; how and where to test for ''pressure waves'' and how the piping installation can be ''corrected;'' how to calibrate transmitters and gauges under ''pressure and temperature conditions similar to those prevailing during the test''; how to correct dead-weight gauges for ''gravitational acceleration at the location of the instrument''; where to install ''a receiver with inlet throttling'' to correct for flow pulsations; and how a restricting orifice may be used to reduce oscillation of gauges. Finally, DOE requests comment on its proposals regarding discharge piping and pressure taps.

24. DOE requests comment regarding the proposed density measurement equipment requirements.

25. DOE requests comment on the proposal to allow manufacturers to self-declare the full-load operating pressure between 90 and 100 percent of the measured maximum full-flow operating pressure, and whether a smaller or larger range should be used.

26. DOE requests comment on the proposed method for determining maximum full-flow operating pressure, full-load operating pressure, and full-load actual volume flow rate of a compressor.

27. DOE requests comment regarding whether any more specific instructions would be required to determine the maximum full-flow operating pressure for variable-speed compressors in addition to the proposal that testing is to be conducted at maximum speed, and no speed reduction is allowed during the test.

28. DOE requests comment on its proposal regarding applicable representations of energy and non-energy metrics for compressors.

29. DOE requests comment on any additional metrics that manufacturers often use when making representations of compressor energy use or efficiency.

30. DOE requests comment on the proposed sampling plan for certification of compressor models.

31. DOE requests feedback regarding all aspects of its proposal to permit use of an AEDM for compressors, and any data or information comparing modeled performance with the results of physical testing.

32. DOE requests comment on its proposal to conduct enforcement proceedings using performance calculated as the arithmetic mean of a tested sample, not to exceed four units.

33. DOE requests comment on its proposed provisions that specify how DOE would determine the full-load operating pressure for determination of the full-load actual volume flow rate, isentropic efficiency, specific power, pressure ratio, and the appropriate standard level (if applicable) for any tested equipment.

34. DOE requests comment on its conclusion that the proposed rule does not have a significant impact on a substantial number of small entities.

35. DOE requests comment on the burden estimate to comply with the proposed recordkeeping requirements.

## VI. Approval of the Office of the Secretary

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

**List of Subjects**

*10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, Small businesses.

*10 CFR Part 431*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on April 22, 2016.

**Kathleen B. Hogan,**

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

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 431 of Chapter II, subchapter D of Title 10, Code of Federal Regulations as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 2. In § 429.2 revise paragraph (a) to read as follows:

### § 429.2 Definitions.

(a) The definitions found in §§ 430.2, 431.2, 431.62, 431.72, 431.82, 431.92, 431.102, 431.132, 431.152, 431.192, 431.202, 431.222, 431.242, 431.262, 431.282, 431.292, 431.302, 431.322, 431.342, 431.442, and 431.462 of this chapter apply for purposes of this part.

* * * * *

■ 3. Add § 429.61 to read as follows:

### § 429.61 Compressors.

(a) *Determination of represented value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model of compressor either by testing in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) *Units to be tested.* (i) If the represented value is determined through testing, the general requirements of § 429.11 apply; and

(ii) For each basic model selected for testing, a sample of sufficient size must be randomly selected and tested to ensure that—

(A) Any represented value of the full- or part-load package isentropic efficiency or other measure of energy efficiency of a basic model for which customers would favor higher values is less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and $\bar{x}$ is the sample mean; n is the number of samples; and $x_i$ is the measured value for the $i^{th}$ sample;

Or,

(*2*) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with $n-1$ degrees of freedom (from appendix A of subpart B);

And

(B) *Package Specific Power.* The representative value(s) of package specific power of a basic model must be the mean of the package specific power measurement(s) for each tested unit of the basic model.

(2) *Alternative efficiency determination methods.* In lieu of testing, any represented value of efficiency, consumption, or other non-energy metrics listed in paragraph (a)(3) of this section for a basic model may be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(i) Any represented values of package isentropic efficiency or other measure of energy consumption of a basic model for which customers would favor higher values must be less than or equal to the value determined through the application of the AEDM, and

(ii) Any represented values of package specific power, pressure ratio, full-load actual volume flow rate, or full-load operating pressure must be the value determined through the application of the AEDM that corresponds to the represented value of package isentropic efficiency determined in paragraph (a)(2)(i) of this section.

(3) *Representations of non-energy metrics.* (i) *Full-load actual volume flow rate.* The representative value of full-load actual volume flow rate of a basic model must be either:

(A) The mean of the full-load actual volume flow rate for the units in the sample; or

(B) The value determined through the application of an AEDM pursuant to the requirements of § 429.70.

(ii) *Full-load operating pressure.* The representative value of full-load operating pressure of a basic model must be greater than or equal to 90-perent of:

(A) The mean of the maximum full-flow operating pressure for the units in the sample, or

(B) The value determined through the application of an AEDM pursuant to the requirements of § 429.70.

(iii) *Pressure Ratio.* The representative value of pressure ratio of a basic model must be either the mean of the pressure ratio for the units in the sample, or the value determined through the application of an AEDM pursuant to the requirements of § 429.70.

■ 4. Section 429.70 is amended by adding paragraph (h) to read as follows:

### § 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(h) *Alternative efficiency determination method (AEDM) for compressors.* (1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to a basic model to determine its efficiency pursuant to this section, unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the basic model as measured by the applicable DOE test procedure;

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(iii) The manufacturer has validated the AEDM, in accordance with paragraph (h)(2) of this section.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability as follows:

(i) The manufacturer must select at least the minimum number of basic models for each validation class specified in paragraph (h)(2)(iv) of this section to which the particular AEDM applies. Using the AEDM, calculate the energy use or energy efficiency for each of the selected basic models. Test each basic model in accordance with 10 CFR 429.61(a) and determine the represented value(s). Compare the results from the testing and the AEDM output according to paragraph (h)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and repeatability of the AEDM.

(ii) Individual Model Tolerances:

(A) The predicted representative values for each model calculated by applying the AEDM may not be more than five percent greater (for measures of efficiency) or less (for measures of consumption) than the values determined from the corresponding test of the model.

(B) The predicted package isentropic efficiency for each model calculated by applying the AEDM must meet or exceed the applicable federal energy conservation standard.

(iii) Additional Test Unit Requirements:

(A) Each AEDM must be supported by test data obtained from physical tests of current models; and

(B) Test results used to validate the AEDM must meet or exceed current, applicable Federal standards as specified in part 431 of this chapter;

(C) Each test must have been performed in accordance with the applicable DOE test procedure with which compliance is required at the time the basic models used for validation are distributed in commerce; and

(iv) Compressor Validation Classes

| Validation class | Minimum number of distinct models that must be tested |
|---|---|
| Rotary, Fixed-speed .. | 2 Basic Models. |
| Rotary, Variable-speed. | 2 Basic Models. |
| Reciprocating, Fixed-speed. | 2 Basic Models. |
| Reciprocating, Variable-speed. | 2 Basic Models. |

(3) *AEDM Records Retention Requirements.* If a manufacturer has used an AEDM to determine representative values pursuant to this section, the manufacturer must have available upon request for inspection by the Department records showing:

(i) The AEDM, including the mathematical model, the engineering or statistical analysis, and/or computer simulation or modeling that is the basis of the AEDM;

(ii) Equipment information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to paragraph (h)(2) of this section; and

(iii) Equipment information and AEDM calculations for each basic model to which the AEDM has been applied.

(4) *Additional AEDM Requirements.* If requested by the Department, the manufacturer must:

(i) Conduct simulations before representatives of the Department to predict the performance of particular basic models of the equipment to which the AEDM was applied;

(ii) Provide analyses of previous simulations conducted by the manufacturer; and/or

(iii) Conduct certification testing of basic models selected by the Department.

■ 5. Section 429.110 is amended by revising paragraph (e)(1)(iv) to read as follows:

**§ 429.110 Enforcement testing.**

* * * * *

(e) * * *

(1) * * *

(iv) For pumps and compressors, DOE will use an initial sample size of not more than four units and will determine compliance based on the arithmetic mean of the sample.

* * * * *

■ 6. Section 429.134 is amended by adding paragraph (k) as follows:

**§ 429.134 Product-specific enforcement provisions.**

* * * * *

(k) *Compressors*—(1) *Verification of full-load operating pressure.* The maximum full flow operating pressure of each tested unit of the basic model will be measured pursuant to the test requirements of appendix A to subpart T of part 431, where the value of full-load operating pressure certified by the manufacturer will be the starting point of the test method prior to increasing discharge pressure. The certified rating for full-load operating pressure will be considered valid only if the certified rating for full-load operating pressure is greater than or equal to 90 percent of and less than or equal to the measured maximum full-flow operating pressure (either the measured maximum full flow operating pressure for a single unit sample or the mean of the measured maximum full flow operating pressures for a multiple unit sample).

(i) If the certified full-load operating pressure is found to be valid, then the certified value will be used as the full-load operating pressure and will be the basis for determination of full-load actual volume flow rate, pressure ratio, specific power, and isentropic efficiency.

(ii) If the rated value of full-load operating pressure is found to be invalid, then the measured maximum full-flow operating pressure will be used as the full-load operating pressure and will be the basis for determination of full-load actual volume flow rate, pressure ratio, specific power, and isentropic efficiency.

(2) *Verification of full-load actual volume flow rate.* The measured full-load actual volume flow rate will be measured, pursuant to the test requirements of appendix A to subpart T of part 431, at the full-load operating pressure determined in paragraph (j)(1) of this section. The certified full-load actual volume flow rate will be considered valid only if the measurement(s) (either the measured full-load actual volume flow rate for a single unit sample or the average of the measured values for a multiple unit sample) are within the percentage of the certified full-load actual volume flow rate specified in Table 1 of this paragraph:

TABLE 1—ALLOWABLE PERCENTAGE DEVIATION FROM THE CERTIFIED FULL-LOAD ACTUAL VOLUME FLOW RATE

| Manufacturer certified full-load actual volume flow rate ($m^3/s$) $\times 10^{-3}$ | Allowable percent of the certified full-load actual volume flow rate (%) |
|---|---|
| 0< and ≤8.3 ..... | ±7 |
| 8.3< and ≤25 ..... | ±6 |
| 25< and ≤250 ..... | ±5 |
| >250 ..... | ±4 |

(i) If the representative value of full-load actual volume flow rate is found to be valid, the full-load actual volume flow rate certified by the manufacturer will be used as the basis for determination of the applicable standard.

(ii) If the representative value of full-load actual volume flow rate is found to be invalid, the mean of all the measured full-load actual volume flow rate values determined from the tested unit(s) will serve as the basis for determination of the applicable standard.

## PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 7. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 8. Add subpart T to part 431 to read as follows:

### Subpart T—Compressors

Sec.



### Subpart T—Compressors

**§ 431.341 Purpose and scope.**

This subpart contains definitions, materials incorporated by reference, test procedures, and energy conservation requirements for compressors, pursuant to Part A–1 of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

**§ 431.342 Definitions concerning compressors.**

The following definitions are applicable to this subpart, including appendix A. In cases where there is a conflict, the language of the definitions adopted in this section take precedence over any descriptions or definitions found in any other source, including in the 2009 version of ISO Standard 1217, ''Displacement compressors—Acceptance tests'' (ISO 1217:2009) (incorporated by reference, see § 431.343). In cases where definitions reference design intent, DOE will consider all relevant information, including marketing materials, labels and certifications, and equipment design, to determine design intent.

*Actual volume flow rate* means the volume flow rate of air, compressed and delivered at the standard discharge point, referred to conditions of total temperature, total pressure and composition prevailing at the standard inlet point, and as determined in accordance with the test procedures prescribed in § 431.344.

*Air compressor* means a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment.

*Ancillary equipment* means any equipment distributed in commerce with an air compressor that is not a bare compressor, driver, or mechanical equipment. Ancillary equipment is considered to be part of a given air compressor, regardless of whether the ancillary equipment is physically attached to the bare compressor, driver, or mechanical equipment at the time when the air compressor is distributed in commerce.

*Bare compressor* means the compression element and auxiliary devices (*e.g.,* inlet and outlet valves, seals, lubrication system, and gas flow paths) required for performing the gas compression process, but does not include the driver; speed-adjusting gear(s); gas processing apparatuses and piping; or compressor equipment packaging and mounting facilities and enclosures.

*Basic model* means all units of a class of compressors manufactured by one manufacturer, having the same primary energy source, the same compressor motor nominal horsepower, and essentially identical electrical, physical, and functional (or pneumatic) characteristics that affect energy consumption and energy efficiency.

*Brushless electric motor* means a machine that converts electrical power into rotational mechanical power without use of sliding electrical contacts.

*Compressor* means a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure and has a pressure ratio greater than 1.3.

*Driver* means the machine providing mechanical input to drive a bare compressor directly or through the use of mechanical equipment.

*Fixed-speed compressor* means an air compressor that is not capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor flow rate.

*Full-load actual volume flow rate* means the actual volume flow rate of the compressor at the full-load operating pressure.

*Maximum full-flow operating pressure* means the maximum discharge pressure at which the compressor is capable of operating, as determined in accordance with the test procedure prescribed in § 431.344.

*Mechanical equipment* means any component of an air compressor that transfers energy from the driver to the bare compressor.

*Compressor motor nominal horsepower* means the motor horsepower of the electric motor, as determined in accordance with the applicable procedures in subpart B and subpart X of part 431, with which the rated air compressor is distributed in commerce.

*Package isentropic efficiency* means the ratio of power required for an ideal isentropic compression process to the actual packaged compressor power input used at a given load point, as determined in accordance with the test procedures prescribed in § 431.344.

*Package specific power* means the compressor power input at a given load point, divided by the actual volume flow rate at the same load point, as determined in accordance with the test procedures prescribed in § 431.344.

*Positive displacement compressor* means a compressor in which the admission and diminution of successive volumes of the gaseous medium are performed periodically by forced expansion and diminution of a closed space(s) in a working chamber(s) by means of displacement of a moving member(s) or by displacement and forced discharge of the gaseous medium into the high-pressure area.

*Pressure ratio* means the ratio of discharge pressure to inlet pressure, determined at full-load operating pressure in accordance with the test procedures prescribed in § 431.344.

*Reciprocating compressor* means a positive displacement compressor in which gas admission and diminution of its successive volumes are performed cyclically by straight-line alternating movements of a moving member(s) in a compression chamber(s).

*Rotary compressor* means a positive displacement compressor in which gas admission and diminution of its successive volumes or its forced discharge are performed cyclically by rotation of one or several rotors in a compressor casing.

*Variable-speed compressor* means an air compressor that is capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor actual volume flow rate.

**§ 431.343 Materials incorporated by reference.**

(a) *General.* DOE incorporates by reference the following standard into part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 6 U.S.C. 522(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, or go to *http://www1.eere.energy.gov/buildings/appliance_standards/.* The following standards can be obtained from the sources below.

(b) *ISO. International Organization for Standardization,* Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva,

Switzerland+41 22 749 01 11, *www.iso.org.*

(1) ISO Standard 1217:2009, (''ISO 1217:2009''), ''Displacement compressors—Acceptance tests,'' sections 2, 3, and 4; subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), and 6.2(h); and subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C; approved 2009, IBR approved for appendix A to subpart T of part 431.

(2) [Reserved]

**§ 431.344 Test procedure for measuring and determining energy consumption of compressors.**

(a) *Scope.* (1) This section a test method that is applicable to a compressor that meets the following criteria:

(i) Is an air compressor,

(ii) Is a rotary or reciprocating compressor,

(iii) Is driven by a brushless electric motor,

(iv) Is distributed in commerce with a compressor motor nominal horsepower greater than or equal to 1 and less than or equal to 500 horsepower (hp), and

(v) Has a full-load operating pressure greater than or equal to 31 pounds per square inch gauge (psig) and less than or equal to 225 psig.

(b) *Testing and Calculations.* Determine the applicable full-load package isentropic efficiency ($\eta_{isen,FL}$), part-load package isentropic efficiency ($\eta_{isen,PL}$), package specific power, full-load operating pressure, full-load actual volume flow rate, and pressure ratio using the test procedure set forth in appendix A of this subpart T.

## Appendix A to Subpart T of Part 431—Uniform Test Method for Certain Air Compressors

**Note:** Starting on [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], any representations made with respect to the energy use or efficiency of compressors subject to testing pursuant to 10 CFR 431.344 must be made in accordance with the results of testing pursuant to this appendix.

**I. Measurements, Test Conditions, and Equipment Configuration**

A. *Measurement Equipment.* For the purposes of measuring air compressor performance, the equipment necessary to measure flow rate, inlet and discharge pressure, temperature, condensate, power, and energy must comply with the equipment and accuracy requirements specified in ISO 1217:2009 sections 5.2, 5.3, 5.4, 5.6, 5.9, C.2.3, and C.2.4 of Annex C (incorporated by reference, see § 431.343). In addition:

A.1. Electrical measurement equipment must be capable of measuring true RMS current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency.

A.2. Any instruments used to measure a particular parameter specified in paragraph (A.1.) must have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the square root of the sum of the squares of individual instrument accuracies.

A.3. Any instruments used to directly measure the density of air must have an accuracy of ±1.0 percent of the measured value.

A.4. Any pressure measurement equipment used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.2 of ISO 1217:2009.

A.5. Any temperature measurement equipment used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.3 of ISO 1217:2009.

A.6. Where ISO 1217:2009 refers to ''corrected volume flow rate,'' the term is deemed synonymous with the term ''actual volume flow rate,'' as defined in section 3.4.1 of ISO 1217:2009.

B. Test Conditions and Configuration of Unit Under Test.

B.1. For both fixed-speed and variable-speed compressors, conduct testing in accordance with the test conditions, unit configuration, and specifications of subsections 6.2(g), 6.2(h), of ISO 1217:2009 and C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, and C.4.4 of Annex C to ISO 1217:2009, Annex C (incorporated by reference, see § 431.343). In addition, the test conditions and configuration must meet the following requirements:

B.1.1. Regarding the power supply: (1) Maintain the voltage within ±5 percent of the rated value of the motor, (2) maintain the frequency within ±1 percent of the rated value of the motor, (3) maintain the voltage unbalance of the power supply within ±3 percent of the rated values of the motor, and (4) maintain total harmonic distortion below 12 percent throughout the test.

B.1.2. Ambient Conditions. The ambient air temperature must be greater than or equal to 80 °F and less than or equal to 90 °F for the duration of testing. There are no ambient condition requirements for inlet pressure or relative humidity.

B.1.3. Discharge Piping. The piping connected to the discharge orifice of the compressor must be of a diameter at least equal to that of the compressor discharge orifice to which it is connected. That piping must also be of a length at least fifteen times that diameter.

B.1.3.1. Discharge Piping Pressure Transducers. Transducers used to record compressor discharge pressure must be located on the discharge piping between 2 inches and 6 inches, inclusive, from the discharge orifice of the compressor.

C. *Equipment Configuration.*

C.1. All ancillary equipment that is distributed in commerce with the compressor under test must be present and installed for all tests specified in this appendix.

C.2. The inlet of the compressor under test must be open to the atmosphere and take in ambient air for all tests specified in this appendix.

