FEDERAL REGISTER

Vol. 82 Thursday,

No. 211 November 2, 2017

Pages 50799–51148

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Presidential Documents

Title 3—

The President

Notice of October 31, 2017

Continuation of the National Emergency With Respect to Sudan

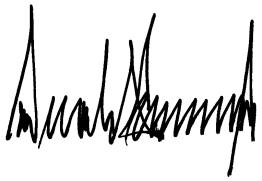
On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and took related steps to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Sudan. On April 26, 2006, by Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency declared in Executive Order 13067, and ordered the blocking of property of certain persons connected to the Darfur region. On October 13, 2006, by Executive Order 13412, the President took additional steps with respect to the national emergency declared in Executive Order 13067 and expanded in Executive Order 13400. In Executive Order 13412, the President also took steps to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

On January 13, 2017, by Executive Order 13761, the President found that positive efforts by the Government of Sudan between July 2016 and January 2017 improved certain conditions that Executive Orders 13067 and 13412 were intended to address. Given these developments, and in order to encourage the Government of Sudan to sustain and enhance these efforts, section 1 of Executive Order 13761 provided that sections 1 and 2 of Executive Order 13067 and the entirety of Executive Order 13412 would be revoked as of July 12, 2017, provided that the criteria in section 12(b) of Executive Order 13761 had been met.

On July 11, 2017, by Executive Order 13804, I amended Executive Order 13761, extending until October 12, 2017, the effective date in section 1 of Executive Order 13761.

Despite recent positive developments, the crisis constituted by the actions and policies of the Government of Sudan that led to the declaration of a national emergency in Executive Order 13067 of November 3, 1997; the expansion of that emergency in Executive Order 13400 of April 26, 2006; and with respect to which additional steps were taken in Executive Order 13412 of October 13, 2006, Executive Order 13761 of January 13, 2017, and Executive Order 13804 of July 11, 2017, has not been resolved. These actions and policies continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. I have, therefore, determined that it is necessary to continue the national emergency declared in Executive Order 13067, as expanded by Executive Order 13400, with respect to Sudan.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 31, 2017.

[FR Doc. 2017–24016
11–1–17; 8:45 am]
Billing code 3295–F8–P

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

CFR Correction

In Title 5 of the Code of Federal Regulations, Parts 1 to 699, revised as of January 1, 2017, in Appendix C to Subpart B of part 532: On page 469, under NEW YORK, the wage area listing for Newburgh is removed; and on page 482, under WASHINGTON, in the Southeastern Washington-Eastern Oregon wage area listing, *Area of application. Survey area plus:,* under Washington, Columbia is added.

[FR Doc. 2017–23913 Filed 11–1–17; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2017–0049]

Black Stem Rust; Additions of Rust-Resistant Species and Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On September 5, 2017, the Animal and Plant Health Inspection Service published a direct final rule. The direct final rule notified the public of our intention to amend the black stem rust quarantine and regulations by adding 15 varieties to the list of rust-resistant *Berberis* species and varieties and 2 varieties to the list of rust-resistant *Mahonia* species and varieties. We received two comments, which are addressed in this document.

DATES: The effective date of the direct final rule published September 5, 2017, at 82 FR 41825–41827, is confirmed as November 6, 2017.

FOR FURTHER INFORMATION CONTACT: Dr. Richard N. Johnson, National Policy Manager, Black Stem Rust, Pest Management, PHP, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1231; (301) 851–2109.

SUPPLEMENTARY INFORMATION: Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus (*Puccinia graminis*) that reduces the quality and yield of infected wheat, oat, barley, and rye crops. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia.* The fungus is spread from host to host by windborne spores.

The black stem rust quarantine and regulations, which are contained in 7 CFR 301.38 through 301.38–8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks.

On September 5, 2017, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (82 FR 41825–41827, Docket No. APHIS–2017–0049) a direct final rule [1] to amend the black stem rust quarantine and regulations by adding 15 varieties to the list of rust-resistant *Berberis* species and varieties and 2 varieties to the list of rust-resistant *Mahonia* species and varieties.

We solicited comments on the rule for 30 days ending October 5, 2017, and indicated that, if we received written adverse comments or written notice of intent to submit adverse comments, we would publish a document in the **Federal Register** withdrawing the direct final rule before the effective date.

We received two comments by that date, neither of which we consider to be adverse. One commenter questioned why rust-resistant plants must be regulated—including being added to the black stem rust quarantine and regulations list, as well as being accompanied by a certificate if moved interstate—if they do not pose a risk of spreading black stem rust.

APHIS' quarantine of the 48 conterminous States and the District of Columbia and restrictions on the interstate movement of *Berberis, Mahoberberis,* and *Mahonia* spp. plants are imposed to ensure that those plants do not pose a risk of spreading black stem rust or contributing to the development of new races of the rust. All plants of the genera *Berberis, Mahoberberis,* and *Mahonia* are considered regulated articles, though aspects of their regulation may vary depending on their designation as either rust-resistant or rust-susceptible. Certificates that accompany rust-resistant species of barberry plants serve as a means to identify them and allow for their interstate movement into or through designated protected areas as defined in the regulations; rust-susceptible species of barberry plants are prohibited from such movement interstate.

The other commenter questioned the reliability of testing protocols to determine a plant's rust resistance, and requested assurance based on evidence that the sample size used to determine rust resistance is adequate to determine an overall species' resistance.

Testing performed by the Agricultural Research Service of the United States Department of Agriculture (USDA) at its Cereal Disease Laboratory in St. Paul, MN has been used to effectively determine rust resistance for more than 50 years. Based on our extensive experience with this test, we believe that 12—in any of the combinations described in the direct final rule—is the reliable test sample size on which USDA can make its determination. We do not know of any plant that was subsequently discovered to be rust-susceptible after undergoing the test procedure 12 times and being determined by USDA to be rust-resistant.

Therefore, for the reasons given in the direct final rule and in this document, we are confirming the effective date as November 6, 2017.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

[1] To view the direct final rule and the comments received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0049.*

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 30th day of October 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–23897 Filed 11–1–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4279

Guaranteed Loanmaking

CFR Correction

In Title 7 of the Code of Federal Regulations, Part 2000 to End, revised as of January 1, 2017, on page 749, § 4279.162 is added to read as follows:

§ 4279.162 Strategic economic and community development.

Applicants with projects that support the implementation of strategic economic development and community development plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic economic development and community development plans on a Multi-jurisdictional basis.

[81 FR 10457, Mar. 1, 2016]

[FR Doc. 2017–23912 Filed 11–1–17; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AO44

Schedule for Rating Disabilities; The Endocrine System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD) by revising the portion of the Schedule that addresses endocrine conditions and disorders of the endocrine system. The effect of this action is to ensure that the VASRD uses current medical terminology and to provide detailed and updated criteria for evaluation of endocrine disorders.

DATES: This rule is effective on December 10, 2017.

FOR FURTHER INFORMATION CONTACT: Ioulia Vvedenskaya, Medical Officer, Part 4 VASRD Regulations Staff (211C), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, *Ioulia.Vvedenskaya@va.gov,* (202) 461–9700 (this is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: VA published a proposed rule in the **Federal Register** at 80 FR 39011 on July 8, 2015, to amend the portion of the VASRD dealing with endocrine disorders. VA provided a 60-day public comment period, and interested persons were invited to submit written comments, suggestions, or objections on or before September 8, 2015. VA received comments from four individuals. In addition, VA received a comment from a veterans service organization. Unless otherwise indicated below, VA adopts the changes set forth in the proposed rule.

Public Comments

One commenter asked whether VA would recognize polycystic ovarian syndrome (PCOS) under the VA rating schedule. VA has a mechanism in place to address PCOS under 38 CFR 4.116. Specifically, the rating schedule for Gynecological Conditions and Disorders of the Breast addresses various ovarian conditions under Diagnostic Code (DC) 7615, ''Ovary, disease, injury, or adhesions of'' and allows VA to rate based on whether symptoms are controlled by or require continuous treatment. In exceptional cases where the schedular evaluation is inadequate, 38 CFR 3.321 allows for extraschedular evaluation. Therefore, VA makes no changes based on this comment.

Two commenters proposed additional modifications to DC 7913, ''Diabetes mellitus.'' One commenter suggested adding a note to address the issue of regulation of activities. Another commenter suggested not changing the insulin requirements within DC 7913 without considering the other requirements in the DC such as regulation of activities. The same commenter suggested removing the insulin requirement for a 20-percent rating and the regulation of activities requirement at all disability ratings under the DC. The commenter stated that the functional impairment caused by required use of insulin is greater than impairment caused by ingestion of oral medication to control diabetes. As stated in the proposed rule, VA is not proposing any change to the evaluation criteria for DC 7913 at this time other than requiring ''one or more daily injection'' of insulin for a 20-, 40- or 60-percent rating and instead intends to establish a work group to specifically address this condition. Therefore, these comments are beyond the scope of this rulemaking. However, VA will take these comments into consideration in connection with a possible future rulemaking.

One commenter suggested changing the terminology for a 100-percent rating under DC 7903, ''Hypothyroidism'' from ''myxedema'' to ''myxedema coma or crisis'' because myxedema can be present without causing the requisite level of symptoms for a 100-percent rating. Myxedema is a term used to denote severe hypothyroidism, and myxedema coma or myxedema crisis is a medical emergency and represents a specific rare life-threatening clinical condition. Because the clinical picture of myxedema appears in the most extreme cases of hypothyroidism, we believe that this manifestation of the disability warrants a 100-percent rating (See Greenspan's Basic & Clinical Endocrinology (D.G. Gardner et al. eds., 9th ed. 2011) available at *http://accessmedicine.mhmedical.com/content.aspx?bookid=380&sectionid=39744047#8401831*). Therefore, VA makes no changes based on this comment.

The same commenter proposed that VA retain a 10-percent minimum evaluation in the DCs for endocrine disabilities because of the need for continuous medication to control the symptoms of these disabilities. VA disagrees. In the absence of symptoms, medical management of chronic endocrine disorders does not present a significant lifestyle adjustment, and it does not result in impairment of earning capacity (see 38 U.S.C. 1155). Therefore, VA makes no changes based on this comment.

The same commenter noted a typographical error in the text of proposed DC 7911. The word ''adrenocortical'' was misspelled as ''adrenalcortical.'' VA has changed the spelling of the term based on this comment.

One commenter was supportive of the overall changes and additions to this section of the VASRD, such as additional DCs, clarification of notes on residuals affecting other body systems, instructions to rate some residuals separately, accounting for additional symptoms, and formation of a new work group for diabetes mellitus. The

commenter also commented that proposed DCs 7900 (Hyperthyroidism), 7903 (Hypothyroidism), and 7905 (Hypoparathyroidism) do not adequately account for disability due to uncontrolled thyroid hormone or calcium imbalance because proposed DCs 7900 and 7903 only provide a 30-percent rating for symptoms existing for up to six months after diagnosis and proposed DC 7905 provides a 100-percent rating for symptoms occurring for up to three months after diagnosis; thereafter, residual effects are rated under the body system affected by the endocrine disability. The commenter stated that endocrine function may still be disturbed while the correct dosage of medication is being determined and that some patients may not have received treatment.

We first point out that the ratings under DC 7900 and 7903 are for ''six months after initial diagnosis'' and the rating under DC 7905 is for ''three months after initial diagnosis.'' Thus, the claimants are likely receiving treatment. In addition, as VA explained in the notice of proposed rulemaking, most symptoms of hyperthyroidism and hypothyroidism are alleviated within six months of treatment (see 80 FR 39011, 39013 (Jul. 8, 2015)).

With regard to residual symptoms, the primary effect of chronic hyperthyroidism, hypothyroidism, and hypoparathyroidism is on body systems regulated by the thyroid. Therefore, in cases where veterans still have symptoms after six months for hyperthyroidism or hypothyroidism or after three months for hypoparathyroidism, VA addresses residual symptoms by rating all residuals based on the specific disability presented under the most appropriate DCs within the appropriate body system(s).

The residuals of endocrine disorders such as uncontrolled thyroid hormone or calcium imbalance produce measurable disability including muscle damage, blood-clotting issues, nerve and kidney damage, depression, and many others. Therefore, VA makes no changes based on this comment.