C.3. The compressor under test must be set up according to all manufacturer instructions for normal operation (*e.g.,* verify oil-level, connect all loose electrical connections, close off bottom of unit to floor, cover forklift holes).

**II. Determination of Package Isentropic Efficiency, Package Specific Power, and Pressure Ratio**

A. *Data Collection and Analysis.*

A.1. Stabilization. Record data (at each tested point) under steady-state conditions, which are achieved when the difference between two consecutive, unique, packaged compressor power input reading measurements, taken at a minimum of 10 seconds apart and measured per section C.2.4 of Annex C to ISO 1217:2009, is equal to or less than 300 watts.

A.2. Data Sampling and Frequency. At each load point, record a minimum of 16 unique measurements, collected over a minimum time of 15 minutes. Each consecutive measurement must be no more than 60 seconds apart, and not less than 10 seconds apart. The difference in packaged compressor power input between the maximum and minimum measurement must be equal to or less than 300 watts, as measured per section C.2.4 of Annex C to ISO 1217:2009. Each measurement within the 15-minute data recording time period must meet the requirements in this section; if one or more measurements do not meet the requirements then perform a new data recording of at least 16 new unique measurements collected over a minimum time of 15 minutes. Average the measurements to determine the value of each parameter to be used in subsequent calculations.

A.3. Calculations and Rounding. Perform all calculations using raw measured values. Round the final result for package isentropic efficiency to the thousandth (*i.e.,* 0.001), for package specific power in kilowatt per 100 cubic feet per minute to the nearest hundredth (*i.e.,* 0.01), for pressure ratio to the nearest tenth (*i.e.,* 0.1), for full-load actual volume flow rate in actual cubic feet per minute to the nearest tenth (*i.e.,* 0.1), and for full-load operating pressure in psig to the nearest integer (*i.e.,* 1). All terms and quantities refer to values determined in accordance with the procedures set forth in this appendix for the tested unit.

B. *Full-Load Operating Pressure and Full-Load Actual Volume Flow Rate.* Determine the full-load operating pressure and full-load actual volume flow rate (referenced throughout this appendix) in accordance with the procedures prescribed in section III of this appendix.

C. *Full-Load Isentropic Efficiency for Fixed- and Variable-Speed Air Compressors.* Use this test method to test fixed-speed air compressors and variable-speed air compressors.

C.1. Maximum allowable deviation from specified load points. For the purposes of sections II.C.2, II.C.2.1, and II.C.2.2 of this appendix, maximum allowable deviations from the specified discharge pressure and

volume rate in Tables C.1 and C.2 of Annex C of ISO 1217:2009 (incorporated by reference, see § 431.343) apply. For the purposes of sections II.C.2, II.C.2.1, and II.C.2.2 of this appendix, the term ''volume flow rate'' in Table C.2 of Annex C of ISO 1217:2009 refers to the actual volume flow rate of the compressor under test.

C.2. Calculate the package isentropic efficiency at full-load operating pressure and 100 percent of full-load volume flow rate (full-load package isentropic efficiency) using the following equation:

$$\eta_{isen,FL} = \eta_{isen,100\%} = \frac{P_{isen,100\%}}{P_{real,100\%}}$$

Where:

$\eta_{isen,FL} = \eta_{isen,100\%}$ = package isentropic efficiency at full-load operating pressure and 100 percent of full-load actual volume flow rate,

$P_{isen,100\%}$ = isentropic power required for compression at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section II.C.2.1 of this appendix, and

$P_{real,100\%}$ = packaged compressor power input at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section II.C.2.2 of this appendix.

C.2.1. Calculate the isentropic power required for compression at full-load operating pressure and at 100 percent of full-load actual volume flow rate using the following equation:

$$P_{isen,100\%} = \dot{V}_{1\_m3/s} \cdot p_1 \frac{\kappa}{(\kappa - 1)} \cdot \left[ \left( \frac{p_2}{p_1} \right)^{\frac{\kappa - 1}{\kappa}} - 1 \right]$$

Where:

$\dot{V}_{1\_m3/s}$ = actual volume flow rate at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section C.4.2.1 of annex C of ISO 1217:2009 (cubic meters per second) with no corrections made for shaft speed,

$p_1$ = atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009 (Pa),

$P_2$ = discharge pressure at full-load operating pressure and 100 percent of full-load actual volume flow rate, determined in accordance with section 5.2 of ISO 1217:2009 (Pa), and

$\kappa$ = isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.

C.2.2. Calculate packaged compressor power input at full-load operating pressure and 100 percent of full-load actual volume flow rate using the following equation:

Where:

$K_5$ = correction factor for inlet pressure and pressure ratio, as determined in section C.4.3.2 of annex C to ISO 1217:2009. For calculations of this variable use a value of 100 kPa for contractual inlet pressure, and

$P_{PR,100\%}$ = packaged compressor power input reading at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section C.2.4 of annex C to ISO 1217:2009 (watts).

D. Part-Load Package Isentropic Efficiency for Variable-Speed Air Compressors. Use this test method to test variable-speed air compressors only.

D.1. For variable-speed compressors, calculate the part-load package isentropic efficiency using the following equation:

$$\eta_{isen,PL} = \omega_{40\%} \times \eta_{isen,40\%} + \omega_{70\%} \times \eta_{isen,70\%} + \omega_{100\%} \times \eta_{isen,100\%}$$

Where:

$\eta_{isen,PL}$ = part-load package isentropic efficiency for a variable-speed compressor,

$\eta_{isen,100\%}$ = package isentropic efficiency at full-load operating pressure, as determined in section II.C.2 of this appendix,

$\eta_{isen,70\%}$ = package isentropic efficiency at 70 percent of full-load actual volume flow rate, as determined in section II.D.3 of this appendix,

$\eta_{isen,40\%}$ = package isentropic efficiency at 40 percent of full-load actual volume flow rate, as determined in section II.D.4 of this appendix,

$\omega_{40\%}$ = weighting at 40 percent of full-load actual volume flow rate and is 0.25,

$\omega_{70\%}$ = weighting at 70 percent of full-load actual volume flow rate and is 0.50, and

$\omega_{100\%}$ = weighting at 100 percent of full-load actual volume flow rate and is 0.25.

D.2. Maximum allowable deviation from specified load points. For the purposes of sections II.D.3, II.D.3.1, II.D.3.2, II.D.4, II.D.4.1 and II.D.4.2 of this appendix, the maximum allowable deviations from the specified volume flow rate specified in Table C.2 of Annex C of ISO 1217:2009 (incorporated by reference, see § 431.343) apply. For the purposes of sections II.D.3, II.D.3.1, II.D.3.2, II.D.4, II.D.4.1 and II.D.4.2 of this appendix, the term volume flow rate in Table C.2 of Annex C of ISO 1217:2009 refers to the actual volume flow rate of the compressor under test.

D.3. To determine the package isentropic efficiency at 70 percent of full-load actual volume flow rate, adjust the speed of the driver to reach the specified load point (70 percent of full-load actual volume flow rate). Calculate package isentropic efficiency at 70 percent of full-load actual volume flow rate using the following equation:

$$\eta_{isen,70\%} = \frac{P_{isen,70\%}}{P_{real,70\%}}$$

Where:

$\eta_{isen,70\%}$ = package isentropic efficiency at 70 percent of full-load actual volume flow rate,

$P_{isen,70\%}$ = isentropic power required for compression at 70 percent of full-load actual volume flow rate, as determined in section II.D.3.1 of this appendix, and

$P_{real,70\%}$ = packaged compressor power input at 70 percent of full-load actual volume flow rate, as determined in section II.D.3.2 of this appendix.

D.3.1. Calculate the isentropic power required for compression at 70 percent of full-load actual volume flow rate using the following equation:

$$P_{isen,70\%} = \dot{V}_{1\_m3/s} \cdot p_1 \frac{\kappa}{(\kappa - 1)} \cdot \left[ \left( \frac{p_2}{p_1} \right)^{\frac{\kappa-1}{\kappa}} - 1 \right]$$

Where:

$\dot{V}_{1\_m3/s}$ = actual volume flow rate at 70 percent of full-load actual volume flow rate, as determined in section C.4.2.1 of annex C of ISO 1217:2009 (cubic meters per second) with no corrections made for shaft speed,

$p_1$ = atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009 (Pa),

$p_2$ = discharge pressure at 70 percent of full-load actual volume flow rate, determined in accordance with section 5.2 of ISO 1217:2009 (Pa), and

$\kappa$ = isentropic exponent (ratio of specific heats) of air, which for the purposes of this test procedure is 1.400.

D.3.2. Calculate packaged compressor power input at 70 percent of full-load actual volume flow rate using the following equation:

$$P_{real,70\%} = K_5 \cdot P_{PR,70\%}$$

Where:

$K_5$= correction factor for inlet pressure and pressure ratio, as determined in section C.4.3.2 of annex C to ISO 1217:2009. For calculations of this variable use a value of 100 kPa for contractual inlet pressure, and

$P_{PR,70\%}$= packaged compressor power input reading at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section C.2.4 of annex C to ISO 1217:2009 (watts).

D.4. To determine the package isentropic efficiency at 40 percent of full-load actual volume flow rate, adjust the speed of the driver to reach the specified load point (40 percent of full-load actual volume flow rate). Calculate package isentropic efficiency at 40 percent of full-load actual volume flow rate using the following equation:

$$\eta_{isen,40\%} = \frac{P_{isen,40\%}}{P_{real,40\%}}$$

$\eta_{isen,40\%}$ = package isentropic efficiency at 40 percent of full-load actual volume flow rate,

$P_{isen,40\%}$ = isentropic power required for compression at 40 percent of full-load actual volume flow rate, as determined in section II.D.4.1 of this appendix, and

$P_{real,40\%}$ = packaged compressor power input at 40 percent of full-load actual volume flow rate, as determined in section II.D.4.2 of this appendix.

D.4.1. Calculate the isentropic power required for compression at 40 percent of full-load actual volume flow rate using the following equation:

$$P_{isen,40\%} = \dot{V}_{1\_m3/s} \cdot p_1 \frac{\kappa}{(\kappa - 1)} \cdot \left[ \left( \frac{p_2}{p_1} \right)^{\frac{\kappa-1}{\kappa}} - 1 \right]$$

Where:

$\dot{V}_{1\_m3/s}$ = actual volume actual volume flow rate at 40 percent of full-load actual volume flow rate, as determined in section C.4.2.1 of annex C of ISO 1217:2009 (cubic meters per second) with no corrections made for shaft speed,

$p_1$ = atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009 (Pa),

$p_2$ = discharge pressure at 40 percent of full-load actual volume flow rate, determined in accordance with section 5.2 of ISO 1217:2009 (Pa), and

$\kappa$ = isentropic exponent (ratio of specific heats) of air, which for the purposes of this test procedure is 1.400.

D.4.2. Calculate packaged compressor power input at 40 percent of full-load actual volume flow rate using the following equation:

$$P_{real,40\%} = K_5 \cdot P_{PR,40\%}$$

Where:

$K_5$ = correction factor for inlet pressure and pressure ratio, as determined in section C.4.3.2 of annex C to ISO 1217:2009. For calculations of this variable use a value of 100 kPa for contractual inlet pressure, and

$P_{PR,40\%}$ = packaged compressor power input reading at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section C.2.4 of annex C to ISO 1217:2009 (watts).

E. *Determination of Package Specific Power.* For both fixed- and variable-speed air compressors, determine the package specific power, at any load point, using the equation for specific energy consumption in section C.4.4 of annex C of ISO 1217:2009 (incorporated by reference, see § 431.343) and other values measured pursuant to this appendix.

F. *Determination of Pressure Ratio*

F.1. Maximum allowable deviation from specified load points. For the purposes of section II.F.2 of this appendix, do not exceed the maximum allowable deviations from the specified discharge pressure and volume flow rate specified in Tables C.1 and C.2 of Annex C of ISO 1217:2009 (incorporated by reference, see § 431.343). For the purposes of sections II.F.2 of this appendix, the term volume flow rate, in Table C.2 of Annex C of ISO 1217: 2009 refers to the actual volume flow rate of the compressor under test.

F.2. Pressure ratio, as defined in § 431.342, is determined at full-load operating pressure. Calculate pressure ratio using the following equation:

$$PR = \frac{p_2}{p_1}$$

Where:

PR = pressure ratio,

$p_1$ = atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009 (Pa), and

$p_2$ = discharge pressure at full-load operating pressure, determined in accordance with section 5.2 of ISO 1217:2009 (Pa).

**III. Method to Determine Maximum Full-Flow Operating Pressure, Full-Load Operating Pressure, and Full-Load Actual Volume Flow Rate**

A. Principal Strategy

The principal strategy of this method is to incrementally increase discharge pressure by 2 psig relative to a starting point, and identify the maximum full-flow operating pressure at which the compressor is capable of operating. The maximum discharge pressure achieved is the maximum full-flow operating pressure. The full-load operating pressure and full-load actual volume flow rate are determined based on the maximum full-flow operating pressure.

B. Pre-Test Instructions

B.1. Safety

For the method presented in section III.C.1 of this appendix, only test discharge pressure within the safe operating range of the compressor, as specified by the manufacturer in the installation and operation manual shipped with the unit. Make no changes to safety limits or equipment. Do not violate any manufacturer-provided, motor operational guidelines for normal use, including any restriction on instantaneous and continuous input power draw and output shaft power (*e.g.,* electrical rating and service factor limits).

B.2. Adjustment of Discharge Pressure

B.2.1. If the air compressor is not equipped, as distributed in commerce by the manufacturer, with any mechanism to adjust the maximum discharge pressure output limit, proceed to section III.B.3 of this appendix.

B.2.2. If the air compressor is equipped, as distributed in commerce by the manufacturer, with any mechanism to adjust the maximum discharge pressure output limit, then adjust this mechanism to the maximum pressure allowed, according to the manufacturer's operating instructions for these mechanisms. Mechanisms to adjust discharge pressure may include, but are not limited to, onboard digital or analog controls, and user-adjustable inlet valves.

B.3. Driver-Speed

If the unit under test is a variable-speed compressor, maintain maximum driver speed throughout the test. If the unit under test is a fixed-speed compressor with a multi-speed driver, maintain driver speed at the maximum speed throughout the test.

B.4. Measurements and Tolerances

B.4.1. Recording

Record data by electronic means such that the requirements of section B.4.5 of section III of this appendix are met.

B.4.2. Discharge Pressure

Measure discharge pressure in accordance with section 5.2 of ISO 1217:2009 (incorporated by reference, see § 431.343). Express compressor discharge pressure in pounds per square inch, gauge (''psig''), in reference to ambient conditions, and record it to the nearest integer. Specify targeted discharge pressure points in integer values only. The maximum allowable measured deviation from the targeted discharge pressure at each tested point is ±1 psig.

B.4.3. Actual Volume Flow Rate

Measure actual volume flow rate in accordance with section C.4.2.1 of annex C of ISO 1217:2009 (where it is called ''corrected volume flow rate'') with no corrections made for shaft speed. Express compressor actual volume flow rate in actual cubic feet per minute at inlet conditions (''acfm'').

B.4.4. Stabilization

Record data (at each tested point) under steady-state conditions, which are achieved when the difference between two consecutive, unique, packaged compressor power input reading measurements, taken at a minimum of 10 seconds apart and measured per section C.2.4 of Annex C to ISO 1217:2009, is equal to or less than 300 watts.

B.4.5. Data Sampling and Frequency

At each load point, record a minimum of two separate measurements, collected at a minimum of 10 seconds apart. Each consecutive measurement must meet the stabilization requirement established in section III.B.4.4 of this appendix. Average the measurement to determine the value of each parameter to be used in subsequent calculations.

B.5. Adjusting System Back-Pressure

Set up the unit under test so that back-pressure on the unit can be adjusted (*e.g.,* by valves) incrementally, causing the measured discharge pressure to change, until the compressor is in an unloaded condition.

B.6. Unloaded Condition

A unit is considered to be in an unloaded condition if capacity controls on the unit automatically reduce the actual volume flow rate from the compressor (*e.g.,* shutting the motor off, or unloading by adjusting valves).

C. Test Instructions

C.1. Adjust the back-pressure of the system so the measured discharge pressure is 90 percent of the certified maximum full-flow operating pressure, rounded to the nearest integer, in psig. If the expected maximum full-flow operating pressure is not known, then adjust the back-pressure of the system so that the measured discharge pressure is 75 psig. Allow the unit to remain at this setting for 15 minutes to allow the unit to thermally stabilize. Then measure and record discharge pressure and actual volume flow rate at the starting pressure.

C.2. Adjust the back-pressure of the system to increase the discharge pressure by 2 psig from the previous value, allow the unit to remain at this setting for a minimum of 2 minutes, and proceed to section IV.C.3 of this appendix.

C.3. If the unit is now in an unloaded condition, end the test and proceed to section III.C.4 of this appendix. If the unit is not in an unloaded condition, measure discharge pressure and actual volume flow rate, and repeat section III.C.2 of this appendix.

C.4. Of the discharge pressures recorded under stabilized conditions in sections III.C.1 through III.C.3 of this appendix, identify the largest. This is the maximum full-flow operating pressure. Determine the full-load operating pressure as a self-declared value greater than or equal to 90 percent of and less than or equal to the measured maximum full-flow operating pressure. The full-load actual volume flow rate is the actual volume flow rate measured at the full-load operating pressure.

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Part III

## United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2016.

**SUMMARY:** Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

**DATES:** The Commission has specified an effective date of November 1, 2016, for the amendments set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov.* The amendments set forth in this notice also may be accessed through the Commission's Web site at *www.ussc.gov.*

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on January 15, 2016 (*see* 81 FR 2295). The Commission held public hearings on the proposed amendments in Washington, DC, on February 17 and March 16, 2016. On April 28, 2016, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2016.

**Authority:** 28 U.S.C. 994(a), (o), and (p); USSC Rules of Practice and Procedure 4.1.

**Patti B. Saris,**

*Chair.*

1. *Amendment:* Section 1B1.13 is amended in the heading by striking ''as a Result of Motion by Director of Bureau of Prisons'' and inserting ''Under 18 U.S.C. 3582(c)(1)(A)''.

The Commentary to § 1B1.13 captioned ''Application Notes'' is amended in Note 1 by striking the heading as follows: ''*Application of Subdivision (1)(A).*—''; by striking Note 1(A) as follows:

(A) *Extraordinary and Compelling Reasons.*—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the following circumstances:

(i) The defendant is suffering from a terminal illness.

(ii) The defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and for which conventional treatment promises no substantial improvement.

(iii) The death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children.

(iv) As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii).'';

by redesignating Notes 1(B) and 2 as Notes 3 and 5, respectively, and inserting before Note 3 (as so redesignated) the following new Notes 1 and 2:

''1. *Extraordinary and Compelling Reasons.*—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) *Medical Condition of the Defendant.*—

(i) The defendant is suffering from a terminal illness (*i.e.,* a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (*i.e.,* a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) *Age of the Defendant.*—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) *Family Circumstances.*—

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) *Other Reasons.*—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

2. *Foreseeability of Extraordinary and Compelling Reasons.*—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.'';

in Note 3 (as so redesignated) by striking ''subdivision (1)(A)'' and inserting ''this policy statement'';

and by inserting after Note 3 (as so redesignated) the following new Note 4:

''4. *Motion by the Director of the Bureau of Prisons.*—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the

amount of reduction), after considering the factors set forth 18 U.S.C. 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

This policy statement shall not be construed to confer upon the defendant any right not otherwise recognized in law.''.