The commenter also stated that VA has not provided a reasoned argument for eliminating a 10-percent evaluation when continued medication is required under DCs 7900 and 7903. Ratings under the schedule are ''based, as far as practicable, upon the average impairments of earning capacity resulting from [specific] injuries'' or combination of injuries (see 38 U.S.C. 1155). As detailed above, VA explained in the notice of proposed rulemaking that symptoms of hyperthyroidism and hypothyroidism generally resolve completely within six months after diagnosis and that symptoms of hypoparathyroidism are generally eliminated following treatment with calcium and vitamin D supplementation (see 80 FR 39011, 39012–14 (Jul. 8, 2015)). Because symptoms are generally eliminated or minimal once a patient receives appropriate medication, there is no impairment of earning capacity and therefore no need to retain the 10-percent rating under DCs 7900, 7903, and 7905. As explained above, any disabling residuals may be rated under the most appropriate rating code. Further, if medication is discontinued and symptoms reappear, the disability could again be rated under the schedule for rating disabilities of the endocrine system.

The same commenter suggested that proposed DC 7912 should account for residuals of common treatment procedures such as the Whipple procedure, which is also used for the treatment of pancreatic cancer. VA regulations allow for secondary service connection for disabilities that are proximately due to or the result of a service-connected disease or injury (see 38 CFR 3.310(a)). Disabilities that are secondarily service connected and have distinguishable symptoms, to include disabilities that arise from the treatment of a service-connected disability, are rated separately under the VA rating schedule. Therefore, VA makes no changes based on this comment.

The same commenter proposed that VA amend DCs 7901 and 7902 to account for the specific characteristics of disfigurement due to thyroid enlargement rather than rating such disfigurement under DC 7800 because the criteria in DC 7800 do not match the features of thyroid enlargement. The commenter provided two examples of this alleged inconsistency, cystic thyroid nodules requiring draining and soft swelling of the neck. If disfigurement related to thyroid enlargement does not satisfy the criteria in DC 7800, the disfigurement does not result in impairment of earning capacity and is not compensable (see 38 U.S.C. 1155). Therefore, VA makes no changes based on these comments.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the change noted.

We are additionally adding updates to 38 CFR part 4, Appendices A, B, and C, to reflect changes to the endocrine system rating criteria made by this rulemaking. The appendices are tools for users of the VASRD and do not contain substantive content regarding evaluation of disabilities. As such, we believe it is appropriate to include these updates in this final rule.

Benefits Costs

The change to the proposed rule will not alter the estimated costs provided in the previous Notice of Proposed Rulemaking.

Effective Date of Final Rule

Veterans Benefits Administration (VBA) personnel utilize the Veterans Benefit Management System for Rating (VBMS–R) to process disability compensation claims that involve disability evaluations made under the VASRD. In order to ensure that there is no delay in processing veterans' claims, VA must coordinate the effective date of this final rule with corresponding VBMS–R system updates. As such, this final rule will apply effective December 10, 2017, the date VBMS–R system updates related to this final rule will be complete.

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and have been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not directly affect any small entities. Only certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.009, Veterans Medical Care Benefits; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on April 19, 2017, for publication.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: April 19, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs

Editor's Note: This document was received for publication at the Office of the Federal Register on October 19, 2017.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 4 as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. Amend § 4.104 by revising the entry for 7008 to read as follows:

§ 4.104 Schedule of ratings-cardiovascular system.

DISEASES OF THE HEART

	Rating
* * * * *	
7008 Hyperthyroid heart disease. Rate under the appropriate cardiovascular diagnostic code, depending on particular findings.	
* * * * *	

■ 3. Amend § 4.119 by:

■ a. Revising the entries for 7900 through 7905;

■ b. Adding in numerical order an entry for 7906; and

■ c. Revising the entries for 7907 through 7909, 7911 through 7913, and 7915 through 7919.

The revisions and addition read as follows:

§ 4.119 Schedule of ratings—endocrine system.

	Rating
7900 Hyperthyroidism, including, but not limited to, Graves' disease:	
For six months after initial diagnosis	30
Thereafter, rate residuals of disease or complications of medical treatment within the appropriate diagnostic code(s) within the appropriate body system.	
Note (1): If hyperthyroid cardiovascular or cardiac disease is present, separately evaluate under DC 7008 (hyperthyroid heart disease).	
Note (2): Separately evaluate eye involvement occurring as a manifestation of Graves' Disease as diplopia (DC 6090); impairment of central visual acuity (DCs 6061–6066); or under the most appropriate DCs in § 4.79.	
7901 Thyroid enlargement, toxic:	
Note (1): Evaluate symptoms of hyperthyroidism under DC 7900, hyperthyroidism, including, but not limited to, Graves' disease.	
Note (2): If disfigurement of the neck is present due to thyroid disease or enlargement, separately evaluate under DC 7800 (burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck).	
7902 Thyroid enlargement, nontoxic:	
Note (1): Evaluate symptoms due to pressure on adjacent organs (such as the trachea, larynx, or esophagus) under the appropriate diagnostic code(s) within the appropriate body system.	
Note (2): If disfigurement of the neck is present due to thyroid disease or enlargement, separately evaluate under DC 7800 (burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck).	
7903 Hypothyroidism:	

	Rating
Hypothyroidism manifesting as myxedema (cold intolerance, muscular weakness, cardiovascular involvement (including, but not limited to hypotension, bradycardia, and pericardial effusion), and mental disturbance (including, but not limited to dementia, slowing of thought and depression))	100
Note (1): This evaluation shall continue for six months beyond the date that an examining physician has determined crisis stabilization. Thereafter, the residual effects of hypothyroidism shall be rated under the appropriate diagnostic code(s) within the appropriate body system(s) (*e.g.,* eye, digestive, and mental disorders).	
Hypothyroidism without myxedema	30
Note (2): This evaluation shall continue for six months after initial diagnosis. Thereafter, rate residuals of disease or medical treatment under the most appropriate diagnostic code(s) under the appropriate body system (*e.g.,* eye, digestive, mental disorders).	
Note (3): If eye involvement, such as exophthalmos, corneal ulcer, blurred vision, or diplopia, is also present due to thyroid disease, also separately evaluate under the appropriate diagnostic code(s) in § 4.79, Schedule of Ratings—Eye (such as diplopia (DC 6090) or impairment of central visual acuity (DCs 6061–6066)).	
7904 Hyperparathyroidism:	
For six months from date of discharge following surgery	100
Note (1): After six months, rate on residuals under the appropriate diagnostic code(s) within the appropriate body system(s) based on a VA examination.	
Hypercalcemia (indicated by at least one of the following: Total Ca greater than 12 mg/dL (3–3.5 mmol/L), Ionized Ca greater than 5.6 mg/dL (2–2.5 mmol/L), creatinine clearance less than 60 mL/min, bone mineral density T-score less than 2.5 SD (below mean) at any site or previous fragility fracture)	60
Note (2): Where surgical intervention is indicated, this evaluation shall continue until the day of surgery, at which time the provisions pertaining to a 100-percent evaluation shall apply.	
Note (3): Where surgical intervention is not indicated, this evaluation shall continue for six months after pharmacologic treatment begins. After six months, rate on residuals under the appropriate diagnostic code(s) within the appropriate body system(s) based on a VA examination.	
Symptoms such as fatigue, anorexia, nausea, or constipation that occur despite surgery; or in individuals who are not candidates for surgery but require continuous medication for control	10
Asymptomatic	0
Note (4): Following surgery or other treatment, evaluate chronic residuals, such as nephrolithiasis (kidney stones), decreased renal function, fractures, vision problems, and cardiovascular complications, under the appropriate diagnostic codes.	
7905 Hypoparathyroidism:	
For three months after initial diagnosis	100
Thereafter, evaluate chronic residuals, such as nephrolithiasis (kidney stones), cataracts, decreased renal function, and congestive heart failure under the appropriate diagnostic codes.	
7906 Thyroiditis:	
With normal thyroid function (euthyroid)	0
Note: Manifesting as hyperthyroidism, evaluate as hyperthyroidism, including, but not limited to, Graves' disease (DC 7900); manifesting as hypothyroidism, evaluate as hypothyroidism (DC 7903).	
7907 Cushing's syndrome:	
As active, progressive disease, including areas of osteoporosis, hypertension, and proximal upper and lower extremity muscle wasting that results in inability to rise from squatting position, climb stairs, rise from a deep chair without assistance, or raise arms	100
Proximal upper or lower extremity muscle wasting that results in inability to rise from squatting position, climb stairs, rise from a deep chair without assistance, or raise arms	60
With striae, obesity, moon face, glucose intolerance, and vascular fragility	30
Note: The evaluations specifically indicated under this diagnostic code shall continue for six months following initial diagnosis. After six months, rate on residuals under the appropriate diagnostic code(s) within the appropriate body system(s).	
7908 Acromegaly:	
Evidence of increased intracranial pressure (such as visual field defect), arthropathy, glucose intolerance, and either hypertension or cardiomegaly	100
Arthropathy, glucose intolerance, and hypertension	60
Enlargement of acral parts or overgrowth of long bones	30
7909 Diabetes insipidus:	
For three months after initial diagnosis	30
Note: Thereafter, if diabetes insipidus has subsided, rate residuals under the appropriate diagnostic code(s) within the appropriate body system.	
With persistent polyuria or requiring continuous hormonal therapy	10
7911 Addison's disease (adrenocortical insufficiency):	
Four or more crises during the past year	60
Three crises during the past year, or; five or more episodes during the past year	40
One or two crises during the past year, or; two to four episodes during the past year, or; weakness and fatigability, or; corticosteroid therapy required for control	20
Note (1): An Addisonian ''crisis'' consists of the rapid onset of peripheral vascular collapse (with acute hypotension and shock), with findings that may include: anorexia; nausea; vomiting; dehydration; profound weakness; pain in abdomen, legs, and back; fever; apathy, and depressed mentation with possible progression to coma, renal shutdown, and death.	
Note (2): An Addisonian ''episode,'' for VA purposes, is a less acute and less severe event than an Addisonian crisis and may consist of anorexia, nausea, vomiting, diarrhea, dehydration, weakness, malaise, orthostatic hypotension, or hypoglycemia, but no peripheral vascular collapse.	
Note (3): Tuberculous Addison's disease will be evaluated as active or inactive tuberculosis. If inactive, these evaluations are not to be combined with the graduated ratings of 50 percent or 30 percent for non-pulmonary tuberculosis specified under § 4.88b. Assign the higher rating.	
7912 Polyglandular syndrome (multiple endocrine neoplasia, autoimmune polyglandular syndrome):	

	Rating
Evaluate according to major manifestations to include, but not limited to, Type I diabetes mellitus, hyperthyroidism, hypothyroidism, hypoparathyroidism, or Addison's disease.	
7913 Diabetes mellitus:	
Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated	100
Requiring one or more daily injection of insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated	60
Requiring one or more daily injection of insulin, restricted diet, and regulation of activities	40
Requiring one or more daily injection of insulin and restricted diet, or; oral hypoglycemic agent and restricted diet	20
Manageable by restricted diet only	10
Note (1): Evaluate compensable complications of diabetes separately unless they are part of the criteria used to support a 100-percent evaluation. Noncompensable complications are considered part of the diabetic process under DC 7913.	
Note (2): When diabetes mellitus has been conclusively diagnosed, do not request a glucose tolerance test solely for rating purposes.	
* * * * * * *	
7915 Neoplasm, benign, any specified part of the endocrine system:	
Rate as residuals of endocrine dysfunction.	
7916 Hyperpituitarism (prolactin secreting pituitary dysfunction):	
Note: Evaluate as malignant or benign neoplasm, as appropriate.	
7917 Hyperaldosteronism (benign or malignant):	
Note: Evaluate as malignant or benign neoplasm, as appropriate.	
7918 Pheochromocytoma (benign or malignant):	
Note: Evaluate as malignant or benign neoplasm as appropriate.	
7919 C-cell hyperplasia of the thyroid:	
If antineoplastic therapy is required, evaluate as a malignant neoplasm under DC 7914. If a prophylactic thyroidectomy is performed (based upon genetic testing) and antineoplastic therapy is not required, evaluate as hypothyroidism under DC 7903.	
* * * * * * *	

■ 4. Amend the table in appendix A to part 4 in the entries for Sec. 4.104 and Sec. 4.119 by:
■ a. Revising the entry for 7008;
■ b. Revising the entries for 7900 through 7905;
■ c. Adding in numerical order an entry for 7906; and
■ d. Revising the entries for 7907 through 7909, 7911 through 7913, and 7915 through 7919.