The Commentary to § 1B1.13 captioned ''Background'' is amended by striking ''This policy statement implements 28 U.S.C. 994(t).'' and inserting the following:

''The Commission is required by 28 U.S.C. 994(a)(2) to develop general policy statements regarding application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. 3553(a)(2)), including, among other things, the appropriate use of the sentence modification provisions set forth in 18 U.S.C. 3582(c). In doing so, the Commission is authorized by 28 U.S.C. 994(t) to 'describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.' This policy statement implements 28 U.S.C. 994(a)(2) and (t).''.

*Reason for Amendment:* This amendment is a result of the Commission's review of the policy statement pertaining to ''compassionate release'' at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons). The amendment broadens certain eligibility criteria and encourages the Director of the Bureau of Prisons to file a motion for compassionate release when ''extraordinary and compelling reasons'' exist.

Section 3582(c)(1)(A) of title 18, United States Code, authorizes a federal court, upon motion of the Director of the Bureau of Prisons, to reduce the term of imprisonment of a defendant if ''extraordinary and compelling reasons'' warrant such a reduction or the defendant is at least 70 years of age and meets certain other criteria. Such a reduction must be consistent with applicable policy statements issued by the Sentencing Commission. *See* 18 U.S.C. 3582(c)(1)(A); *see also* 28 U.S.C. 992(a)(2) (stating that the Commission shall promulgate general policy statements regarding ''the sentence modification provisions set forth in section[ ] . . . 3582(c) of title 18''); and 994(t) (stating that the Commission, in promulgating any such policy statements, ''shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples''). In turn, the Commission promulgated the policy statement at § 1B1.13, which defines ''extraordinary and compelling reasons'' for compassionate release.

The Bureau of Prisons has developed its own criteria for the implementation of section 3582(c)(1)(A). *See* U.S. Department of Justice, Federal Bureau of Prisons, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g) (Program Statement 5050.49, CN–1). Under its program statement, a sentence reduction may be based on the defendant's medical circumstances (*e.g.,* a terminal or debilitating medical condition; *see* 5050.49(3)(a)–(b)) or on certain non-medical circumstances (*e.g.,* an elderly defendant, the death or incapacitation of the family member caregiver of an inmate's minor child, or the incapacitation of the defendant's spouse or registered partner when the inmate would be the only available caregiver; *see* 5050.49(4),(5),(6)).

The Commission has conducted an in-depth review of this topic, including consideration of Bureau of Prisons data documenting lengthy review of compassionate release applications and low approval rates, as well as two reports issued by the Department of Justice Office of the Inspector General that are critical of the Bureau of Prisons' implementation of its compassionate release program. *See* U.S. Department of Justice, Office of the Inspector General, The Federal Bureau of Prisons' Compassionate Release Program, I–2013–006 (April 2013); U.S. Department of Justice, Office of the Inspector General, The Impact of the Aging Inmate Population on the Federal Bureau of Prisons, E–15–05 (May 2015). In February 2016, the Commission held a public hearing on compassionate release and received testimony from witnesses and experts about the need to broaden the criteria for eligibility, to add guidance to the medical criteria, and to remove other administrative hurdles that limit the availability of compassionate release for otherwise eligible defendants.

The amendment revises § 1B1.13 in several ways. First, the amendment broadens the Commission's guidance on what should be considered ''extraordinary and compelling reasons'' for compassionate release. It provides four categories of criteria: ''Medical Condition of the Defendant,'' ''Age of the Defendant,'' ''Family Circumstances,'' and ''Other Reasons.''

The ''Medical Condition of the Defendant'' category has two prongs: One for defendants with terminal illness, and one that applies to defendants with a debilitating condition. For the first subcategory, the amendment clarifies that terminal illness means ''a serious and advanced illness with an end of life trajectory,'' and it explicitly states that a ''specific prognosis of life expectancy (*i.e.* a probability of death within a specific time period) is not required.'' These changes respond to testimony and public comment on the challenges associated with diagnosing terminal illness. In particular, while an end-of-life trajectory may be determined by medical professionals with some certainty, it is extremely difficult to determine death within a specific time period. For that reason, the Commission concluded that requiring a specified prognosis (such as the 18-month prognosis in the Bureau of Prisons' program statement) is unnecessarily restrictive both in terms of the administrative review and the scope of eligibility for compassionate release applications. For added clarity, the amendment also provides a non-exhaustive list of illnesses that may qualify as a terminal illness.

For the non-terminal medical category, the amendment provides three broad criteria to include defendants who are (i) suffering from a serious condition, (ii) suffering from a serious functional or cognitive impairment, or (iii) experiencing deteriorating health because of the aging process, for whom the medical condition substantially diminishes the defendant's ability to provide self-care within a correctional facility and from which he or she is not expected to recover. The primary change to this category is the addition of prong (II) regarding a serious functional or cognitive impairment. This additional prong is intended to include a wide variety of permanent, serious impairments and disabilities, whether functional or cognitive, that make life in prison overly difficult for certain inmates.

The amendment also adds an age-based category (''Age of the Defendant'') for eligibility in § 1B1.13. This new category would apply if the defendant (i) is at least 65 years old, (ii) is experiencing a serious deterioration in health because of the aging process, and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment (whichever is less). The age-based category resembles criteria in the Bureau of Prisons' program

statement, but adds a limitation that the defendant must be experiencing seriously deteriorating health because of the aging process. The amendment also clarifies that the time-served aspect should be applied with regard to ''whichever is less,'' an important distinction from the Bureau of Prisons' criteria, which has limited application to only those elderly offenders serving significant terms of imprisonment. The Commission determined that 65 years should be the age for eligibility under the age-based category after considering the Commission's recidivism research, which finds that inmates aged 65 years and older exhibit a very low rate of recidivism (13.3%) as compared to other age groups. The Commission expects that the broadening of the medical conditions categories, cited above, will lead to increased eligibility for inmates who suffer from certain conditions or impairments, and who experience a diminished ability to provide self-care in prison, regardless of their age.

The amendment also includes a ''Family Circumstances'' category for eligibility that applies to (i) the death or incapacitation of the caregiver of the defendant's minor child, or (ii) the incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver. The amendment deletes the requirement under prong (i) regarding the death or incapacitation of the ''defendant's only family member'' caregiver, given the possibility that the existing caregiver may not be of family relation. The Commission also added prong (ii), which makes this category of criteria consistent with similar considerations in the Bureau of Prisons' program statement.

Second, the amendment updates the Commentary in § 1B1.13 to provide that an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction. The Commission heard from stakeholders and medical experts that the corresponding limitation in the Bureau of Prisons' program statement ignores the often precipitous decline in health or circumstances that can occur after imprisonment. The Commission determined that potential foreseeability at the time of sentencing should not automatically preclude the defendant's eligibility for early release under § 1B1.13.

Finally, the amendment adds a new application note that encourages the Director of the Bureau of Prisons to file a motion under 18 U.S.C. 3582(c)(1)(A) if the defendant meets any of the circumstances listed as ''extraordinary and compelling reasons'' in § 1B1.13. The Commission heard testimony and received public comment concerning the inefficiencies that exist within the Bureau of Prisons' administrative review of compassionate release applications, which can delay or deny release, even in cases where the applicant appears to meet the criteria for eligibility. While only the Director of the Bureau of Prisons has the statutory authority to file a motion for compassionate release, the Commission finds that ''the court is in a unique position to assess whether the circumstances exist, and whether a reduction is warranted (and, if so, the amount of reduction), including the factors set forth 18 U.S.C. 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.'' The Commission's policy statement is not legally binding on the Bureau of Prisons and does not confer any rights on the defendant, but the new commentary is intended to encourage the Director of the Bureau of Prisons to exercise his or her authority to file a motion under section 3582(c)(1)(A) when the criteria in this policy statement are met.

The amendment also adds to the Background that the Commission's general policy-making authority at 28 U.S.C. 994(a)(2) serves as an additional basis for this and other guidance set forth in § 1B1.13, and the amendment changes the title of the policy statement. These changes are clerical.

2. *Amendment:* Section 2E3.1 is amended in subsection (a) by striking subsection (a)(2) as follows:

''(2) 10, if the offense involved an animal fighting venture; or'';

by redesignating subsections (a)(1) and (a)(3) as subsections (a)(2) and (a)(4), respectively; in subsection (a)(2) (as so redesignated) by striking ''operation; or'' and inserting ''operation;''; by inserting before subsection (a)(2) (as so redesignated) the following new subsection (a)(1):

''(1) 16, if the offense involved an animal fighting venture, except as provided in subdivision (3) below;'';

and by inserting before subsection (a)(4) (as so redesignated) the following new subsection (a)(3):

''(3) 10, if the defendant was convicted under 7 U.S.C. 2156(a)(2)(B); or''.

The Commentary to § 2E3.1 captioned ''Statutory Provisions'' is amended by inserting after ''7 U.S.C. 2156'' the following: ''(felony provisions only)''.

The Commentary to § 2E3.1 captioned ''Application Notes'' is amended in Note 1 by striking '': 'Animal'' and inserting '', 'animal'';

and in Note 2 by striking ''If the offense involved extraordinary cruelty to an animal that resulted in, for example, maiming or death to an animal, an upward departure may be warranted.'', and inserting the following:

''The base offense levels provided for animal fighting ventures in subsection (a)(1) and (a)(3) reflect that an animal fighting venture involves one or more violent fights between animals and that a defeated animal often is severely injured in the fight, dies as a result of the fight, or is killed afterward. Nonetheless, there may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such a case, an upward departure may be warranted. For example, an upward departure may be warranted if (A) the offense involved extraordinary cruelty to an animal beyond the violence inherent in such a venture (such as by killing an animal in a way that prolongs the suffering of the animal); or (B) the offense involved animal fighting on an exceptional scale (such as an offense involving an unusually large number of animals).''.

Appendix A (Statutory Index) is amended in the line referenced to 7 U.S.C. 2156 by inserting after ''§ 2156'' the following: ''(felony provisions only)''.

*Reason for Amendment:* This amendment responds to two legislative changes to the Animal Welfare Act (the ''Act'') (codified at 7 U.S.C. 2156) made by Congress in 2008 and 2014. First, in 2008, Congress amended the Act to increase the maximum term of imprisonment for offenses involving an animal fighting venture from three years to five years. *See* Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–234, § 14207(b), 122 Stat. 1461, 1462 (May 22, 2008). Second, in 2014, Congress again amended the Act to create two new offenses—the offense of attending an animal fight and the offense of causing an individual under the age of 16 to attend an animal fight, with respective statutory maximum terms of imprisonment of one and three years. *See* Agricultural Act of 2014, Pub. L. 113–79, § 12308, 128 Stat. 990, 990 (Feb. 7, 2014).

The amendment makes several changes to § 2E3.1 (Gambling Offenses, Animal Fighting Offenses) to account for these legislative actions. The amendment is informed by extensive public comment, recent case law, and

analysis of Commission data regarding the current penalties for animal fighting offenses.

*Higher Penalties for Animal Fighting Venture Offenses*

First, the amendment increases the base offense level for offenses involving an animal fighting venture from 10 to 16. This change reflects the increase in the statutory maximum penalty from three to five years for offenses prohibited under 7 U.S.C. 2156(a)–(e). *See* 18 U.S.C. 49 (containing the criminal penalties for violations of section 2156). The Commission also determined that the increased base offense level better accounts for the cruelty and violence that is characteristic of these crimes, as reflected in the extensive public comment and testimony noting that a defeated animal is often severely injured or killed during or after a fight and that the animals used in these crimes are commonly exposed to inhumane living conditions or other forms of neglect.

In making this change, the Commission was also informed by data evidencing a high percentage of above range sentences in these cases. During fiscal years 2011 through 2014, almost one-third (31.0%) of the seventy-four offenders who received the base offense level of 10 under § 2E3.1 received an above range sentence, compared to a national above range rate of 2.0 percent for all offenders. For those animal fighting offenders sentenced above the range, the average extent of the upward departure was more than twice the length of imprisonment at the high end of the guideline range, resulting in an average sentence of 18 months (and a median sentence of 16 months). Comparably, the amended base offense level will result in a guideline range of 12 to 18 months for the typical animal fighting venture offender who is in Criminal History Category I and receives a three-level reduction for acceptance of responsibility under § 3E1.1 (Acceptance of Responsibility). Additionally, for offenders in the higher criminal history categories, the guideline range at base offense level 16 allows for applicable Chapter Three increases while remaining within the statutory maximum.

*New Offenses Relating to Attending an Animal Fighting Venture*

The amendment also establishes a base offense level of 10 in § 2E3.1 if the defendant was convicted under section 2156(a)(2)(B) for causing an individual under 16 to attend an animal fighting venture. The Commission believes this level of punishment best reflects Congress's intent in creating this new crime. A base offense level of 10 for this new offense will result in a guideline range (before acceptance of responsibility) of 6 to 12 months of imprisonment for offenders in Criminal History Category I, while allowing for a guideline range approaching the three-year statutory maximum for offenders in higher criminal history categories. The Commission also noted that assigning a base offense level of 10 is consistent with the policy decision made by the Commission when it assigned a base offense level of 10 to an animal fighting crime in 2008, which, at that time, also had a three-year statutory maximum penalty. *See* USSG App. C, amend. 721 (effective November 1, 2008).

Lastly, the amendment establishes a base offense level of 6 for the new class A misdemeanor of attending an animal fighting venture prohibited by section 2156(a)(2)(A) by including only the felony provisions of 7 U.S.C. 2156 in the Appendix A reference to § 2E3.1. Consistent with other Class A misdemeanor offenses, this base offense level is established through application of § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)).

*Departure Provision*

The amendment also revises and expands the existing upward departure language in two ways.

First, the amendment clarifies the circumstances in which an upward departure for exceptional cruelty may be warranted. As reflected in the revised departure provision, the base offense levels provided for animal fighting ventures in subsections (a)(1) and (a)(3) reflect the fact that an animal fighting venture involves one or more violent fights between animals and that a defeated animal often is severely injured in the fight, dies as a result of the fight, or is killed afterward. The Commission heard testimony that in a typical dog fight, dogs puncture and tear at each other, until one animal is too injured to continue, and during a cock fight, roosters strike each other with their beaks and with sharp blades that have been strapped to their legs, suffering punctured lungs, broken bones, and pierced eyes. Nonetheless, as informed by public comment and testimony, the Commission's study indicates that some animal fighting offenses involve extraordinary cruelty to an animal beyond that which is common to such crimes, such as killing an animal in a way that prolongs the suffering of the animal. The Commission determined that such extraordinary cruelty may fall outside the heartland of conduct encompassed by the base offense level for animal fighting ventures and, therefore, that an upward departure may be warranted in those cases.

Similarly, the amendment expands the existing departure provision to include offenses involving animal fighting on an exceptional scale (such as offenses involving an unusually large number of animals) as another example of conduct that may warrant an upward departure. As with the example of extraordinary cruelty, the Commission determined that the base offense level under the revised guideline may understate the seriousness of the offense in those cases.

3. *Amendment:* Section 2G2.1 is amended in subsection (b)(3) by striking ''If the offense involved distribution'' and inserting ''If the defendant knowingly engaged in distribution'';

and in subsection (b)(4) by inserting ''(A)'' before ''sadistic or masochistic'', and by inserting after ''violence'' the following: ''; or (B) an infant or toddler''.

The Commentary to § 2G2.1 captioned ''Statutory Provisions'' is amended by inserting at the end the following: ''For additional statutory provision(s), *see* Appendix A (Statutory Index).''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended by redesignating Notes 3, 4, 5, and 6 as Notes 5, 6, 7, and 8, respectively, and by inserting after Note 2 the following new Notes 3 and 4:

''3. *Application of Subsection (b)(3).*—For purposes of subsection (b)(3), the defendant 'knowingly engaged in distribution' if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

4. *Interaction of Subsection (b)(4)(B) and Vulnerable Victim (§ 3A1.1(b)).*—If subsection (b)(4)(B) applies, do not apply § 3A1.1(b).''.

Section 2G2.2 is amended in subsection (b)(3) by striking ''If the offense involved'';

in subparagraphs (A), (C), (D), and (E) by striking ''Distribution'' and inserting ''If the offense involved distribution'';

in subparagraph (B) by striking ''Distribution for the receipt, or expectation of receipt, of a thing of value,'' and inserting ''If the defendant distributed in exchange for any valuable consideration,'';

and in subparagraph (F) by striking ''Distribution'' and inserting ''If the defendant knowingly engaged in distribution,'';

and in subsection (b)(4) by inserting ''(A)'' before ''sadistic or masochistic'',

and by inserting after ''violence'' the following: ''; or (B) sexual abuse or exploitation of an infant or toddler.''

The Commentary to § 2G2.2 captioned ''Statutory Provisions'' is amended by inserting at the end the following: ''For additional statutory provision(s), *see* Appendix A (Statutory Index).''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended in Note 1 by striking the fourth undesignated paragraph as follows:

'' 'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the 'thing of value' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.'',

and inserting the following:

'' ' The defendant distributed in exchange for any valuable consideration' means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other child pornographic material, preferential access to child pornographic material, or access to a child.'';

by redesignating Notes 2 through 7 as Notes 3, 5, 6, 7, 8, and 9, respectively;

by inserting after Note 1 the following new Note 2:

''2. *Application of Subsection (b)(3)(F).*—For purposes of subsection (b)(3)(F), the defendant 'knowingly engaged in distribution' if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.'';

in Note 3 (as so redesignated) by inserting ''(A)'' after ''(b)(4)'' both places such term appears;

and by inserting after Note 3 (as so redesignated) the following new Note 4:

''4. *Interaction of Subsection (b)(4)(B) and Vulnerable Victim (§ 3A1.1(b)).*—If subsection (b)(4)(B) applies, do not apply § 3A1.1(b).''.

Section 2G3.1 is amended in subsection (b)(1) by striking ''If the offense involved'';

in subparagraphs (A), (C), (D), and (E) by striking ''Distribution'' and inserting ''If the offense involved distribution'';

in subparagraph (B) by striking ''Distribution for the receipt, or expectation of receipt, of a thing of value,'' and inserting ''If the defendant distributed in exchange for any valuable consideration,'';

and in subparagraph (F) by striking ''Distribution'' and inserting ''If the defendant knowingly engaged in distribution,''.

The Commentary to § 2G3.1 captioned ''Application Notes'' is amended in Note 1 by striking the fourth undesignated paragraph as follows:

'' 'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration.'',

and inserting the following:

'' 'The defendant distributed in exchange for any valuable consideration' means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other obscene material, preferential access to obscene material, or access to a child.'';

by redesignating Notes 2 and 3 as Notes 3 and 4, respectively;

and by inserting after Note 1 the following new Note 2:

''2. *Application of Subsection (b)(1)(F).*—For purposes of subsection (b)(1)(F), the defendant 'knowingly engaged in distribution' if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.''.