The revisions and addition read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic code No.	
*	*	* * * * * *
	7008	Evaluation January 12, 1998; criterion December 10, 2017.
*	*	* * * * * *
4.119	7900	Criterion August 13, 1981; evaluation June 9, 1996; title December 10, 2017; evaluation December 10, 2017; criterion December 10, 2017; note December 10, 2017.
	7901	Criterion August 13, 1981; evaluation June 9, 1996; title December 10, 2017; evaluation December 10, 2017; criterion December 10, 2017; note December 10, 2017.
	7902	Evaluation August 13, 1981; criterion June 9, 1996; title December 10, 2017; evaluation December 10, 2017; criterion December 10, 2017; note December 10, 2017.
	7903	Criterion August 13, 1981; evaluation June 9, 1996; evaluation December 10, 2017; criterion December 10, 2017; note December 10, 2017.
	7904	Criterion August 13, 1981; evaluation June 9, 1996; evaluation December 10, 2017; criterion December 10, 2017; note *December 10, 2017.*
	7905	Evaluation; August 13, 1981; evaluation June 9, 1996; evaluation December 10, 2017; criterion December 10, 2017.
	7906	Added December 10, 2017.
	7907	Evaluation; August 13, 1981; evaluation June 9, 1996; criterion December 10, 2017; note December 10, 2017.
	7908	Criterion August 13, 1981; criterion June 9, 1996; criterion December 10, 2017.
	7909	Evaluation August 13, 1981; criterion June 9, 1996; evaluation June 9, 1996; criterion December 10, 2017; evaluation *December 10, 2017;* note *December 10, 2017.*
	7910	Removed June 9, 1996.
	7911	Evaluation March 11, 1969; evaluation August 13, 1981; criterion June 9, 1996; title December 10, 2017; note *December 10, 2017.*
	7912	Title December 10, 2017; criterion *December 10, 2017.*
	7913	Criterion September 9, 1975; criterion August 13, 1981; criterion June 6, 1996; evaluation June 9, 1996; criterion December 10, 2017; note *December 10, 2017.*

Sec.	Diagnostic code No.	
*	*	* * * * * * *
	7915	Criterion June 9, 1996; criterion *December 10, 2017.*
	7916	Added June 9, 1996; note *December 10, 2017.*
	7917	Added June 9, 1996; note *December 10, 2017.*
	7918	Added June 9, 1996; note *December 10, 2017.*
	7919	Added June 9, 1996; evaluation June 9, 1996; criterion December 10, 2017; note *December 10, 2017.*
*	*	* * * * * * *

■ 5. Amend Appendix B to part 4 by:

■ a. Revising the entries for diagnostic codes 7900 through 7902;

■ b. Adding, in numerical order, an entry for diagnostic code 7906; and

■ c. Revising the entries for diagnostic codes 7911 and 7912.

The revisions and addition read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic code No.	
*	* * * * * * *
	THE ENDOCRINE SYSTEM
7900	Hyperthyroidism, including, but not limited to, Graves' disease.
7901	Thyroid enlargement, toxic.
7902	Thyroid enlargement, nontoxic.
*	* * * * * * *
7906	Thyroiditis.
*	* * * * * * *
7911	Addison's disease (adrenocortical insufficiency).
7912	Polyglandular syndrome (multiple endocrine neoplasia, autoimmune polyglandular syndrome).
*	* * * * * * *

■ 6. Amend Appendix C to Part 4 as follows:

■ a. Add, in alphabetical order, entries for ''Graves' disease'' and ''Polyglandular syndrome'';

■ b. Revise the entry for ''Thyroid gland''; and

■ c. Add, in alphabetical order, an entry for ''Thyroiditis''.

The additions and revision read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

	Diagnostic code No.
* * * * *	
Graves' disease	7900
* * * * *	
Polyglandular syndrome	7912
* * * * *	
Thyroid gland.	
Nontoxic thyroid enlargement	7902
Toxic thyroid enlargement	7901
Thyroiditis	7906
* * * * *	

[FR Doc. 2017–23044 Filed 11–1–17; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0327; FRL–9970–14–Region 5]

Air Plan Approval; Minnesota; State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) submission from Minnesota addressing the state board requirements of the Clean Air Act (CAA). EPA is also approving elements of Minnesota's submission addressing the infrastructure requirements relating to state boards for the 1997 ozone, 1997 fine particulate ($PM_{2.5}$), 2006 $PM_{2.5}$, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), 2010 sulfur dioxide (SO_2), and 2012 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The proposed rulemaking associated with this final action was published on July 17, 2017, and EPA received no comments during the comment period, which ended on August 16, 2017.

DATES: This final rule is effective on December 4, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2016–0327. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from

8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What is the background of this SIP submission?
II. What guidance is EPA using to evaluate this SIP submission?
III. What is the result of EPA's review of this SIP submission?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

This rulemaking addresses a SIP submission from the Minnesota Pollution Control Agency (MPCA) dated May 26, 2016, which addresses CAA requirements relating to the state board requirements under section 128, as well as infrastructure requirements of section 110 relating to state boards for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

The requirement for states to make infrastructure SIP submissions arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA. This specific rulemaking is only taking action on the CAA 110(a)(2)(E)(ii) element of these infrastructure SIP requirements.

II. What guidance is EPA using to evaluate this SIP submission?

EPA's guidance relating to infrastructure SIP submissions can be found in a guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ [1] National Ambient Air Quality Standards'' (2007 Guidance). Further guidance is provided in a September 13, 2013, document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)'' (2013 Guidance).

III. What is the result of EPA's review of this SIP submission?

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MPCA provided public notice for the SIP revision on April 4, 2016, commenced a public comment period on April 5, 2016, and closed the public comment period on May 5, 2016. No comments were received nor were there any requests for a public hearing.

Minnesota provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in sections 128 and 110(a)(2)(E)(ii) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS, as applicable.

On July 17, 2017 (82 FR 32669), EPA published a proposed rule that would approve these submissions into Minnesota's SIP. This proposed rule contained a detailed evaluation of how Minnesota's submission satisfies certain requirements under CAA sections 110 and 128. No comments were received. Therefore, EPA is finalizing this rule as proposed.

IV. What action is EPA taking?

EPA is taking final action to incorporate Minn. Stat. 10A.07, Minn. Stat. 10A.09, and Minn. R. 7000.0300 into Minnesota's SIP. EPA is further approving this submission as meeting CAA obligations under section 128, as well as 110(a)(2)(E)(ii) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Minnesota Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2]

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

[1] $PM_{2.5}$ refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as ''fine'' particles.

[2] 62 FR 27968 (May 22, 1997).

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2018. 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

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.*

■ 2. In § 52.1220:

■ a. In the table in paragraph (c):

■ i. Add the heading entitled ''CHAPTER 7000 PROCEDURAL RULES'' at the beginning of the table and the entry ''7000.0300''.

■ ii. Add the entries ''10A.07'' and ''10A.09'' in numerical order under the subheading entitled ''Minnesota Statutes''.

■ b. In the table in paragraph (e):

■ i. Revise the entry ''Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS''.

■ ii. Revise the entry ''Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS''.

■ iii. Revise the entry currently named ''Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour Ozone NAAQS'' to read ''Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS''.

■ iv. Revise the entry ''Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS''.

■ v. Revise the entry ''Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS''.

■ vi. Revise the entry ''Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO_2) NAAQS''.

■ vii. Revise the entry ''Section 110(a)(2) Infrastructure Requirements for the 2010 sulfur dioxide (SO_2) NAAQS,''.

■ viii. Revise the entry ''Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS''.

The additions and revisions read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MINNESOTA REGULATIONS

Minnesota citation	Title/subject	State effective date	EPA approval date	Comments
CHAPTER 7000 PROCEDURAL RULES				
7000.0300	Duty of candor	4/19/2004	11/2/2017, [insert **Federal Register** citation].	
*	*	*	*	*
Minnesota Statutes				
10A.07	Conflicts of interest	5/25/2013	11/2/2017, [insert **Federal Register** citation].	
10A.09	Statements of economic interest.	5/23/2015	11/2/2017, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Comments
*	*	* *	*	* *
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	11/29/2007 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	CAA elements 110(a)(2)(A), (B), (C) with respect to enforcement, (D)(ii), (E) through (H), (J) except for prevention of significant deterioration (PSD), and (K) through (M) have been approved. CAA elements 110(a)(2)(C) and (J) with respect to PSD have been disapproved.
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	11/29/2007 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	CAA elements 110(a)(2)(A), (B), (C) with respect to enforcement, (D)(ii), (E) through (H), (J) except for prevention of significant deterioration (PSD), and (K) through (M) have been approved. CAA elements 110(a)(2)(C) and (J) with respect to PSD have been disapproved.
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS.	Statewide	5/23/2011, 6/27/2012 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	These actions address the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We have not finalized action on the visibility protection requirements of (D)(i)(II). We will address these requirements in a separate action. Although EPA has disapproved portions of Minnesota's submission addressing the prevention of significant deterioration, Minnesota continues to implement the Federally promulgated rules for this purpose as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J).
Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS.	Statewide	6/19/2012 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	These actions address the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Although EPA has disapproved portions of Minnesota's submission addressing the prevention of significant deterioration, Minnesota continues to implement the Federally promulgated rules for this purpose as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J).
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	6/12/2014 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	These actions address the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) or the visibility portion of (D)(i)(II). We will address these requirements in a separate action. EPA has disapproved the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.
Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO_2) NAAQS.	Statewide	6/12/2014 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	These actions address the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We have not taken action on the visibility portion of (D)(i)(II). We will address these requirements in a separate action. EPA is disapproving the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Comments
Section 110(a)(2) Infrastructure Requirements for the 2010 sulfur dioxide (SO_2) NAAQS.	Statewide	6/12/2014 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	These actions address the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We have not taken action on (D)(i)(I) or the visibility portion of (D)(i)(II). We will address these requirements in a separate action. EPA has disapproved the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.
Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS.	Statewide	6/12/2014 and 5/26/2016.	11/2/2017, [insert **Federal Register** citation].	These actions address the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) or the visibility portion of (D)(i)(II). We will address these requirements in a separate action. EPA has disapproved the elements related to the prevention of significant deterioration, specifically as they pertain to section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J); however, Minnesota continues to implement the Federally promulgated rules for this purpose.

[FR Doc. 2017–23461 Filed 11–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0323; FRL–9970–17–Region 5]

Air Plan Approval; Illinois; Volatile Organic Compounds Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state submission as a revision to the Illinois state implementation plan (SIP) for ozone. The revision, submitted on May 30, 2017, incorporates changes to the Illinois Administrative Code (IAC) definition of volatile organic material, otherwise known as volatile organic compound (VOC). The revision removes recordkeeping and reporting requirements related to the use of t-butyl acetate (also known as tertiary butyl acetate) as a VOC, and is in response to an EPA rulemaking that occurred in 2016. Illinois also added information to provide clarity to the list of compounds excluded from the definition of VOC.

DATES: This direct final rule will be effective January 2, 2018, unless EPA receives adverse comments by December 4, 2017. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0323 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What did Illinois submit?
III. What is EPA's analysis of the SIP revision?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What is the background for this action?

The Clean Air Act (CAA) requires the regulation of VOC for various purposes. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of ''VOC,'' and what compounds shall be treated as VOC for regulatory purposes.

Tropospheric ozone, commonly known as smog, is formed when VOC

and nitrogen oxides react in the atmosphere in the presence of sunlight. Because of the harmful effects of ozone, EPA and state governments limit the amount of VOC that can be released into the atmosphere.

EPA uses the reactivity of ethane as the threshold for determining whether a compound makes a negligible contribution to tropospheric ozone formation. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by EPA from the regulatory definition of VOC. EPA lists compounds it has determined to be negligibly reactive in its regulations as being excluded from the regulatory definition of VOC in 40 CFR 51.100(s). *See* 81 FR 9339 (February 25, 2016).

Illinois' SIP includes a definition of VOC at 35 IAC Part 211, Subpart B, Section 7150 (35 IAC 211.7150), which conforms to EPA's regulatory definition of VOC. Subsection (a) of 35 IAC 211.7150 includes a list of compounds excluded from the regulatory definition of VOC, which reflect the compounds EPA has excluded in 40 CFR 51.100(s) on the basis that they make a negligible contribution to tropospheric ozone formation.

II. What did Illinois submit?

On May 30, 2017, Illinois submitted, as a SIP revision, a change to the definition of VOC at 35 IAC 211.7150 in response to an EPA rulemaking in 2016 that updated an existing exemption for the compound tertiary butyl acetate. Illinois also submitted corrections to chemical names and revisions to chemical identifiers included in the list of excluded compounds at 35 IAC 211.7150(a).