*Reason for Amendment:* This amendment addresses circuit conflicts and application issues related to the child pornography guidelines. One issue generally arises under both the child pornography production guideline and the child pornography distribution guideline when the offense involves victims who are unusually young and vulnerable. The other two issues frequently arise when the offense involves a peer-to-peer file-sharing program or network. These issues were noted by the Commission in its 2012 report to Congress on child pornography offenses. *See* United States Sentencing Commission, ''Report to the Congress: Federal Child Pornography Offenses,'' at 33–35 (2012).

*Offenses Involving Infants and Toddlers*

First, the amendment addresses differences among the circuits when cases involve infant and toddler victims. The production guideline at § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) provides a 4-level enhancement if the offense involved a minor who had not attained the age of 12 years and a 2-level enhancement if the minor had not attained the age of 16 years. *See* § 2G2.1(b)(1)(A)–(B). The non-production guideline at § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor) provides a 2-level enhancement if the material involved a prepubescent minor or a minor who had not attained the age of 12 years. *See* § 2G2.2(b)(2).

A circuit conflict has arisen as to whether a defendant who receives an age enhancement under §§ 2G2.1 and 2G2.2 may also receive a vulnerable victim adjustment at § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) when the victim is extremely young and vulnerable, such as an infant or toddler. Section 3A1.1(b)(1) provides for a 2-level increase if the defendant knew or should have known that a victim was a ''vulnerable victim,'' which is defined in the accompanying commentary as a victim ''who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.'' *See* § 3A1.1, comment. (n.2). The commentary also provides that the vulnerable victim adjustment does not apply if the factor that makes the victim a ''vulnerable victim,'' such as age, is incorporated in the offense guidelines, ''unless the victim was unusually vulnerable for reasons unrelated to age.'' *Id.*

The Fifth and Ninth Circuits have held that it is permissible to apply both enhancements in cases involving infant or toddler victims because their level of vulnerability is not fully incorporated in the offense guidelines. *See United States v. Jenkins,* 712 F.3d 209, 214 (5th

Cir. 2013); *United States v. Wright,* 373 F.3d 935, 943 (9th Cir. 2004). These circuits have reasoned that although the victim's small physical size and extreme vulnerability tend to correlate with age, such characteristics are not the same as compared to most children under 12 years. *Jenkins,* 712 F.3d at 214; *Wright,* 373 F.3d at 942–43. The Fourth Circuit, by contrast, has held that the age enhancement and vulnerable victim adjustment may not be simultaneously applied because the child pornography guidelines fully address age-related factors. *See United States v. Dowell,* 771 F.3d 162, 175 (4th Cir. 2014). The Fourth Circuit reasoned that cognitive development or psychological susceptibility necessarily is related to age. *Id.*

The amendment resolves the circuit conflict by explicitly accounting for infant and toddler victims in the child pornography guidelines. Specifically, the amendment revises §§ 2G2.1 and 2G2.2 by adding a new basis for application of the ''sadistic or masochistic'' enhancement when the offense involves infants or toddlers. The amendment amends § 2G2.1(b)(4) to provide for a 4-level increase ''if the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) an infant or toddler,'' and amends § 2G2.2(b)(4) to provide a 4-level increase ''if the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) sexual abuse or exploitation of an infant or toddler.'' The accompanying application note to each guideline provides that if subsection (b)(4)(B) applies, do not apply the vulnerable victim adjustment in Chapter Three.

The amendment reflects the Commission's view, based on testimony and public comment, that child pornography offenses involving infants and toddlers warrant an enhancement. Because application of the vulnerable victim adjustment necessarily relies on a fact-specific inquiry, the Commission determined that expanding the ''sadistic or masochistic'' enhancement (§§ 2G2.1(b)(4) and 2G2.2(b)(4)) to include infant and toddler victims would promote more consistent application of the child pornography guidelines and reduce unwarranted sentencing disparities. In making its determination, the Commission was informed by case law indicating that most circuits have found depictions of the sexual abuse or exploitation of infants or toddlers involving penetration or pain portray sadistic conduct. *See, e.g., United States* v. *Hoey,* 508 F.3d 687, 691 (1st Cir. 2007) (''We agree with the many circuits which have found that images depicting the sexual penetration of young and prepubescent children by adult males represent conduct sufficiently likely to involve pain such as to support a finding that it is inherently 'sadistic' or similarly 'violent' . . . .''); *United States* v. *Delmarle,* 99 F.3d 80, 83 (2d Cir. 1996) (''[S]ubjection of a young child to a sexual act that would have to be painful is excessively cruel and hence is sadistic . . . .''); *United States* v. *Maurer,* 639 F.3d 72, 79 (3d Cir. 2011) (''[W]e join other circuits in holding that the application of § 2G2.2(b)(4) is appropriate where an image depicts sexual activity involving a prepubescent minor that would have caused pain to the minor.''); *United States* v. *Burgess,* 684 F.3d 445, 454 (4th Cir. 2012) (image depicting vaginal penetration of five-year-old girl by adult male, which would ''necessarily cause physical pain to the victim,'' qualified for sentencing enhancement under § 2G2.2(b)); *United States* v. *Lyckman,* 235 F.3d 234, 238–39 (5th Cir. 2000) (agreeing with the Second, Seventh, and Eleventh Circuits that application of subsection (b)(4) is warranted when the image depicts ''the physical penetration of a young child by an adult male.''); *United States* v. *Groenendal,* 557 F.3d 419, 424–26 (6th Cir. 2009) (penetration of a prepubescent child by an adult male constitutes inherently sadistic conduct that justifies application of § 2G2.2(b)(4)); *United States* v. *Meyers,* 355 F.3d 1040, 1043 (7th Cir. 2004) (finding vaginal intercourse between a prepubescent girl and an adult male sadistic); *United States* v. *Belflower,* 390 F.3d 560, 562 (8th Cir. 2004) (images involving the anal penetration of minor boy or girl adult male are per se sadistic or violent within the meaning of subsection (b)(4)); *United States* v. *Henderson*, 649 F.3d 995 (9th Cir. 2010) (vaginal penetration of prepubescent minor qualifies for (b)(4) enhancement); *United States* v. *Kimler,* 335 F.3d 1132, 1143 (10th Cir. 2003) (finding no expert testimony necessary for a sentence enhancement [(b)(4)] when the images depicted penetration of prepubescent children by adults); *United States* v. *Bender,* 290 F.3d 1279, 1286 (11th Cir. 2002) (photograph was sadistic within the meaning of subsection (b)(4) when it depicts the ''subjugation of a young child to a sexual act that would have to be painful''). The Commission intends the new enhancement to apply to any sexual images of an infant or toddler.

*The Two and Five Level Distribution Enhancements*

Next, the amendment addresses differences among the circuits involving application of the tiered distribution enhancements in § 2G2.2. Section 2G2.2(b)(3) provides for an increase for distribution of child pornographic material ranging from 2 to 7 levels depending on certain factors. *See* § 2G2.2(b)(3)(A)–(F). The circuits have reached different conclusions regarding the mental state required for application of the 2-level enhancement for ''generic'' distribution as compared to the 5-level enhancement for distribution not for pecuniary gain. The circuit conflicts involving these two enhancements have arisen frequently, although not exclusively, in cases involving the use of peer-to-peer file-sharing programs or networks.

*Peer-to-Peer File-Sharing Programs*

The Commission's 2012 report to Congress discussed the use of file-sharing programs, such as Peer-to-Peer (''P2P''), in the context of cases involving distribution of child pornography. *See* 2012 Report at 33–35, 48–62. Specifically, P2P is a software application that enables computer users to share files easily over the Internet. These applications do not require a central server or use of email. Rather, the file-sharing application allows two or more users to essentially have access each other's computers and to directly swap files from their computers. Some file-sharing programs require a user to designate files to be shared during the installation process, meaning that at the time of installation the user can ''opt in'' to share files, and the software will automatically scan the user's computer and then compile a list of files to share. Other programs employ a default file-sharing setting, meaning the user can ''opt out'' of automatically sharing files by changing the default setting to limit which, if any, files are available for sharing. Once the user has downloaded and set up the file-sharing software, the user can begin searching for files shared on the connected network using search keywords in the same way one regularly uses a search engine such as Google. Users may choose to ''opt in'' for a variety of reasons, including, for example, to obtain faster download speeds, to have access to a greater range of material, or because the particular site mandates sharing.

*The 2-Level Distribution Enhancement*

The circuits have reached different conclusions regarding whether application of the 2-level distribution

enhancement at § 2G2.2(b)(3)(F) requires a mental state (*mens rea*), particularly in cases involving use of a file-sharing program or network. The Fifth, Tenth, and Eleventh Circuits have held that the 2-level distribution enhancement applies if the defendant used a file-sharing program, regardless of whether the defendant did so purposefully, knowingly, or negligently. *See, e.g., United States* v. *Baker,* 742 F.3d 618, 621 (5th Cir. 2014); *United States* v. *Ray,* 704 F.3d 1307, 1312 (10th Cir. 2013); *United States* v. *Creel,* 783 F.3d 1357, 1360 (11th Cir. 2015). The Second, Fourth, and Seventh Circuits have held that the 2-level distribution enhancement requires a showing that the defendant knew of the file-sharing properties of the program. *See, e.g., United States* v. *Baldwin,* 743 F.3d 357, 361 (2d Cir. 2015) (requiring knowledge); *United States* v. *Robinson,* 714 F.3d 466, 468 (7th Cir. 2013) (knowledge); *United States* v. *Layton,* 564 F.3d 330, 335 (4th Cir. 2009) (knowledge or reckless disregard). The Eighth Circuit has held that knowledge is required, but knowledge may be inferred from the fact that a file-sharing program was used, absent ''concrete evidence'' of ignorance. *See United States* v. *Dodd,* 598 F.3d 449, 452 (8th Cir. 2010). The Sixth Circuit has held that there is a ''presumption'' that ''users of file-sharing software understand others can access their files.'' *United States* v. *Conner,* 521 Fed. App'x 493, 499 (6th Cir. 2013); *see also United States* v. *Abbring,* 788 F.3d 565, 567 (6th Cir. 2015) (''the whole point of a file-sharing program is to share, sharing creates a transfer, and transferring equals distribution'').

The amendment generally adopts the approach of the Second, Fourth, and Seventh Circuits. It amends § 2G2.2(b)(3)(F) to provide that the 2-level distribution enhancement applies if ''the defendant knowingly engaged in distribution.'' Based on testimony, public comment, and data analysis, the Commission determined that the 2-level distribution enhancement is appropriate only in cases in which the defendant knowingly engaged in distribution. An accompanying application note clarifies that: ''For purposes of subsection (b)(3)(F), the defendant 'knowingly engaged in distribution' if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.'' Similar changes are made to the 2-level distribution enhancement at § 2G2.1(b)(3) and the obscenity guideline, § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor; Misleading Domain Names), which contains a similarly tiered distribution enhancement.

*The 5-Level Distribution Enhancement*

Finally, the amendment responds to differences among the circuits in applying the 5-level enhancement for distribution not for pecuniary gain at § 2G2.2(b)(3)(B). While courts generally agree that mere use of a file-sharing program or network, without more, is insufficient for application of the 5-level distribution enhancement, the circuits have taken distinct approaches with respect to the circumstances under which the 5-level rather than the 2-level enhancement is appropriate in such circumstances. The Fourth Circuit has held that the 5-level distribution enhancement applies when the defendant (1) ''knowingly made child pornography in his possession available to others by some means''; and (2) did so ''for the specific purpose of obtaining something of valuable consideration, such as more pornography.'' *United States* v. *McManus,* 734 F.3d 315, 319 (4th Cir. 2013). In contrast, while holding that the 5-level enhancement applies when the defendant knew he was distributing child pornographic material in exchange for a thing of value, the Fifth Circuit has indicated that when the defendant knowingly uses file-sharing software, the requirements for the 5-level enhancement are generally satisfied. *See United States* v. *Groce,* 784 F.3d 291, 294 (5th Cir. 2015).

The amendment revises § 2G2.2(b)(3)(B) and commentary to clarify that the 5-level enhancement applies ''if the defendant distributed in exchange for any valuable consideration.'' The amendment further explains in the accompanying application note that this means ''the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other child pornographic material, preferential access to child pornographic material, or access to a child.'' The amendment makes parallel changes to the obscenity guideline at § 2G3.1, which has a similar tiered distribution enhancement.

As with the 2-level distribution enhancement, the amendment resolves differences among the circuits in applying the 5-level distribution enhancement by clarifying the mental state required for distribution of child pornographic material for non-pecuniary gain, particularly when the case involves a file-sharing program or network. The Commission determined that the amendment is an appropriate way to account for the higher level of culpability when the defendant had the specific purpose of distributing child pornographic material to another person in exchange for valuable consideration.

4. *Amendment:* Section 2L1.1 is amended in subsection (b)(4) by striking the following:

''If the defendant smuggled, transported, or harbored a minor who was unaccompanied by the minor's parent or grandparent, increase by 2 levels.'',

and inserting the following:

''If the offense involved the smuggling, transporting, or harboring of a minor who was unaccompanied by the minor's parent, adult relative, or legal guardian, increase by 4 levels.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 1 by striking the third undesignated paragraph as follows:

'' 'Aggravated felony' is defined in the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States).'',

and inserting the following:

'' 'Aggravated felony' has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), without regard to the date of conviction for the aggravated felony.'';

in the paragraph that begins '' 'Minor' means'' by striking ''16 years'' and inserting ''18 years'';

and by inserting after the paragraph that begins '' 'Parent' means'' the following new paragraph:

'' 'Bodily injury,' 'serious bodily injury,' and 'permanent or life-threatening bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).'';

by renumbering Notes 2 through 6 according to the following table:

| Before Amendment | After Amendment |
|---|---|
| 4 | 2 |
| 5 | 3 |
| 6 | 5 |
| 2 | 6 |
| 3 | 7 |

and by rearranging those Notes, as so renumbered, to place them in proper order;

and by inserting after Note 3 (as so renumbered) the following new Note 4:

''4. *Application of Subsection (b)(7) to Conduct Constituting Criminal Sexual Abuse.*—Consistent with Application Note 1(L) of § 1B1.1 (Application Instructions), 'serious bodily injury' is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. 2241 or 2242 or any similar offense under state law.''.

Section 2L1.2 is amended by striking subsections (a) and (b) as follows:

'' (a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

(A) a conviction for a felony that is (i) a drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a crime of violence; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense, increase by 16 levels if the conviction receives criminal history points under Chapter Four or by 12 levels if the conviction does not receive criminal history points;

(B) a conviction for a felony drug trafficking offense for which the sentence imposed was 13 months or less, increase by 12 levels if the conviction receives criminal history points under Chapter Four or by 8 levels if the conviction does not receive criminal history points;

(C) a conviction for an aggravated felony, increase by 8 levels;

(D) a conviction for any other felony, increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 4 levels.'',

and inserting the following:

'' (a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) (Apply the Greater) If the defendant committed the instant offense after sustaining—

(A) a conviction for a felony that is an illegal reentry offense, increase by 4 levels; or

(B) two or more convictions for misdemeanors under 8 U.S.C. 1325(a), increase by 2 levels.

(2) (Apply the Greatest) If, before the defendant was ordered deported or ordered removed from the United States for the first time, the defendant sustained—

(A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;

(B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;

(C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;

(D) a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.

(3) (Apply the Greatest) If, at any time after the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct resulting in—

(A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;

(B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;

(C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;

(D) a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.''.

The Commentary to § 2L1.2 captioned ''Statutory Provisions'' is amended by striking ''8 U.S.C. 1325(a) (second or subsequent offense only), 8 U.S.C. 1326'' and inserting ''8 U.S.C. 1253, 1325(a) (second or subsequent offense only), 1326''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by striking Notes 1 through 7 as follows:

''1. *Application of Subsection (b)(1).*—

(A) *In General.*—For purposes of subsection (b)(1):

(i) A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.

(ii) A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.

(iii) A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.

(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

(B) *Definitions.*—For purposes of subsection (b)(1):

(i) 'Alien smuggling offense' has the meaning given that term in section 101(a)(43)(N) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(N)).

(ii) 'Child pornography offense' means (I) an offense described in 18 U.S.C. 2251, 2251A, 2252, 2252A, or 2260; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(iii) 'Crime of violence' means any of the following offenses under federal, state, or local law: murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced), statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.

(iv) 'Drug trafficking offense' means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(v) 'Firearms offense' means any of the following:

(I) An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. 921, or of an explosive material as defined in 18 U.S.C. 841(c).

(II) An offense under federal, state, or local law that prohibits the possession of a firearm described in 26 U.S.C. 5845(a), or of an explosive material as defined in 18 U.S.C. 841(c).

(III) A violation of 18 U.S.C. 844(h).

(IV) A violation of 18 U.S.C. 924(c).

(V) A violation of 18 U.S.C. 929(a).

(VI) An offense under state or local law consisting of conduct that would have been an offense under subdivision (III), (IV), or (V) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(vi) 'Human trafficking offense' means (I) any offense described in 18 U.S.C. 1581, 1582, 1583, 1584, 1585, 1588, 1589, 1590, or 1591; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(vii) 'Sentence imposed' has the meaning given the term 'sentence of imprisonment' in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release, but only if the revocation occurred before the defendant was deported or unlawfully remained in the United States.

(viii) 'Terrorism offense' means any offense involving, or intending to promote, a 'Federal crime of terrorism', as that term is defined in 18 U.S.C. 2332b(g)(5).

(C) *Prior Convictions.*—In determining the amount of an enhancement under subsection (b)(1), note that the levels in subsections (b)(1)(A) and (B) depend on whether the conviction receives criminal history points under Chapter Four (Criminal History and Criminal Livelihood), while subsections (b)(1)(C), (D), and (E) apply without regard to whether the conviction receives criminal history points.

2. *Definition of 'Felony'.*—For purposes of subsection (b)(1)(A), (B), and (D), 'felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

3. *Application of Subsection (b)(1)(C).*—

(A) *Definitions.*—For purposes of subsection (b)(1)(C), 'aggravated felony' has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), without regard to the date of conviction for the aggravated felony.

(B) *In General.*—The offense level shall be increased under subsection (b)(1)(C) for any aggravated felony (as defined in subdivision (A)), with respect to which the offense level is not increased under subsections (b)(1)(A) or (B).

4. *Application of Subsection (b)(1)(E).*—For purposes of subsection (b)(1)(E):

(A) 'Misdemeanor' means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

(B) 'Three or more convictions' means at least three convictions for offenses that are not treated as a single sentence pursuant to subsection (a)(2) of § 4A1.2 (Definitions and Instructions for Computing Criminal History).

5. *Aiding and Abetting, Conspiracies, and Attempts.*—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.