The Illinois SIP currently excludes tertiary butyl acetate for purposes of VOC emissions limitations or VOC content requirements. However, the Illinois SIP includes the compound as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC. *See* 35 IAC 211.7150(e); 69 FR 69298 (November 29, 2004).

In response to an EPA rulemaking in 2016 (discussed further below), Illinois is revising its SIP to remove the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to the use of t-butyl acetate as a VOC by deleting subsection (e) of 35 IAC 211.7150.

Additionally, Illinois amended the list of excluded compounds by adding the International Union of Pure and Applied Chemistry (IUPAC) names [1] and CAS registry numbers, [2] and presenting common names parenthetically.[3] Illinois made these changes to eliminate confusion and make it easier to identify specific excluded compounds in 35 IAC 211.7150(a).

For example, tertiary butyl acetate bears the IUPAC name ''1,1-dimethyl ethyl acetic acid ester'' and CAS number 540–88–5. EPA lists this compound as ''t-butyl acetate'' in 40 CFR 51.100(s)(1). Illinois continues to identify the compound as tertiary butyl acetate, and parenthetically added the IUPAC name and CAS number in 35 IAC 211.7150(a).[4]

Finally, Illinois made an administrative change by deleting the words ''of this Section'' in 35 IAC 211.7150(d), which discusses appropriate testing methods and includes a reference to subsection (b) of 35 IAC 211.7150.

III. What is EPA's analysis of the SIP revision?

Effective April 25, 2016, EPA amended the regulatory definition of VOC to remove applicable recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements for the compound tertiary butyl acetate. (81 FR 9339).

EPA had previously excluded tertiary butyl acetate from the definition of VOC for purposes of VOC emissions limitations and VOC content requirements on the basis that it makes a negligible contribution to tropospheric ozone formation. However, EPA continued to define tertiary butyl acetate as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOC. *See* 69 FR 69298 (November 29, 2004). Tertiary butyl acetate was the only compound that was excluded from the VOC definition for purposes of emission controls but still considered a VOC for purposes of recordkeeping and reporting requirements.

In 2016, EPA removed the recordkeeping and reporting requirements related to tertiary butyl acetate as a VOC in response to a petition. In removing these requirements, EPA stated that the primary objective of the recordkeeping and reporting requirements for tertiary butyl acetate was to address the cumulative impacts of ''negligibly reactive'' compounds, and had suggested that future exempt compounds may also be subject to such requirements. However, these requirements had not been included in any other proposed or final VOC exemptions since the tertiary butyl acetate rule in 2004. EPA found that having high quality data on tertiary butyl acetate emissions alone is unlikely to be very useful in assessing the cumulative impacts of negligibly reactive compounds on ozone formation, and therefore the requirements were not achieving their primary objective to inform more accurate photochemical modeling in support of SIP submissions.

EPA concluded that there was no evidence that tertiary butyl acetate was being used at levels that would cause concern for ozone formation. Additionally, the recordkeeping and reporting requirements, which were unique among all VOC-exempt compounds, were of limited utility because they did not provide sufficient information to judge the cumulative impacts of exempted compounds, and because the data had not been consistently collected and reported by states. As a result, EPA amended 40 CFR 51.100(s)(5) by removing the recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements for tertiary butyl acetate as a VOC. This action did not affect the existing exclusion of tertiary butyl acetate from the regulatory definition of VOC for purposes of emission limits and control requirements found in 40 CFR 51.100(s)(1). 81 FR 9339 (February 25, 2016).

Illinois' SIP revision is consistent with EPA's action amending the definition of VOC at 40 CFR 51.100(s)(5) to exclude recordkeeping and reporting requirements for tertiary butyl acetate. Additionally, this revision did not affect the existing exclusion of this compound from the regulatory definition of VOC for purposes of emission limits and control requirements in 35 IAC 211.7150(a).

Furthermore, Illinois' addition of IUPAC names and CAS registry

[1] IUPAC has developed a recognized system of nomenclature for chemical compounds.

[2] Chemical Abstract Service (CAS) numbers are developed by the American Chemical Society. CAS numbers are in widespread use, and provide clarity because a single CAS number identifies only one chemical isomer.

[3] In Table 6 of Attachment 7 to Illinois' submittal, Illinois lists the chemical compounds excluded from the definition of VOC, using the designations by EPA, IUPAC names, CAS numbers, and commonly used alternative names for each.

[4] EPA continues to include the CAS number to further identify compounds when adopting an exclusion from the definition of VOC. See 81 FR 9339 (February 25, 2016).

numbers to the list of excluded compounds in 35 IAC 211.7150(a) is consistent with the Illinois SIP. Illinois has kept the EPA designated names of the compounds in the list, and added information that may make it easier to identify compounds that are excluded from regulation as VOCs. These changes do not interfere with the Federal listing of excluded compounds, and provide more specific chemical composition, structural, and isomeric identification information.

IV. What action is EPA taking?

EPA is approving revisions to 35 IAC 211.7150 contained in the May 30, 2017, submittal into the Illinois SIP. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective January 2, 2018 without further notice unless we receive relevant adverse written comments by December 4, 2017. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective January 2, 2018.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[5]

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[5] 62 FR 27968 (May 22, 1997).

List of Subjects in 40 CFR Part 52

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

Dated: October 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

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.*

■ 2. In § 52.720, the table in paragraph (c) is amended under ''Part 211: Definitions and General Provisions'', ''Subpart B: Definitions'' by revising the entry for 211.7150 ''Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)'' to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 211: Definitions and General Provisions				
*	*	*	*	*
Subpart B: Definitions				
*	*	*	*	*
211.7150	Volatile Organic Material (VOM) Or Volatile Organic Compound (VOC).	1/23/2017	11/2/2017, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2017–23468 Filed 11–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0638; FRL–9969–93–Region 3]

Determination of Attainment by the Attainment Date for the 2008 Ozone Standard; Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a final determination that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area (the Philadelphia Area) has attained the 2008 ozone national ambient air quality standard (NAAQS) by the July 20, 2016 attainment date. This final determination is based on complete, certified, and quality assured ambient air quality monitoring data for the Philadelphia Area for the 2013–2015 monitoring period. The effect of this determination of attainment (DOA) is that the Philadelphia Area will not be bumped up or reclassified as a moderate nonattainment area. The determination of attainment is not equivalent to a redesignation, and the States in the Philadelphia Area must still meet the statutory requirements for redesignation in order to be redesignated to attainment. This determination is also not a clean data determination. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on December 4, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–R03–OAR–2016–0638. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2017 (82 FR 18268), EPA published a notice of proposed rulemaking (NPR) for the Philadelphia Area. The Philadelphia Area consists of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties in Pennsylvania; Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem Counties in New Jersey; Cecil County, Maryland; and New Castle County in Delaware. *See* 40 CFR 81.331, 81.339, 81.321, and 81.308. In the NPR, EPA proposed to determine, in accordance with its statutory obligations under section 181(b)(2)(A) of the CAA and the relevant regulatory provisions (40 CFR