6. *Computation of Criminal History Points.*—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

7. *Departure Based on Seriousness of a Prior Conviction.*—There may be cases in which the applicable offense level substantially overstates or understates the seriousness of a prior conviction. In such a case, a departure may be warranted. *Examples:* (A) In a case in which subsection (b)(1)(A) or (b)(1)(B) does not apply and the defendant has a prior conviction for possessing or transporting a quantity of a controlled substance that exceeds a quantity consistent with personal use, an upward departure may be warranted. (B) In a case in which the 12-level enhancement under subsection (b)(1)(A) or the 8-level enhancement in subsection (b)(1)(B) applies but that enhancement does not adequately reflect the extent or seriousness of the conduct underlying the prior conviction, an upward departure may be warranted. (C) In a case in which subsection (b)(1)(A) applies, and the prior conviction does not meet the definition of aggravated felony at 8 U.S.C. 1101(a)(43), a downward departure may be warranted.'';

by redesignating Notes 8 and 9 as Notes 6 and 7, respectively, and inserting before Note 6 (as so redesignated) the following new Notes 1, 2, 3, 4, and 5:

''1. *In General.*—

(A) *'Ordered Deported or Ordered Removed from the United States for the First Time'.*—For purposes of this guideline, a defendant shall be considered 'ordered deported or ordered removed from the United States' if the defendant was ordered deported or ordered removed from the United States based on a final order of exclusion, deportation, or removal, regardless of whether the order was in response to a conviction. 'For the first time' refers to the first time the defendant was ever the subject of such an order.

(B) *Offenses Committed Prior to Age Eighteen.*—Subsections (b)(1), (b)(2), and (b)(3) do not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.

2. *Definitions.*—For purposes of this guideline:

'Crime of violence' means any of the following offenses under federal, state, or local law: murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c), or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another. 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States. 'Extortion' is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

'Drug trafficking offense' means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

'Felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

'Illegal reentry offense' means (A) an offense under 8 U.S.C. 1253 or 1326, or (B) a second or subsequent offense under 8 U.S.C. 1325(a).

'Misdemeanor' means any federal, state, or local offense punishable by a term of imprisonment of one year or less.

'Sentence imposed' has the meaning given the term 'sentence of imprisonment' in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History). The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

3. *Criminal History Points.*—For purposes of applying subsections (b)(1), (b)(2), and (b)(3), use only those convictions that receive criminal history points under § 4A1.1(a), (b), or (c). In addition, for purposes of subsections (b)(1)(B), (b)(2)(E), and (b)(3)(E), use only those convictions that are counted separately under § 4A1.2(a)(2).

A conviction taken into account under subsection (b)(1), (b)(2), or (b)(3) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

4. *Cases in Which Sentences for An Illegal Reentry Offense and Another Felony Offense were Imposed at the Same Time.*—There may be cases in which the sentences for an illegal reentry offense and another felony offense were imposed at the same time and treated as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). In such a case, use the illegal reentry offense in determining the appropriate enhancement under subsection (b)(1), if it independently would have received criminal history points. In addition, use the prior sentence for the other felony offense in determining the appropriate enhancement under subsection (b)(3), if it independently would have received criminal history points.

5. *Departure Based on Seriousness of a Prior Offense.*—There may be cases in which the offense level provided by an enhancement in subsection (b)(2) or (b)(3) substantially understates or overstates the seriousness of the conduct underlying the prior offense, because (A) the length of the sentence imposed does not reflect the seriousness of the prior offense; (B) the prior conviction is too remote to receive criminal history points (*see* § 4A1.2(e)); or (C) the time actually served was substantially less than the length of the sentence imposed for the prior offense. In such a case, a departure may be warranted.''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended in Note 2(B) by striking ''an aggravated felony'' and inserting ''a prior conviction''.

*Reason for Amendment:* This multi-part amendment is a result of the Commission's multi-year study of immigration offenses and related guidelines, and reflects extensive data collection and analysis relating to immigration offenses and offenders. Based on this data, legal analysis, and public comment, the Commission identified a number of specific areas where changes were appropriate. The first part of this amendment makes several discrete changes to the alien smuggling guideline, § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), while the second part significantly revises the illegal reentry guideline, § 2L1.2 (Unlawfully Entering or Remaining in the United States).

*Alien Smuggling*

The first part of the amendment amends the alien smuggling guideline (§ 2L1.1). A 2014 letter from the Deputy Attorney General asked the Commission to examine several aspects of this guideline in light of changing circumstances surrounding the commission of these offenses. *See* Letter from James M. Cole to Hon. Patti B. Saris (Oct. 9, 2014). In response, the Commission undertook a data analysis that, in conjunction with additional public comment, suggested two primary areas for change in the guideline.

*Unaccompanied Minors*

The specific offense characteristic at § 2L1.1(b)(4) provides an enhancement ''[i]f the defendant smuggled, transported, or harbored a minor who was unaccompanied by the minor's parent or grandparent.'' The amendment makes several changes to this enhancement.

First, the amendment increases the enhancement at subsection (b)(4) from 2 levels to 4 levels, and broadens its scope to offense-based rather than defendant-based. These two changes were made in light of data, testimony, and public comment indicating that: (1) in recent years there has been a significant increase in the number of unaccompanied minors smuggled into the United States; (2) unaccompanied minors being smuggled are often exposed to deprivation and physical danger (including sexual abuse); (3) the smuggling of unaccompanied minors places a particularly severe burden on public resources when they are taken into custody; and (4) alien smuggling is typically conducted by multimember commercial enterprises that accept smuggling victims without regard to their age, such that an individual defendant is likely to be aware of the risk that unaccompanied minors are being smuggled as part of the offense.

Second, the amendment narrows the scope of the enhancement at subsection (b)(4) by revising the meaning of an ''unaccompanied'' minor. Prior to the amendment, the enhancement did not apply if the minor was accompanied by the minor's parent or grandparent. The amendment narrows the class of offenders who would receive the enhancement by specifying that the enhancement does not apply if the minor was accompanied by the minor's ''parent, adult relative, or legal guardian.'' This change reflects the view that minors who are accompanied by a parent or another responsible adult relative or legal guardian ordinarily are not subject to the same level of risk as minors unaccompanied by such adults.

Third, the amendment expands the definition of ''minor'' in the guideline, as it relates to the enhancement in subsection (b)(4), to include an individual under the age of 18. The guideline currently defines ''minor'' to include only individuals under 16 years of age. The Commission determined that an expanded definition of minor that includes 16- and 17-year-olds is consistent with other aspects of federal immigration law, including the statute assigning responsibility for unaccompanied minors under age 18 to the Department of Health and Human Services. *See* 6 U.S.C. 279(g)(2)(B). The Commission also believed that it was appropriate to conform the definition of minor in the alien smuggling guideline to the definition of minor in § 3B1.4 (Using a Minor to Commit a Crime).

*Clarification of the Enhancement Applicable to Sexual Abuse of Aliens*

The amendment addresses offenses in which an alien (whether or not a minor) is sexually abused. Specifically, it ensures that a ''serious bodily injury'' enhancement of 4 levels will apply in such a case. It achieves this by amending the commentary to § 2L1.1 to clarify that the term ''serious bodily injury'' included in subsection (b)(7)(B) has the meaning given that term in the commentary to § 1B1.1 (Application Instructions). That instruction states that ''serious bodily injury'' is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. 2241 or 2242 or any similar offense under state law.

The Commission's data indicated that the (b)(7)(B) enhancement has not been applied in some cases in which a smuggled alien had been sexually assaulted. The Commission determined

that this clarification is warranted to ensure that the 4-level enhancement is consistently applied when the offense involves the sexual abuse of an alien.

*Illegal Reentry*

The second part of the amendment is the product of the Commission's multi-year study of the illegal reentry guideline. In considering this amendment, the Commission was informed by the Commission's 2015 report, *Illegal Reentry Offenses;* its previous consideration of the ''categorical approach'' in the context of the definition of ''crimes of violence''; and extensive public testimony and public comment, in particular from judges from the southwest border districts where the majority of illegal reentry prosecutions occur.

The amendment responds to three primary concerns. First, the Commission has received significant comment over several years from courts and stakeholders that the ''categorical approach'' used to determine the particular level of enhancement under the existing guideline is overly complex and resource-intensive and often leads to litigation and uncertainty. The existing guideline's single specific offense characteristic provides for enhancements of between 4 levels and 16 levels, based on the nature of a defendant's most serious conviction that occurred before the defendant was ''deported'' or ''unlawfully remained in the United States.'' Determining whether a predicate conviction qualifies for a particular level of enhancement requires application of the categorical approach to the penal statute underlying the prior conviction. *See generally United States* v. *Taylor,* 495 U.S. 575 (1990) (establishing the categorical approach). Instead of the categorical approach, the amendment adopts a much simpler sentence-imposed model for determining the applicability of predicate convictions. The level of the sentencing enhancement for a prior conviction generally will be determined by the length of the sentence imposed for the prior offense, not by the type of offense for which the defendant had been convicted. The definition of ''sentence imposed'' is the same definition that appears in Chapter Four of the *Guidelines Manual.*

Second, comment received by the Commission and sentencing data indicated that the existing 16- and 12-level enhancements for certain prior felonies committed before a defendant's deportation were overly severe. In fiscal year 2015, only 29.7 percent of defendants who received the 16-level enhancement were sentenced within the applicable sentencing guideline range, and only 32.4 percent of defendants who received the 12-level enhancement were sentenced within the applicable sentencing guideline range.

Third, the Commission's research identified a concern that the existing guideline did not account for other types of criminal conduct committed by illegal reentry offenders. The Commission's 2015 report found that 48.0 percent of illegal reentry offenders were convicted of at least one offense (other than their instant illegal reentry conviction) after their first deportations.

The amendment addresses these concerns by accounting for prior criminal conduct in a broader and more proportionate manner. The amendment reduces somewhat the level of enhancements for criminal conduct occurring before the defendant's first order of deportation and adds a new enhancement for criminal conduct occurring after the defendant's first order of deportation. It also responds to concerns that prior convictions for illegal reentry offenses may not be adequately accounted for in the existing guideline by adding an enhancement for prior illegal reentry and multiple prior illegal entry convictions.

The manner in which the amendment responds to each of these concerns is discussed in more detail below.

*Accounting for Prior Illegal Reentry Offenses*

The amendment provides at subsection (b)(1) a new tiered enhancement based on prior convictions for illegal reentry offenses under 8 U.S.C. 1253, 1325(a), or 1326. A defendant who has one or more felony illegal reentry convictions will receive an increase of 4 levels. ''Illegal reentry offense'' is defined in the commentary to include all convictions under 8 U.S.C. 1253 (failure to depart after an order of removal) and 1326 (illegal reentry), as well as second or subsequent illegal entry convictions under § 1325(a). A defendant who has two or more misdemeanor illegal entry convictions under 8 U.S.C. 1325(a) will receive an increase of 2 levels.

The Commission's data indicates that the extent of a defendant's history of illegal reentry convictions is associated with the number of his or her prior deportations or removals from the United States, with the average illegal reentry defendant having been removed from the United States 3.2 times. *Illegal Reentry Offenses,* at 14. Over one-third (38.1%) of the defendants were previously deported after an illegal entry or reentry conviction. *Id.* at 15. The Commission determined that a defendant's demonstrated history of violating §§ 1325(a) and 1326 is appropriately accounted for in a separate enhancement. Because defendants with second or successive § 1325(a) convictions (whether they were charged as felonies or misdemeanors) have entered illegally more than once, the Commission determined that this conduct is appropriately accounted for under this enhancement.

For a defendant with a conviction under § 1326, or a felony conviction under § 1325(a), the 4-level enhancement in the new subsection (b)(1)(A) is identical in magnitude to the enhancement the defendant would receive under the existing subsection (b)(1)(D). The Commission concluded that an enhancement is also appropriate for defendants previously convicted of two or more misdemeanor offenses under § 1325(a).

*Accounting for Other Prior Convictions*

Subsections (b)(2) and (b)(3) of the amended guideline account for convictions (other than illegal entry or reentry convictions) primarily through a sentence-imposed approach, which is similar to how Chapter Four of the *Guidelines Manual* determines a defendant's criminal history score based on his or her prior convictions. The two subsections are intended to divide the defendant's criminal history into two time periods. Subsection (b)(2) reflects the convictions, if any, that the defendant sustained before being ordered deported or removed from the United States for the first time. Subsection (b)(3) reflects the convictions, if any, that the defendant sustained after that event (but only if the criminal conduct that resulted in the conviction took place after that event).

The specific offense characteristics at subsections (b)(2) and (b)(3) each contain a parallel set of enhancements of:

- 10 levels for a prior felony conviction that received a sentence of imprisonment of five years or more;
- 8 levels for a prior felony conviction that received a sentence of two years or more;
- 6 levels for a prior felony conviction that received a sentence exceeding one year and one month;
- 4 levels for any other prior felony conviction
- 2 levels for three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses.

The (b)(2) and (b)(3) specific offense characteristics are to be calculated separately, but within each specific

offense characteristic, a defendant may receive only the single greatest applicable increase.

The Commission determined that the new specific offense characteristics more appropriately provide for incremental punishment to reflect the varying levels of culpability and risk of recidivism reflected in illegal reentry defendants' prior convictions. The (b)(2) specific offense characteristic reflects the same general rationale as the illegal reentry statute's increased statutory maximum penalties for offenders with certain types of serious pre-deportation predicate offenses (in particular, ''aggravated felonies'' and ''felonies''). *See* 8 U.S.C. 1326(b)(1) and (b)(2). The Commission's data analysis of offenders' prior felony convictions showed that the more serious types of offenses, such as drug-trafficking offenses, crimes of violence, and sex offenses, tended to receive sentences of imprisonment of two years or more, while the less serious felony offenses, such as felony theft or drug possession, tended to receive much shorter sentences. The sentence-length benchmarks in (b)(2) are based on this data.

The (b)(3) specific offense characteristic focuses on post-reentry criminal conduct which, if it occurred after a defendant's most recent illegal reentry, would receive no enhancement under the existing guideline. The Commission concluded that a defendant who sustains criminal convictions occurring before and after the defendant's first order of deportation warrants separate sentencing enhancement.

The Commission concluded that the length of sentence imposed by a sentencing court is a strong indicator of the court's assessment of the seriousness of the predicate offense at the time, and this approach is consistent with how criminal history is generally scored in the Chapter Four of the *Guidelines Manual.* In amending the guideline, the Commission also took into consideration public testimony and comment indicating that tiered enhancements based on the length of the sentence imposed, rather than the classification of a prior offense under the categorical approach, would greatly simplify application of the guideline. With respect an offender's prior felony convictions, the amendment eliminates the use of the categorical approach, which has been criticized as cumbersome and overly legalistic.

The amendment retains the use of the categorical approach for predicate misdemeanor convictions in the new subsections (b)(2)(E) and (b)(3)(E) in view of a congressional directive requiring inclusion of an enhancement for certain types of misdemeanor offenses. *See* Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. 104–208, § 344, 110 Stat. 3009.

The amendment also addresses another frequent criticism of the existing guideline—that its use of a single predicate conviction sustained by a defendant before being deported or removed from the United States to impose an enhancement of up to 16 levels is often disproportionate to a defendant's culpability or recidivism risk. The Commission's data shows an unusually high rate of downward variances and departures from the guideline for such defendants. For example, the Commission's report found that less than one-third of defendants who qualify for a 16-level enhancement have received a within-range sentence, while 92.7 percent of defendants who currently qualify for no enhancement receive a within-range sentence. *Illegal Reentry Report,* at 11.

The lengths of the terms of imprisonment triggering each level of enhancement were set based on Commission data showing differing median sentence lengths for a variety of predicate offense categories. For example, the Commission's data indicated that sentences for more serious predicate offenses, such as drug-trafficking and felony assault, exceeded the two- and five-year benchmarks far more frequently than did sentences for less serious felony offenses, such as drug possession and theft. With respect to drug-trafficking offenses, the Commission found that 34.6 percent of such offenses received sentences of between two and five years, and 17.0 percent of such offenses received sentences of five years or more. With respect to felony assault offenses, the Commission found that 42.1 percent of such offenses received sentences of between two and five years, and 9.0 percent of such offenses received sentences of five years or more. With respect to felony drug possession offenses, 67.7 percent of such offenses received sentences of 13 months or less, while only 21.3 percent received sentences between two years and five years and only 3.0 percent received sentences of five years or more. With respect to felony theft offenses, 57.1 percent of such offenses received sentences of 13 months or less, while only 17.4 percent received sentences between two years and five years and only 2.0 percent received sentences of five years or more.

The Commission considered public comment suggesting that the term of imprisonment a defendant actually served for a prior conviction was a superior means of assessing the seriousness of the prior offense. The Commission determined that such an approach would be administratively impractical due to difficulties in obtaining accurate documentation. The Commission determined that a sentence-imposed approach is consistent with the Chapter Four criminal history rules, easily applied, and appropriately calibrated to account for the seriousness of prior offenses.

*Departure Provision*

The amendment adds a new departure provision, at Application Note 5, applicable to situations where ''an enhancement in subsection (b)(2) or (b)(3) substantially understates or overstates the seriousness of the conduct underlying the prior offense.'' This departure accounts for three situations in which an enhancement based on the length of a prior imposed sentence appears either inadequate or excessive in light of the defendant's underlying conduct. For example, if a prior serious conviction (*e.g.,* murder) is not accounted for because it is not within the time limits set forth in § 4A1.2(e) and did not receive criminal history points, an upward departure may be warranted. Conversely, if the time actually served by the defendant for the prior offense was substantially less than the length of the original sentence imposed, a downward departure may be warranted.

*Excluding Stale Convictions*

For all three specific offense characteristics, the amendment considers prior convictions only if the convictions receive criminal history points under the rules in Chapter Four. Counting only convictions that receive criminal history points addresses concerns that the existing guideline sometimes has provided for an unduly severe enhancement based on a single offense so old it did not receive criminal history points. The Commission's research has found that a defendant's criminal history score is a strong indicator of recidivism risk, and it is therefore appropriate to employ the criminal history rules in this context. *See* U.S. Sent. Comm'n, *Recidivism Among Federal Offenders: A Comprehensive Overview* (2016). The limitation to offenses receiving criminal history points also promotes ease of application and uniformity throughout the guidelines. *See* 28 U.S.C. 994(c)(2) (directing the Commission to establish categories of offenses based on appropriate mitigating and aggravating factors); *cf.* USSG § 2K2.1, comment.

(n.10) (imposing enhancements based on a defendant's predicate convictions only if they received criminal history points).

*Application of the ''Single Sentence Rule''*

The amendment also contains an application note addressing the situation when a defendant was simultaneously sentenced for an illegal reentry offense and another federal felony offense. It clarifies that, in such a case, the illegal reentry offense counts towards subsection (b)(1), while the other felony offense counts towards subsection (b)(3).

Because the amendment is intended to make a distinction between illegal reentry offenses and other types of offenses, the Commission concluded that it was appropriate to ensure that such convictions are separately accounted for under the applicable specific offense characteristics, even if they might otherwise constitute a ''single sentence'' under § 4A1.2(a)(2). For example, if the single sentence rule applied, a defendant who was sentenced simultaneously for an illegal reentry and a federal felony drug-trafficking offense might receive an enhancement of only 4 levels under subsection (b)(1), even though, if the two sentences had been imposed separately, the drug offense would result in an additional enhancement of between 4 and 10 levels under subsection (b)(3).

*Definition of ''Crime of Violence''*

The amendment continues to use the term ''crime of violence,'' although now solely in reference to the 2-level enhancement for three or more misdemeanor convictions at subsections (b)(2)(E) and (b)(3)(E). The amendment conforms the definition of ''crime of violence'' in Application Note 2 to that adopted for use in the career offender guideline effective August 1, 2016. *See* Notice of Submission to Congress of Amendment to the Sentencing Guidelines Effective August 1, 2016, 81 FR 4741 (Jan. 27, 2016). Uniformity and ease of application weigh in favor of using a consistent definition for the same term throughout the *Guidelines Manual.*

5. *Amendment:* Section 5B1.3 is amended in the heading by striking ''*Conditions*—'' and inserting ''*Conditions'';*

in subsections (a)(1) through (a)(8) by striking the initial letter of the first word in each subsection and inserting the appropriate capital letter for the word, and by striking the semicolon at the end of each subsection and inserting a period;

in subsection (a)(6), as so amended, by inserting before the period at the end the following: ''. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. 3572(d)), the defendant shall adhere to the schedule'';

by striking subsection (a)(9) as follows:

''(9) (A) in a state in which the requirements of the Sex Offender Registration and Notification Act (*see* 42 U.S.C. 16911 and 16913) do not apply, a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (Pub. L. 105–119, § 115(a)(8), Nov. 26, 1997) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student; or

(B) in a state in which the requirements of Sex Offender Registration and Notification Act apply, a sex offender shall (i) register, and keep such registration current, where the offender resides, where the offender is an employee, and where the offender is a student, and for the initial registration, a sex offender also shall register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence; (ii) provide information required by 42 U.S.C. 16914; and (iii) keep such registration current for the full registration period as set forth in 42 U.S.C. 16915;'',

and inserting the following:

''(9) If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (*see* 18 U.S.C. 3563(a)).'';

and in subsection (a)(10) by striking ''the defendant'' and inserting ''The defendant'';

in subsection (b) by striking ''The court'' and inserting the following:

''*Discretionary Conditions*

The court'';

in subsection (c) by striking ''(Policy Statement) The'' and inserting the following:

'' 'Standard' Conditions (Policy Statement)

The'';

and by striking paragraphs (1) through (14) as follows:

''(1) the defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(4) the defendant shall support the defendant's dependents and meet other family responsibilities (including, but not limited to, complying with the terms of any court order or administrative process pursuant to the law of a state, the District of Columbia, or any other possession or territory of the United States requiring payments by the defendant for the support and maintenance of any child or of a child and the parent with whom the child is living);

(5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) the defendant shall notify the probation officer at least ten days prior to any change of residence or employment;

(7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;

(8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) the defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

(12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm

the defendant's compliance with such notification requirement;

(14) the defendant shall pay the special assessment imposed or adhere to a court-ordered installment schedule for the payment of the special assessment.'', and inserting the following:

''(1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of the time the defendant was sentenced, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

(2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

(3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

(4) The defendant shall answer truthfully the questions asked by the probation officer.

(5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.

(7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

(9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

(10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (*i.e.,* anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).

(11) The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

(12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

(13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.'';

and in subsection (d) by striking ''(Policy Statement) The'' and inserting the following:

''*'Special' Conditions* (Policy Statement)

The'';

by striking paragraph (1) as follows:

''(1) *Possession of Weapons*

If the instant conviction is for a felony, or if the defendant was previously convicted of a felony or used a firearm or other dangerous weapon in the course of the instant offense—a condition prohibiting the defendant from possessing a firearm or other dangerous weapon.'',

and inserting the following:

''(1) *Support of Dependents*

(A) If the defendant has one or more dependents—a condition specifying that the defendant shall support his or her dependents.

(B) If the defendant is ordered by the government to make child support payments or to make payments to support a person caring for a child—a condition specifying that the defendant shall make the payments and comply with the other terms of the order.'';

and in paragraph (4) by striking ''*Program Participation*'' in the heading; by inserting ''(A)'' before ''a condition requiring''; and by inserting before the period at the end the following: ''; and (B) a condition specifying that the defendant shall not use or possess alcohol''.

The Commentary to § 5B1.3 captioned ''Application Note'' is amended by striking Note 1 as follows:

''1. *Application of Subsection (a)(9)(A) and (B).*—Some jurisdictions continue to register sex offenders pursuant to the sex offender registry in place prior to July 27, 2006, the date of enactment of the Adam Walsh Act, which contained the Sex Offender Registration and Notification Act. In such a jurisdiction, subsection (a)(9)(A) will apply. In a jurisdiction that has implemented the requirements of the Sex Offender Registration and Notification Act, subsection (a)(9)(B) will apply. (*See* 42 U.S.C. 16911 and 16913.)'',

and inserting the following:

''1. *Application of Subsection (c)(4).*—Although the condition in subsection (c)(4) requires the defendant to 'answer truthfully' the questions asked by the probation officer, a defendant's legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer's question shall not be considered a violation of this condition.''.

Section 5D1.3 is amended is amended in the heading by striking ''*Conditions*—'' and inserting ''*Conditions*'';

in subsections (a)(1) through (a)(6) by striking the initial letter of the first word in each subsection and inserting the appropriate capital letter for the word, and by striking the semicolon at the end of each subsection and inserting a period;

in subsection (a)(6), as so amended, by inserting before the period at the end the following: ''. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. 3572(d)), the defendant shall adhere to the schedule'';

by striking subsection (a)(7) as follows:

''(7) (A) in a state in which the requirements of the Sex Offender Registration and Notification Act (*see* 42

U.S.C. 16911 and 16913) do not apply, a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (Pub. L. 105–119, § 115(a)(8), Nov. 26, 1997) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student; or

(B) in a state in which the requirements of Sex Offender Registration and Notification Act apply, a sex offender shall (i) register, and keep such registration current, where the offender resides, where the offender is an employee, and where the offender is a student, and for the initial registration, a sex offender also shall register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence; (ii) provide information required by 42 U.S.C. 16914; and (iii) keep such registration current for the full registration period as set forth in 42 U.S.C. 16915;'',

and inserting the following:

''(7) If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (*see* 18 U.S.C. 3583(d)).'';

and in subsection (a)(8) by striking ''the defendant'' and inserting ''The defendant'';

in subsection (b) by striking ''The court'' and inserting the following:

''*Discretionary Conditions*

The court'';

in subsection (c) by striking ''(Policy Statement) The'' and inserting the following:

'' *'Standard' Conditions* (Policy Statement)

The'';

and by striking paragraphs (1) through (15) as follows:

''(1) the defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(4) the defendant shall support the defendant's dependents and meet other family responsibilities (including, but not limited to, complying with the terms of any court order or administrative process pursuant to the law of a state, the District of Columbia, or any other possession or territory of the United States requiring payments by the defendant for the support and maintenance of any child or of a child and the parent with whom the child is living);

(5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) the defendant shall notify the probation officer at least ten days prior to any change of residence or employment;

(7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;

(8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) the defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

(12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;

(14) the defendant shall pay the special assessment imposed or adhere to a court-ordered installment schedule for the payment of the special assessment;

(15) the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay any unpaid amount of restitution, fines, or special assessments.'',

and inserting the following:

''(1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

(2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

(3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

(4) The defendant shall answer truthfully the questions asked by the probation officer.

(5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.

(7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

(9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

(10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (*i.e.,* anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).

(11) The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

(12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

(13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.'';

and in subsection (d) by striking ''(Policy Statement) The'' and inserting the following:

'' *'Special' Conditions* (Policy Statement)

The'';

by striking paragraph (1) as follows:

''(1) *Possession of Weapons*

If the instant conviction is for a felony, or if the defendant was previously convicted of a felony or used a firearm or other dangerous weapon in the course of the instant offense—a condition prohibiting the defendant from possessing a firearm or other dangerous weapon.'',

and inserting the following:

''(1) *Support of Dependents*

(A) If the defendant has one or more dependents—a condition specifying that the defendant shall support his or her dependents.

(B) If the defendant is ordered by the government to make child support payments or to make payments to support a person caring for a child—a condition specifying that the defendant shall make the payments and comply with the other terms of the order.'';

in paragraph (4) by striking ''*Program Participation''* in the heading; by inserting ''(A)'' before ''a condition requiring''; and by inserting before the period at the end the following: ''; and (B) a condition specifying that the defendant shall not use or possess alcohol'';

and by inserting at the end the following new paragraph (8):

''(8) *Unpaid Restitution, Fines, or Special Assessments*

If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.''.

The Commentary to § 5D1.3 captioned ''Application Note'' is amended by striking Note 1 as follows:

''1. *Application of Subsection (a)(7)(A) and (B).*—Some jurisdictions continue to register sex offenders pursuant to the sex offender registry in place prior to July 27, 2006, the date of enactment of the Adam Walsh Act, which contained the Sex Offender Registration and Notification Act. In such a jurisdiction, subsection (a)(7)(A) will apply. In a jurisdiction that has implemented the requirements of the Sex Offender Registration and Notification Act, subsection (a)(7)(B) will apply. (*See* 42 U.S.C. 16911 and 16913.)'',

and inserting the following:

''1. *Application of Subsection (c)(4).*—Although the condition in subsection (c)(4) requires the defendant to 'answer truthfully' the questions asked by the probation officer, a defendant's legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer's question shall not be considered a violation of this condition.''.

*Reason for Amendment:* This amendment is a result of the Commission's multi-year review of sentencing practices relating to federal probation and supervised release. The amendment makes several changes to the guidelines and policy statements related to conditions of probation, § 5B1.3 (Conditions of Probation), and supervised release, § 5D1.3 (Conditions of Supervised Release).

When imposing a sentence of probation or a sentence of imprisonment that includes a period of supervised release, the court is required to impose certain conditions of supervision listed by statute. 18 U.S.C. 3563(a) and 3583(d). Congress has also empowered courts to impose additional conditions of probation and supervised release that are reasonably related to statutory sentencing factors contained in 18 U.S.C. 3553(a), so long as those conditions ''involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in 3553(a)(2).'' 18 U.S.C. 3563(b); *see also* 18 U.S.C. 3583(d). Additional conditions of supervised release must also be consistent with any pertinent policy statements issued by the Commission. *See* 18 U.S.C. 3583(d)(3).

The Commission is directed by its organic statute to promulgate policy statements on the appropriate use of the conditions of probation and supervised release, *see* 28 U.S.C. 994(a)(2)(B), and has implemented this directive in §§ 5B1.3 and 5D1.3. The provisions follow a parallel structure, first setting forth those conditions of supervision that are required by statute in their respective subsections (a) and (b), and then providing guidance on discretionary conditions, which are categorized as ''standard'' conditions, ''special'' conditions, and ''additional'' special conditions, in subsections (c), (d), and (e), respectively.

In a number of cases, defendants have raised objections (with varied degrees of success) to the conditions of supervised release and probation imposed upon them at the time of sentencing. *See, e.g., United States* v. *Munoz,* 812 F.3d 809 (10th Cir. 2016); *United States* v. *Kappes,* 782 F.3d 828, 848 (7th Cir. 2015); *United States* v. *Siegel,* 753 F.3d 705 (7th Cir. 2014); *United States* v. *Bahr,* 730 F.3d 963 (9th Cir. 2013); *United States* v. *Maloney,* 513 F.3d 350, 357–59 (3d Cir. 2008); *United States* v. *Saechao,* 418 F.3d 1073, 1081 (9th Cir. 2005). Challenges have been made on the basis that certain conditions are vaguely worded, pose constitutional concerns, or have been categorized as ''standard'' conditions in a manner that has led to their improper imposition upon particular offenders.

The amendment responds to many of the concerns raised in these challenges by revising, clarifying, and rearranging the conditions contained in §§ 5B1.3 and 5D1.3 in order to make them easier for defendants to understand and probation officers to enforce. Many of the challenged conditions are those laid out in the Judgment in a Criminal Case Form, AO245B, which are nearly identical to the conditions in §§ 5B1.3 and 5D1.3.

The amendment was supported by the Criminal Law Committee (CLC) of the Judicial Conference of the United States.

The CLC has long taken an active and ongoing role in developing, monitoring and recommending revisions to the condition of supervision, which represent the core supervision practices required by the federal supervision model. The changes in the amendment are consistent with proposed changes to the national judgment form recently endorsed by the CLC and Administrative Office of the U.S. Courts, after an exhaustive review of those conditions aided by probation officers from throughout the country.

As part of this broader revision, the conditions in §§ 5B1.3 and 5D1.3 have been renumbered. Where the specific conditions discussed below are identified by a guidelines provision reference, that numeration is in reference to their pre-amendment order.

*Court-Established Payment Schedules*

First, the amendment amends §§ 5B1.3(a)(6) and 5D1.3(a)(6) to set forth as a ''mandatory'' condition that if there is a court-established payment schedule for making restitution or paying a special assessment, the defendant shall adhere to the schedule. Previously, those conditions were classified as ''standard.'' As a conforming change, similar language at §§ 5B1.3(c)(14) and 5D1.3(c)(14) is deleted. This change is made to more closely adhere to the requirements of 18 U.S.C. 3572(d).

*Sex Offender Registration and Notification Act*

Second, the amendment amends §§ 5B1.3(a)(9) and 5D1.3(a)(7) to clarify that, if the defendant is required to register under the Sex Offender Registration and Notification Act (SORNA), the defendant shall comply with the requirements of the SORNA. Language in the guideline provisions and the accompanying commentary indicating that the Act applies in some states and not in others is correspondingly deleted. After receiving testimony from the Department of Justice suggesting the current condition could be misread, the Commission determined that the condition's language should be simplified and updated to unambiguously reflect that federal sex offender registration requirements apply in all states.

*Reporting to the Probation Officer*

Third, the amendment divides the initial and regular reporting requirements, §§ 5B1.3(a)(2) and 5D1.3(a)(2), into two more definite provisions. The amendment also amends the conditions to require that the defendant report to the probation office in the jurisdiction where he or she is authorized to reside, within 72 hours of release unless otherwise directed, and that the defendant must thereafter report to the probation officer as instructed by the court or the probation officer.

*Leaving the Jurisdiction*

Fourth, the amendment revises §§ 5B1.3(c)(1) and 5D1.3(c)(1), which prohibit defendants from leaving the judicial district without permission, for clarity and to insert a mental state (*mens rea*) requirement that a defendant must not leave the district ''knowingly.'' Testimony received by the Commission has observed that a rule prohibiting a defendant from leaving the district without permission of the court or probation officer may be unfairly applied to a defendant who unknowingly moves between districts. The Commission concluded that this change appropriately responds to that concern.

*Answering Truthfully; Following Instructions*

Fifth, the amendment divides §§ 5B1.3(c)(3) and 5D1.3(c)(3) into separate conditions which individually require the defendant to ''answer truthfully'' the questions of the probation officer and to follow the instructions of the probation officer ''related to the conditions of supervision.''

The amendment also adds commentary to clarify that a defendant's legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer's question shall not be considered a violation of the ''answer truthfully'' condition. The Commission determined that this approach adequately addresses Fifth Amendment concerns raised by some courts, *see, e.g., United States* v. *Kappes,* 782 F.3d 828, 848 (7th Cir. 2015) and *United States* v. *Saechao,* 418 F.3d 1073, 1081 (9th Cir. 2005), while preserving the probation officer's ability to adequately supervise the defendant.

*Residence and Employment*

Sixth, the amendment clarifies the standard conditions relating to a defendant's residence, §§ 5B1.3(c)(6) and 5D1.3(c)(6), and the requirement that the defendant work full time, §§ 5B1.3(c)(5) and 5D1.3(c)(5). The revised conditions spell out in plain language that the defendant must live at a place ''approved by the probation officer,'' and that the defendant must work full time (at least 30 hours per week) at a lawful type of employment — or seek to do so — unless excused by the probation officer. The defendant must also notify the probation officer of changes in residence or employment at least 10 days in advance of the change or, if this is not possible, within 72 hours of becoming aware of a change. The Commission determined that these changes are appropriate to ensure that defendants are made aware of what will be required of them while under supervision. These requirements and associated benchmarks (*e.g.,* 30 hours per week) are supported by testimony from the CLC as appropriate to meet supervision needs.

*Visits by Probation Officer*

Seventh, the amendment amends the conditions requiring the defendant to permit the probation officer to visit the defendant at any time, at home or elsewhere, and to permit the probation officer to confiscate items prohibited by the defendant's terms of release, §§ 5B1.3(c)(10) and 5D1.3(c)(10). The revision provides plain language notice to defendants and guidance to probation officers.

The Seventh Circuit has criticized this condition as intrusive and not necessarily connected to the offense of conviction, *see United States* v. *Kappes,* 782 F.3d 828, 850–51 (7th Cir. 2015) and *United States* v. *Thompson,* 777 F.3d 368, 379–80 (7th Cir. 2015), but the Commission has determined that, in some circumstance, adequate supervision of defendants may require probation officers to have the flexibility to visit defendants at off-hours, at their workplaces, and without advance notice to the supervisee. For example, some supervisees work overnight shifts and, in order to verify that they are in compliance with the condition of supervision requiring employment, a probation officer might have to visit them at their workplace very late in the evening.

*Association with Criminals*

Eighth, the amendment revises and clarifies the conditions mandating that the defendant not associate with persons engaged in criminal activity or persons convicted of a felony unless granted permission to do so by the probation officer, §§ 5B1.3(c)(9) and 5D1.3(c)(9). As amended, the condition requires that the defendant must not ''communicate or interact with'' any person whom the defendant ''knows'' to be engaged in ''criminal activity'' and prohibits the defendant from communicating or interacting with those whom the defendant ''knows'' to have been ''convicted of a felony'' without advance permission of the probation officer.

These revisions address concerns expressed by the Seventh Circuit that the condition is vague and lacks a *mens rea* requirement. *See United States* v. *Kappes,* 782 F.3d 828, 848–49 (7th Cir. 2015); *see also United States* v. *King,* 608 F.3d 1122, 1128 (9th Cir. 2010) (upholding the condition by interpreting it to have an implicit *mens rea* requirement). The revision adds an express mental state requirement and replaces the term ''associate'' with more definite language.

*Arrested or Questioned by a Law Enforcement Officer*

Ninth, the amendment makes clerical changes to the ''standard'' conditions requiring that the defendant notify the probation officer after being arrested or questioned by a law enforcement officer. *See* §§ 5B1.3(11) and 5D1.3(11).

*Firearms and Dangerous Weapons*

Tenth, the amendment reclassifies the ''special'' conditions which require that the defendant not possess a firearm or other dangerous weapon, §§ 5B1.3(d)(1) and 5D1.3(d)(1), as ''standard'' conditions and clarifies those conditions. As amended, the defendant must not ''own, possess, or have access to'' a firearm, ammunition, destructive device, or dangerous weapon. After reviewing the testimony from the CLC and others, the Commission determined that reclassifying this condition as a ''standard'' condition will promote public safety and reduce safety risks to probation officers. The amendment also defines ''dangerous weapon'' as ''anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers.''

*Acting as an Informant*

Eleventh, the amendment rewords the ''standard'' condition at §§ 5B1.3(c)(12) and 5D1.3(c)(12) requiring that the defendant not enter into an agreement to act as an informant without permission of the court. The condition is revised to improve clarity.

*Duty to Notify of Risks Posed by the Defendant*

Twelfth, the amendment revises the conditions requiring the defendant, at the direction of the probation officer, to notify others of risks the defendant may pose based on his or her personal history or characteristics, §§ 5B1.3(c)(13) and 5D1.3(c)(13). As amended, the condition provides that, if the probation officer determines that the defendant poses a risk to another person, the probation officer may require the defendant to tell the person about the risk and permits the probation officer to confirm that the defendant has done so. The Commission determined that this revision is appropriate to address criticism by the Seventh Circuit regarding potential ambiguity in how the condition is currently phrased. *See United States* v. *Thompson,* 777 F.3d 368, 379 (7th Cir. 2015).

*Support of Dependents*

Thirteenth, the amendment clarifies and moves the dependent support requirement from the list of ''standard'' conditions, §§ 5B1.3(c)(4) and 5D1.3(c)(4), to the list of ''special'' conditions in subsection (d). As amended, the conditions require that, if the defendant has dependents, he or she must support those dependents; and if the defendant is ordered to make child support payments, he or she must make the payments and comply with the other terms of the order.

These changes address concerns expressed by the Seventh Circuit that the current condition—which requires a defendant to ''support his or her dependents and meet other family responsibilities''—is vague and does apply to defendants who have no dependents. *See United States* v. *Kappes,* 782 F.3d 828, 849 (7th Cir. 2015) and *United States* v. *Thompson,* 777 F.3d 368, 379–80 (7th Cir. 2015). The amendment uses plainer language to provide better notice to the defendant about what is required. The Commission determined that this condition need not apply to all defendants but only to those with dependents.

*Alcohol; Controlled Substances; Frequenting Places Where Controlled Substances are Sold*

Fourteenth, the standard conditions requiring that the defendant refrain from excessive use of alcohol, not possess or distribute controlled substances or paraphernalia, and not frequent places where controlled substances are illegally sold, §§ 5B1.3(c)(7)–(8) and 5D1.3(c)(7)–(8), have been deleted. The Commission determined that these conditions are either best dealt with as special conditions or are redundant with other conditions. Specifically, to account for the supervision needs of defendants with alcohol abuse problems, a new special condition that the defendant ''must not use or possess alcohol'' has been added. The requirement that the defendant abstain from the illegal use of controlled substances is covered by the ''mandatory'' conditions prohibiting commission of additional crimes and requiring substance abuse testing. Finally, the prohibition on frequenting places where controlled substances are illegally sold is encompassed by the ''standard'' condition that defendants not associate with those they know to be criminals or who are engaged in criminal activity.

*Material Change in Economic Circumstances (§ 5D1.3 Only)*

Finally, with respect to supervised release only, the ''standard'' condition requiring that the defendant notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay any unpaid amount of restitution, fines, or special assessments, § 5D1.3(c)(15), is reclassified as a ''special'' condition in subsection (d). Testimony from the CLC and others indicated that defendants on supervised release often have no outstanding restitution, fines, or special assessments remaining at the time of their release, rendering the condition superfluous in those cases. No change has been made to the parallel ''mandatory'' condition of probation at § 5B1.3(a)(7).

6. *Amendment:* Section 2K2.1 is amended in subsection (a)(8) by inserting '', or 18 U.S.C. 1715'' before the period at the end.

The Commentary to § 2K2.1 captioned ''Statutory Provisions'' is amended by inserting after ''(k)-(o),'' the following: ''1715,''.

The Commentary to § 2M6.1 captioned ''Application Notes'' is amended in Note 1 by striking ''831(f)(2)'' and inserting ''831(g)(2)'', and by striking ''831(f)(1)'' and inserting ''831(g)(1)''.

The Commentary to § 2T1.6 captioned ''Background'' is amended by striking ''The offense is a felony that is infrequently prosecuted.''.

Chapter Two, Part T, Subpart 2, is amended in the Introductory Commentary by striking ''Because these offenses are no longer a major enforcement priority, no effort'' and inserting ''No effort''.

Section 2T2.1 is amended by striking the Commentary captioned ''Background'' as follows:

''*Background:* The most frequently prosecuted conduct violating this section is operating an illegal still. 26 U.S.C. 5601(a)(1).''.

Section 2T2.2 is amended by striking the Commentary captioned ''Background'' as follows:

''*Background:* Prosecutions of this type are infrequent.''.

Appendix A (Statutory Index) is amended by inserting after the line

referenced to 18 U.S.C. 1712 the following:

| | |
|---|---|
| ''18 U.S.C. 1715 | 2K2.1''; |

by inserting after the line referenced to 18 U.S.C. 2280 the following:

| | |
|---|---|
| ''18 U.S.C. 2280a | 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A6.1, 2B1.1, 2B3.2, 2K1.3, 2K1.4, 2M5.2, 2M5.3, 2M6.1, 2Q1.1, 2Q1.2, 2X1.1, 2X2.1, 2X3.1''; |

by inserting after the line referenced to 18 U.S.C. 2281 the following:

| | |
|---|---|
| ''18 U.S.C. 2281a | 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A6.1, 2B1.1, 2B3.2, 2K1.4, 2M6.1, 2Q1.1, 2Q1.2, 2X1.1''; |

and by inserting after the line referenced to 18 U.S.C. 2332h the following:

| | |
|---|---|
| ''18 U.S.C. 2332i | 2A6.1, 2K1.4, 2M2.1, 2M2.3, 2M6.1''. |

*Reason for Amendment:* This amendment responds to recently enacted legislation and miscellaneous guideline application issues.

*USA FREEDOM Act*

The Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act (''USA FREEDOM Act'') of 2015, Pub. L. 114–23 (June 2, 2015), set forth changes to statutes related to maritime navigation and nuclear terrorism and provided new and expanded criminal offenses to implement the United States' obligations under certain provisions of four international conventions. The USA FREEDOM Act also specified that the new crimes constitute ''federal crimes of terrorism.'' *See* 18 U.S.C. 2332b(g)(5). The amendment responds to the USA FREEDOM Act by referencing the new offenses in Appendix A (Statutory Index) to various Chapter Two guidelines covering murder and assault, weapons, national security, and environmental offenses.

First, the USA FREEDOM Act enacted 18 U.S.C. 2280a (Violence against maritime navigation and maritime transport involving weapons of mass destruction). Subsections 2280a(a)(1)(A) and (a)(1)(B)(i) prohibit certain acts against maritime navigation committed in a manner that causes or is likely to cause death, serious injury, or damage, when the purpose of the conduct is to intimidate a population or to compel a government or international organization to do or abstain from doing any act. Subsections 2280a(a)(1)(B)(ii)–(vi) prohibit certain other acts against maritime navigation. Subsection 2280a(a)(1)(C) prohibits transporting another person on board a ship knowing the person has committed a violation under 18 U.S.C. 2280 (Violence against maritime navigation) or certain subsections of section 2280a, or an offense under a listed counterterrorism treaty. Subsection 2280a(a)(1)(D) prohibits injuring or killing a person in connection with the commission of certain offenses under section 2280a. Subsection 2280a(a)(1)(E) prohibits attempts and conspiracies under the statute. The penalty for a violation of these subsections is a term of imprisonment for not more than 20 years. If the death of a person results, the penalty is imprisonment for any term of years or for life. Subsection 2280a(a)(2) prohibits threats to commit offenses under subsection 2280a(a)(1)(A), with a penalty of imprisonment of up to five years.

The new offenses at section 2280a are referenced in Appendix A (Statutory Index) to the following Chapter Two guidelines: §§ 2A1.1 (First Degree Murder); 2A1.2 (Second Degree Murder); 2A1.3 (Voluntary Manslaughter); 2A1.4 (Involuntary Manslaughter); 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder); 2A2.2 (Aggravated Assault); 2A2.3 (Assault); 2A6.1 (Threatening or Harassing Communications); 2B1.1 (Fraud); 2B3.2 (Extortion); 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials); 2K1.4 (Arson; Property Damage by Use of Explosives); 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License); 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations or Specially Designated Global Terrorists, or For a Terrorist Purpose); 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction); 2Q1.1 (Knowing Endangerment Resulting From Mishandling Hazardous or Toxic Substances, Pesticides or Other Pollutants); 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides); 2X1.1 (Conspiracy); 2X2.1 (Aiding and Abetting); and 2X3.1 (Accessory After the Fact).

Second, the USA FREEDOM Act enacted 18 U.S.C. 2281a (Additional offenses against maritime fixed platforms). Subsection 2281a(a)(1) prohibits certain acts that occur either on a fixed platform or to a fixed platform committed in a manner that may cause death, serious injury, or damage, when the purpose of the conduct is to intimidate a population or to compel a government or international organization to do or abstain from doing any act. The penalty for a violation of subsection 2281a(a)(1) is a term of imprisonment for not more than 20 years. If the death of a person results, the penalty is imprisonment for any term of years or for life. Subsection 2281a(a)(2) prohibits threats to commit offenses under subsection 2281a(a)(1), and the penalty for a violation of subsection 2281a(a)(2) is imprisonment of up to five years.

The new offenses at 18 U.S.C. 2281a are referenced to §§ 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A6.1, 2B1.1, 2B3.2, 2K1.4, 2M6.1, 2Q1.1, 2Q1.2, and 2X1.1.

Third, the USA FREEDOM Act enacted 18 U.S.C. 2332i (Acts of nuclear terrorism). Section 2332i prohibits the possession or use of certain radioactive materials or devices with the intent to cause death or serious bodily injury or to cause substantial damage to property or the environment, as well as threats to commit any such acts. The penalty for a violation of section 2332i is imprisonment for any term of years or for life.

The new offenses at 18 U.S.C. 2332i are referenced to §§ 2A6.1, 2K1.4, 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities), 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities), and 2M6.1.

The amendment also makes clerical changes to Application Note 1 to § 2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction) to reflect the redesignation of a section in the United States Code by the USA FREEDOM Act.

The three new statutes provide a wide range of elements—meaning that the statutes can be violated in a large number of alternative ways. The Commission performed a section-by-section analysis of the elements of the new statutes and identified the Chapter Two offense guidelines that appear most analogous. As a result, the Commission determined that referencing the new statutes in Appendix A (Statutory Index) to a range of guidelines will allow the courts to select the most appropriate guideline in light of the nature of the conviction. For example, a reference to § 2K1.4 (Arson; Property Damage by Use of Explosives) is provided to account for when the defendant is convicted under section 2280a(a)(1)(A)(i) for the use of an explosive device on a ship in a manner that causes or is likely to cause death or serious injury. *See* USSG App. A, Introduction (Where the statute is

referenced to more than one guideline section, the court is to ''use the guideline most appropriate for the offense conduct charged in the count of which the defendant was convicted.''). The Commission also found it persuasive that other similar statutes are referenced in Appendix A to a similar list of Chapter Two guidelines. Referencing these three new statutes in a manner consistent with the treatment of existing related statutes is reasonable to achieve parity, and will lead to consistent application of the guidelines.

*Firearms As Nonmailable Items under 18 U.S.C. 1715*

Section 1715 of title 18 of the United States Code (Firearms as nonmailable; regulations) makes it unlawful to deposit for mailing or delivery by the mails pistols, revolvers, and other firearms capable of being concealed on the person, and the penalty for a violation of this statute is a term of imprisonment up to two years. Section 1715 is not referenced in Appendix A (Statutory Index). The amendment amends Appendix A to reference offenses under section 1715 to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). The amendment also amends § 2K2.1 to provide a base offense level of 6 under § 2K2.1(a)(8) for convictions under section 1715.

The Commission received public comment suggesting that the lack of specific guidance for section 1715 offenses caused unwarranted sentencing disparity. Commission data provided further support for the need for an amendment to address this issue. Although the data indicated that courts routinely applied § 2K2.1 to violations of section 1715, it also evidenced that courts were reaching different results in the base offense level applied. The Commission was persuaded by the data and public comment that an Appendix A reference and corresponding changes to § 2K2.1 would reduce those unwarranted sentencing disparities. The Commission determined that § 2K2.1 is the most analogous guideline for these types of firearms offenses. By providing an Appendix A reference for section 1715, the amendment ensures that § 2K2.1 will be consistently applied to these offenses. Moreover, the Commission decided that the accompanying changes to § 2K2.1 will eliminate the disparate application of the base offense levels in that guideline. The Commission selected the base offense level of 6 for these offenses because similar statutory provisions with similar penalties are referenced to § 2K2.1(a)(8). The Commission concluded that referencing section 1715 will promote consistency in application and avoid unwarranted sentencing disparities.

*Background Commentary to § 2T1.6 (Failing to Collect or Truthfully Account for and Pay Over Tax)*

The Background Commentary in § 2T1.6 (Failing to Collect or Truthfully Account for and Pay Over Tax) states that ''[t]he offense is a felony that is infrequently prosecuted.'' Section 2T1.6 applies to violations of 26 U.S.C. 7202 (Willful failure to collect or pay over tax) which requires employers to withhold from an employee's paychecks money representing the employee's personal income and Social Security taxes. If an employer willfully fails to collect, truthfully account for, or pay over such taxes, 26 U.S.C. 7202 provides both civil and criminal remedies. The amendment makes a clerical change to the Background Commentary to § 2T1.6 to delete the statement that section 7202 offenses are infrequently prosecuted. The amendment makes additional clerical changes in the Introductory Commentary to Chapter Two, Part T, Subpart 2 (Alcohol and Tobacco Taxes), and the Background Commentary to §§ 2T2.1 (Non-Payment of Taxes) and 2T2.2 (Regulatory Offenses) which has similar language.

The amendment reflects public comment received by the Commission that indicated while the statement in the Background Commentary to § 2T1.6 may have been accurate when the commentary was originally written in 1987, the number of prosecutions under section 7202 have since increased. Additionally, the Commission decided that removing language characterizing the frequency of prosecutions for the tax offenses sentenced under §§ 2T1.6, 2T2.1, and 2T2.2 will remove the perception that the Commission has taken a position regarding the relative frequency of prosecution of such offenses.

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Part IV

## Department of Justice

28 CFR Part 16
Privacy Act of 1974; Systems of Records and Implementation; Notice and Proposed Rule

## DEPARTMENT OF JUSTICE

**[CPCLO Order No. 002–2016]**

## Privacy Act of 1974; Systems of Records

**AGENCY:** Federal Bureau of Investigation, United States Department of Justice.

**ACTION:** Notice of a modified system of records notice.

**SUMMARY:** Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice (Department or DOJ), Federal Bureau of Investigation (FBI), proposes to modify an existing FBI system of records notice titled, ''Fingerprint Identification Records System (FIRS),'' JUSTICE/FBI–009, last published in September 28, 1999 (64 FR 52347), and amended on January 31, 2001 (66 FR 8425), and January 25, 2007 (72 FR 3410). The Department is renaming this system of records, ''The Next Generation Identification (NGI) System,'' JUSTICE/FBI–009. The Department is modifying this system to add and clarify the categories of individuals and records maintained in NGI, and their associated Routine Uses, as well as updating procedures for individuals to access and contest their records. The entire notice is being republished for ease of reference.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by June 6, 2016.

**ADDRESSES:** The public, OMB, and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530, or by facsimile at 202–307–0693. To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Roxane M. Panarella, Criminal Justice Information Services Division (CJIS), Privacy Attorney, 1000 Custer Hollow Road, Clarksburg, WV 26306.

**SUPPLEMENTARY INFORMATION:** This system of records is maintained by FBI's Criminal Justice Information Services Division (CJIS). The FBI is in the process of replacing the Integrated Automated Fingerprint Identification System (IAFIS) with the NGI system. The IAFIS had provided state-of-the-art fingerprint identification and criminal history services for many years. The NGI system continues to provide fingerprint identification and criminal history services, as well as other biometric services, such as enhanced latent fingerprint, palm print, and face recognition searching. The NGI system also allows for the retention and searching of authorized non-criminal justice fingerprints. The FBI developed NGI in response to the growing demand for IAFIS services, new and different user requirements, and advances in technology. NGI has improved the efficiency, accuracy, and availability of the IAFIS services and has added new biometric identification services for its federal, state, local, tribal, international, and national security partners. NGI was developed in increments and includes the following enhancements: (1) The replacement of the IAFIS fingerprint identification technology with a new search algorithm for improved search accuracy, faster response time, and more efficient processing; (2) a rapid search capability via mobile fingerprint devices of a subset of the NGI criminal and terrorist records; (3) an improvement in latent fingerprint search accuracy and more extensive searching of latent fingerprints against the NGI fingerprint repository; (4) the addition of palm prints as a complementary biometric to fingerprints and a biometric search capability of a national palm print system within NGI; (5) the increased retention and searching of fingerprints of non-criminal justice applicants, employees, volunteers, licensees, and others in positions of public trust; (6) a ''rap back'' service that provides near real-time notice of criminal events of those in positions of public trust to authorized entities; (7) the creation of the interstate photo system, which is a repository of all criminal mugshots maintained in NGI; (8) the addition of face recognition technology to permit law enforcement to search photos against the interstate photo system; (9) the creation of a searchable repository of scars, marks, and tattoos associated with criminal identities.

IAFIS had stored some biometrics (*e.g.*, photos, palm prints) other than fingerprints but these biometrics were not searchable and, consequently, not very useful to the FBI's criminal justice partners. NGI has added to these biometric repositories and has enhanced searching of these repositories. In addition, NGI has improved the searching of latent and non-criminal justice fingerprints. Within NGI, tenprint fingerprints (a set of prints from all ten of a person's fingers) continue to be necessary for the retrieval of a person's identity history summary and confirmation of identity. The dissemination of identity history summaries, which may contain criminal history information, remains a primary purpose of NGI. Biometrics other than tenprint fingerprints do not constitute positive identification and are returned only as investigative leads to users of NGI. The authorized uses and users of IAFIS have remained the same for NGI. Access to and dissemination from the system continues to be authorized under the same laws and policies as IAFIS, including 28 U.S.C. 534, Public Law 92–544 (86 Stat. 1115) and 28 CFR 0.85(b) and (j) and part 20.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this modified system of records.

Dated: April 21, 2016.

**Erika Brown Lee,**

*Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

### JUSTICE/FBI–009

**SYSTEM NAME:**

The Next Generation Identification (NGI) System.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Records described in this notice are maintained at the Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), Clarksburg, WV. Some or all system information may be duplicated at other locations, including at FBI facilities, for purposes of system backup, emergency preparedness, and continuity of operations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

A. Individuals fingerprinted as a result of a criminal inquiry, a lawful detention, an arrest, incarceration, or immigration or other civil law violation;

B. Individuals fingerprinted for the purposes of employment, licensing, military service, or volunteer service;

C. Individuals fingerprinted for the purposes of security clearances, suitability determinations, or other background checks;

D. Individuals fingerprinted for the purposes of immigration benefits, alien registration and naturalization, or other governmental benefits;

E. Individuals whose fingerprints have been obtained pursuant to the FBI's authority to identify and

investigate federal crimes and threats to the national security;

F. Individuals whose fingerprints or other biometrics have been received from foreign countries or international organizations pursuant to sharing agreements;

G. Individuals whose biometrics (*e.g.* palm prints, facial images) have been obtained as a result of a criminal inquiry, a lawful detention, an arrest, incarceration, or immigration or other civil law violation;

H. Individuals who have provided biometrics (*e.g.* palm prints, facial images) for the purposes of employment, licensing, military service, or volunteer service;

I. Individuals who have provided biometrics (*e.g.* palm prints, facial images) for the purposes of security clearances, suitability determinations, or other background checks;

J. Individuals who have provided biometrics (*e.g.* palm prints, facial images) for the purposes of immigration benefits, alien registration and naturalization, or other governmental benefits;

K. Individuals whose biometrics (*e.g.* palm prints, facial images) have been obtained pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

L. Individuals whose fingerprints or other biometrics have been retrieved from locations, property, or persons associated with criminal or national security investigations;

M. Missing persons, unidentified persons, or others whose fingerprints or other biometrics have been submitted in support of disaster response, humanitarian efforts, or similar purposes;

N. Individuals whose fingerprints or other biometrics have been retained at their request or consent for personal identification purposes;

O. Individuals whose biographic and/or biometric information may be retained due to their official duties associated with the processing of system records (*e.g.* system administrators, fingerprint collectors) or in their roles as authorized users of the system.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A. Criminal fingerprint images with related biographic, biometric, and criminal justice information;

B. Civil fingerprint images with related biographic, biometric, and noncriminal justice information;

C. Fingerprint images with related biographic, biometric, and event information maintained for the purposes of national security (*e.g.* known or appropriately suspected terrorists);

D. Fingerprint images with related biographic, biometric, and event information received from federal government agencies pursuant to the FBI's authority to identify and investigate federal crimes and threats to the national security;

E. Fingerprint images with related biographic, biometric, and event information received from foreign countries or international organizations pursuant to sharing agreements;

F. Identity History Summary records that contain the criminal justice information associated with criminal fingerprints (*i.e.* ''rap sheets'') and/or the noncriminal justice information associated with civil fingerprints;

G. A name index pertaining to all individuals whose criminal fingerprint images are maintained in the system (*i.e.* the Interstate Identification Index);

H. Biometric images (*e.g.* palm prints, facial images) maintained for criminal, civil, and/or national security purposes;

I. Latent fingerprints and palm prints and/or other latent biometric images maintained for criminal and/or national security purposes;

J. Unknown facial images and palm prints and/or other unknown biometric images maintained for criminal and/or national security purposes;

K. Fingerprint images and/or other biometric images maintained in support of disaster response, humanitarian efforts, or similar purposes;

L. Fingerprint images with related biographic, biometric, and event information maintained pursuant to an individual's request or consent.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authorities for the maintenance of these records include 28 U.S.C. 534, Pub. L. 92–544 (86 Stat. 1115) and codified in 28 CFR 0.85(b) and (j) and part 20.

**PURPOSE(S):**

The purposes for maintaining the NGI System include identification and criminal history information functions in order to perform non-criminal justice background checks, to enforce criminal laws, to further national security, and to assist with humanitarian efforts. The NGI system maintains and disseminates relevant records to local, state, tribal, federal, foreign, and international criminal justice agencies, as well as non-criminal justice agencies and other entities where authorized by federal statute, state statute pursuant to Pub. L. 92–544, Presidential executive order or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), relevant information contained in this system of records may be disclosed as a routine use, under 5 U.S.C. 552a(b)(3), in accordance with blanket routine uses established for FBI record systems. See Blanket Routine Uses (BRU) Applicable to More Than One FBI Privacy Act System of Records, Justice/FBI–BRU, published at 66 FR 33558 (June 22, 2001) and amended at 70 FR 7513 (February 14, 2005) and 72 FR 3410 (January 25, 2007). In addition, as routine uses specific to this system, the FBI may disclose relevant system records to the following persons or entities and under the circumstance or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. Identification and criminal history records may be disclosed as follows:

A. To local, state, tribal, or federal law enforcement or criminal justice agencies (to include the police, prosecution, penal, probation, parole, and the judiciary) or other authorized federal agencies where such disclosure: (a) May assist the recipient in the performance of its law enforcement, criminal justice, or national security functions, to include the screening of employees or applicants for employment (b) may assist the FBI in performing a law enforcement or national security function (c) may promote, assist, or otherwise serve the mutual efforts of the law enforcement, criminal justice, and national security communities, such as site security screening of visitors to criminal justice facilities and military installations; or (d) may serve a compatible civil law enforcement purpose;

B. To state or local agencies for the purpose of background investigations of applicants for noncriminal justice employment or licensing purposes, or other entities, if authorized by a federal statute (*e.g.* The National Child Protection Act of 1993, Volunteers for Children Act, Adam Walsh Child Protection and Safety Act of 2006) or a state statute pursuant to Pub. L. 92–544. Examples include: Those caring for or in contact with vulnerable populations (children, the elderly, the disabled); nursing and home healthcare professionals; non-profit volunteers; foster/adoptive parents; private security officers; providers of medical services/supplies; employees of federal chartered/insured banking institutions; mortgage loan originators; pari-mutuel

wagering/racing licensees; and firearms or explosives permits/licenses;

C. To authorized police departments of railroads and of private colleges and universities performing the administration of criminal justice;

D. To officials of tribal agencies for the purpose of Indian child care, Indian gaming, or pursuant to a Pub. L. 92–544 state statute;

E. To officials of civil or criminal courts for use in domestic violence or stalking cases;

F. To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies;

G. To private contractors for the purpose of providing services for the administration of criminal justice pursuant to a specific agreement (which must incorporate a Security Addendum approved by the Attorney General of the United States) with a criminal justice agency or a noncriminal justice governmental agency performing criminal justice dispatching functions or data processing/information services for criminal justice agencies;

H. To private contractors pursuant to specific outsourcing agreements with noncriminal justice agencies to provide noncriminal justice administrative functions such as electronic fingerprint submission and response; tracking missing dispositions; and archival, storage, or destruction of criminal history record information;

I. To authorized foreign governments or international agencies where such disclosure: (a) May assist the recipient in the performance of its law enforcement, criminal justice, or national security functions (b) may assist the FBI in performing a law enforcement or national security function (c) may promote, assist, or otherwise serve the mutual efforts of the international community or (d) may serve a compatible civil law enforcement purpose;

J. To the Department of Defense, Department of State, Department of Transportation, Office of Personnel Management, Central Intelligence Agency, or other statutorily authorized federal agency for the purpose of determining the eligibility of a person for access to classified information or assignment to or retention in sensitive national security positions, the Armed Forces, or positions of public trust or other critical or sensitive positions, or other suitability determinations;

K. To federal agencies for use in background investigations of present and prospective federal employees and contractors;

L. To federal agencies for any official duty required by their agency rules, regulations, Executive Order, or statute;

M. To regulatory agencies authorized by federal statute (*e.g.* the Securities and Exchange Commission, the Nuclear Regulatory Commission, the Commodity Futures Trading Commission);

N. To the Department of State for the purpose of determining the eligibility of visa applicants;

O. To the Department of Health and Human Services and Department of Agriculture for the purpose of conducting security risk assessments of individuals handling biological agents or toxins;

P. To the Department of Homeland Security and its components for use in background investigations of individuals with access to secure areas of airports, aircraft, ports, and vessels; commercial drivers of hazardous materials; applicants for aircraft training; those responsible for screening airport passengers and property; those with security functions related to baggage and cargo; and other statutorily authorized populations;

Q. To the National Center for Missing and Exploited Children when acting within its statutory duty to support law enforcement agencies and to governmental social service agencies when acting within their duties to investigate or respond to reports of child abuse, neglect, or exploitation or other legally mandated duties;

R. To public housing authorities for the purpose of conducting background checks of applicants for, or tenants of, public housing and to Indian Tribes or Tribally Designated Housing Entities for the purpose of conducting background checks of adult applicants for employment or housing;

S. To authorized local, state, and federal agencies for the purposes of emergency child placement or emergency disaster response;

T. To authorized local, state, tribal, federal, foreign, or international agencies for humanitarian purposes;

U. To a designated point of contact at a criminal justice agency for the purpose of background checks under the National Instant Criminal Background Check System (NICS);

V. To local, state, or federal law enforcement agencies for the investigation of and issuance of firearms and explosives permits;

W. To government employees, contractors, grantees, experts, consultant, students, or others for research conducted or training performed in accordance with statutory and regulatory requirements, including Parts 22 and 46 of Title 28 of the Code of Federal Regulations;

X. To an individual seeking a copy of his/her own criminal history record information pursuant to 28 CFR 16.30–16.34 for the purposes of review and correction;

Y. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility;

Z. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored in paper and/or electronic format.

**RETRIEVABILITY:**

Records in this system are typically retrieved by fingerprints, biometrics, individual name, and other identifying data, including unique identifying numbers assigned by the FBI or other government agencies. Positive identification is effected only by comparison of fingerprint impressions submitted for search against the fingerprints maintained within the system. Another means of retrieval is through name indices which contain

names of the individuals, their birth data, other physical descriptors, and unique identifying numbers, if such have been assigned.

**SAFEGUARDS:**

All records are maintained in a secure government facility with access limited to only authorized personnel or authorized and escorted visitors. Disclosure of information from the system is made only to authorized recipients upon authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations, and procedures.

**RETENTION AND DISPOSAL:**

Records in this system will be retained and disposed of in accordance with the records schedule approved by the National Archives and Records Administration. In general, fingerprints and associated biometric and biographic information will be destroyed when the subjects attain 110 years of age or 7 years after notification of death with biometric confirmation. Criminal history records and transaction logs are to be permanently retained.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director, Criminal Justice Information Services Division, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, WV 26306.

**NOTIFICATION PROCEDURE:**

Because this system contains information related to the government's law enforcement and national security programs, records in this system have been exempted from subsections (d), (e)(4)(G), (e)(4)(H), and (e)(4)(I) pursuant to subsections (j)(2), (k)(2), and (k)(5) of the Privacy Act.

**RECORD ACCESS PROCEDURES:**

Because this system contains information related to the government's law enforcement and national security programs, this system of records has been exempted from subsections (d) and (e)(4)(H) pursuant to subsections (j)(2), (k)(2), and (k)(5) of the Privacy Act. However, procedures are set forth at 28 CFR 16.30–16.34 and 20.24 for an individual to obtain a copy of his/her identification record maintained in NGI to review or to obtain a change, correction, or updating of the record.

**CONTESTING RECORD PROCEDURES:**

Same as above.

**RECORD SOURCE CATEGORIES:**

Federal, state, local, tribal, foreign, and international agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G) (H) and (I), (5) and (8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted this system from (c)(3), (d), (e)(1), and (e)(4)(G) and (H), pursuant to (k)(2) and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**.

[FR Doc. 2016–10120 Filed 5–4–16; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

**[CPCLO Order No. 003–2016]**

### Privacy Act of 1974; Implementation

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Elsewhere in the **Federal Register**, the Federal Bureau of Investigation (FBI), a component of the Department of Justice (Department or DOJ), has published a notice of a modified Privacy Act system of records, ''The Next Generation Identification (NGI) System,'' JUSTICE/FBI–009. In this notice of proposed rulemaking, the FBI proposes to exempt this system from certain provisions of the Privacy Act in order to prevent interference with the FBI's mission to detect, deter, and prosecute crimes and to protect the national security, which includes the use of criminal history record information and biometric identifiers. For the reasons provided below, the Department proposes to amend its Privacy Act regulations by establishing an exemption for records in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). Public comment is invited.

**DATES:** Comments must be received by June 6, 2016.

**ADDRESSES:** Address all comments to the Privacy Analyst, Privacy and Civil Liberties Office, National Place Building, 1331 Pennsylvania Ave. NW., Suite 1000, Washington, DC 20530–0001 or facsimile 202–307–0693. To ensure proper handling, please reference the CPCLO Order No. on your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov.* You may also comment via the Internet to either the Privacy and Civil Liberties Office at DOJ Privacy ACT *ProposedRegulations@usdoj.gov*; or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the CPCLO Order No. in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

*Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

**FOR FURTHER INFORMATION CONTACT:** Roxane M. Panarella, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC 20535–0001, telephone 304–625–4000.

**SUPPLEMENTARY INFORMATION:** In the Notice section of today's **Federal Register**, the FBI has established a modified Privacy Act system of records, ''The Next Generation Identification (NGI) System,'', JUSTICE/FBI–009. The system serves as a repository for FBI information and for information lawfully received from federal, state, local, tribal, foreign, and other governmental partners. It provides fingerprint identification and criminal history services, as well as biometric services such as latent fingerprint, palm print, and face recognition. In this rulemaking, the FBI proposes to exempt this Privacy Act system of records from certain provisions of the Privacy Act in order to prevent interference with the responsibilities of the FBI to detect, deter, and prosecute crimes and to protect the national security.

#### Regulatory Flexibility Act

This proposed rule relates to individuals rather than small business entities. Pursuant to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities.

#### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.,* requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/archive/sum_sbrefa.html.*

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to this system are created by the FBI or other law enforcement and governmental entities and sharing of this information electronically will not increase the paperwork burden on the public.

#### Analysis of Regulatory Impacts

This proposed rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866 and therefore further regulatory evaluation is not necessary. This proposed rule will not have a significant economic impact on a substantial

number of small entities because it applies only to information about individuals.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 103–3, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

**List of Subjects in 28 CFR Part 16**

Administrative practices and procedures, Courts, Freedom of information, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, it is proposed to amend 28 CFR part 16 as follows:

## PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

## Subpart E—Exemption of Records Systems Under the Privacy Act

**§ 16.96 [Amended]**

■ 2. Amend by revising § 16.96 paragraph (e) as follows:

**§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.**

* * * * *

(e) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3); (e)(4)(G), (H)(I); (e) (5) and (8); (f) and (g) of the Privacy Act:

(1) The Next Generation Identification (NGI) System (JUSTICE/FBI–009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k). Where compliance would not appear to interfere with or adversely affect the purpose of this system to detect, deter, and prosecute crimes and to protect the national security, the applicable exemption may be waived by the FBI in its sole discretion.

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal investigative interest by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and national security efforts and may permit the record subject with the opportunity to evade or impede the investigation.

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting of disclosures provision of subsection (c)(3). The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases.

(3) From subsection (d)(1), (2), (3) and (4), (e)(4)(G) and (H), (e)(8), (f) and (g) because these provisions concern individual access to and amendment of law enforcement records and compliance could alert the subject of an authorized law enforcement activity about that particular activity and the interest of the FBI and/or other law enforcement agencies. Providing access could compromise sensitive law enforcement information, disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative technique; could provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses. Also, an alternate system of access has been provided in 28 CFR 16.30 to 34 and 28 CFR 20.34 for record subjects to obtain a copy of their criminal history records. However, the vast majority of criminal history records concern local arrests for which it would be inappropriate for the FBI to undertake correction or amendment.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement purposes. The relevance and utility of certain information may not always be evident until and unless it is vetted and matched with other sources of information that are necessarily and lawfully maintained by the FBI. Most records in this system are acquired from state and local law enforcement agencies and it is not possible for the FBI to review that information as relevant and necessary.

(5) From subsection (e)(2) and (3) because application of this provision could present a serious impediment to the FBI's responsibilities to detect, deter, and prosecute crimes and to protect the national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension. Also, the majority of criminal history records and associated biometrics in this system are collected by state and local agencies at the time of arrest; therefore it is not feasible for the FBI to collect directly from the individual or to provide notice. Those persons who voluntarily submit fingerprints into this system pursuant to state and federal statutes for licensing, employment, and similar civil purposes receive an (e)(3) notice.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With time, seemingly irrelevant or untimely information may acquire new significance when new details are brought to light. Additionally, the information may aid in establishing patterns of activity and providing criminal leads. Most records in this system are acquired from state and local law enforcement agencies and it would be impossible for the FBI to vouch for the compliance of these agencies with this provision. The FBI does communicate to these agencies the need for accurate and timely criminal history

records, including criminal dispositions.

Dated: April 21, 2016.

**Erika Brown Lee,**

*Chief Privacy and Civil Liberties Officer, Department of Justice.*

[FR Doc. 2016–10119 Filed 5–4–16; 8:45 am]

**BILLING CODE 4410–02–P**


# FEDERAL REGISTER

Vol. 81 Thursday,
No. 87 May 5, 2016

Part V

## The President

Notice of May 3, 2016—Continuation of the National Emergency With Respect to Actions of the Government of Syria

Federal Register
Vol. 81, No. 87
Thursday, May 5, 2016

# Presidential Documents

**Title 3—**

**The President**

**Notice of May 3, 2016**

## Continuation of the National Emergency With Respect to Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order (E.O.) 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, E.O. 13338 authorized the blocking of property of certain persons and prohibited the exportation or re-exportation of certain goods to Syria. The national emergency was modified in scope and relied upon for additional steps taken in E.O. 13399 of April 25, 2006, E.O. 13460 of February 13, 2008, E.O. 13572 of April 29, 2011, E.O. 13573 of May 18, 2011, E.O. 13582 of August 17, 2011, E.O. 13606 of April 22, 2012, and E.O. 13608 of May 1, 2012.

The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq.

The regime's brutality and repression of the Syrian people, who have been calling for freedom and a representative government, not only endangers the Syrian people themselves, but also is generating instability throughout the region. The Syrian regime's actions and policies, including with respect to chemical and biological weapons, supporting terrorist organizations, and obstructing the Lebanese government's ability to function effectively, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures to deal with that emergency adopted on that date in E.O. 13338; on April 25, 2006, in E.O. 13399; on February 13, 2008, in E.O. 13460; on April 29, 2011, in E.O. 13572; on May 18, 2011, in E.O. 13573; on August 17, 2011, in E.O. 13582; on April 22, 2012, in E.O. 13606; and on May 1, 2012, in E.O. 13608; must continue in effect beyond May 11, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the Asad regime's use of brutal violence and human rights abuses and calls on the Asad regime to stop its violence against the Syrian people, uphold the Cessation of Hostilities, enable the delivery of humanitarian assistance, and allow a political transition in Syria that will forge a credible path to a future of greater freedom, democracy, opportunity, and justice.

The United States will consider changes in the composition, policies, and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
*May 3, 2016.*

[FR Doc. 2016–10771
Filed 5–4–16; 11:15 am]
Billing code 3295–F6–P

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**Federal Register**

Vol. 81, No. 87

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**H.R. 1670/P.L. 114–147**
National POW/MIA Remembrance Act of 2015 (Apr. 29, 2016; 130 Stat. 358)

**H.R. 2722/P.L. 114–148**
Breast Cancer Awareness Commemorative Coin Act (Apr. 29, 2016; 130 Stat. 360)

**S. 719/P.L. 114–149**
To rename the Armed Forces Reserve Center in Great Falls, Montana, the Captain John E. Moran and Captain William Wylie Galt Armed Forces Reserve Center. (Apr. 29, 2016; 130 Stat. 365)

**S. 1638/P.L. 114–150**
Department of Homeland Security Headquarters Consolidation Accountability Act of 2015 (Apr. 29, 2016; 130 Stat. 366)

**Last List April 21, 2016**

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