51.1103), that the Philadelphia Area attained the 2008 ozone NAAQS by the applicable extended attainment date of July 20, 2016.[1]

II. EPA's Evaluation

Section 181(b)(2)(A) of the CAA requires that EPA determine whether an area has attained the NAAQS by its attainment date based on complete and certified air quality data from the three full calendar years preceding an area's attainment date. The 2008 ozone NAAQS is 0.075 parts per million (ppm). Consistent with the requirements contained in 40 CFR part 50, Appendix P, which set forth how to compute whether monitoring sites and nonattainment areas are attaining the ozone NAAQS, EPA reviewed the ozone ambient air quality monitoring data for the monitoring period from 2013 through 2015 for the Philadelphia Area, as recorded in the air quality system (AQS) database. State and local agencies responsible for ozone air monitoring networks supplied and quality assured the data. EPA determined that the monitoring sites with valid data had design values equal to or less than 0.075 ppm based on the 2013–2015 monitoring period. Therefore, based on 2013–2015 certified air quality data, EPA concludes that the Philadelphia Area has attained the 2008 ozone NAAQS.

Other specific requirements of this determination of attainment by the attainment date and the rationale for EPA's final action are explained in the NPR and will not be restated here. EPA received comments that are addressed in Section III of this rulemaking action.

III. Public Comments and EPA's Responses

EPA received adverse comments from the Center for Biological Diversity (Center), Sierra Club, and Delaware Department of Natural Resources and Environmental Control (Delaware). The comments are excerpted and/or summarized and addressed in this section:

Comment 1: EPA's regression approach is inconsistent with EPA's Appendix P regulations, and EPA's reliance on the regression analysis is unlawful and arbitrary. For one of the two monitors (Brandywine), EPA relies on a regression analysis to predict the missing ozone concentration measurements and, as a result, purportedly achieves the requisite data completeness at that monitor. *See* U.S. EPA Region 3, Delaware Brandywine/Martin Luther King Monitors Data Substitution Analysis TSD 2013–2015 Ozone (Dec. 2016) (TSD), at p. 7. Appendix P is quite clear, however, that ''[w]hen computing whether the minimum data completeness requirements have been met, meteorological or ambient data may be sufficient to demonstrate that *meteorological* conditions on missing days were not conducive to concentrations above the level of the standard.'' 40 CFR part 50, Appendix P section 2.3(b) (emphasis added). EPA's regression analysis does not purport to make any demonstrations regarding meteorological conditions, nor can it, as the analysis is based purely on ozone monitor readings.

Response 1: Commenters read 40 CFR part 50, Appendix P, section 2.3(b) too narrowly, and ignore the last sentence of that section, which states that ''Missing days assumed less then [sic] the level of the standard are counted for the purpose of meeting the data completeness requirement.'' EPA interprets this regulation to allow for reasonable, rational assumptions using available data, whether meteorological or ambient, to determine whether, on days where an ozone monitor is missing data, it is unlikely that the actual ozone levels would exceed the NAAQS. For this determination, EPA used three different methods to determine whether data from days that the relevant ozone monitors were missing data were rationally assumed to be less than the level of the NAAQS, and therefore could be counted toward the data completeness requirement. These methods are: (1) Analysis of temperature; (2) regression analysis; and (3) data substitution. First, EPA conducted an analysis that compared temperature (a meteorological condition) at the Wilmington Delaware National Airport (ILG) to measured ozone readings from 2010 through 2015 at the 18 ozone monitors in the Philadelphia Area (*See* Table 4 of the technical support document (TSD) at page 4). The highest daily 8-hour ozone readings from those 18 Philadelphia Area ozone monitors on *all* days (not just missing days) was compared to the maximum daily temperatures at the Wilmington Airport on the corresponding days. The results of this analysis, presented in Figure 1 on page 6 of the TSD, shows that from 2010 through 2015, none of the 18 monitors recorded an 8-hour ozone level above 0.075 ppm when the temperature at Wilmington Airport was at or below 77 degrees Fahrenheit (°F). This analysis identified 18 days in 2013, 30 days in 2014, and 27 days in 2015 with missing ozone readings that could reasonably be assumed to be below the 0.075 ppm threshold at the Martin Luther King (MLK) monitor (AQS ID 10–003–2004) in Delaware. The temperature-based analysis alone added enough complete days to the MLK monitor to meet the data completeness threshold. For the Brandywine monitor (AQS ID 10–003–1010), the temperature-based analysis identified 22 days during 2013, 9 days during 2014, and 8 days during 2015 that could reasonably be assumed to be below a 0.075 ppm ozone reading. However, the temperature analysis did not add enough complete days to the Brandywine monitor to meet the Appendix P data completeness level because there was an insufficient number of days below 77 °F at the Wilmington Airport in which the Brandywine monitor was missing data. Therefore, EPA performed a regression analysis in order to fill in the remaining data gap as well as to validate the data results (for both monitors) obtained from the analysis of temperature method.

This regression analysis relied on ambient data—measured ozone levels at a nearby certified ozone monitor—to predict ozone levels at monitors with missing data. This type of analysis is only appropriate where readings from a nearby certified ozone monitor closely correlate with readings from the monitors with missing data. In this case, EPA examined the two other air quality monitors located in the same county as the Brandywine and MLK monitors, compared recorded ozone readings of all four monitors on days and found that the Bellefonte2 monitor (AQS ID 10–003–1013), which is located five miles from both Brandywine and MLK, correlated most closely with those monitors. As explained in more detail in the TSD, the Bellefonte2 monitor is strongly correlated with both the Brandywine and MLK monitors (TSD at pp. 8–10). Using this information, EPA determined a separate linear regression equation for each of the Brandywine and MLK monitors. These two equations allowed calculation of predicted ozone

[1] In a final rulemaking action published on May 4, 2016, EPA determined that the Philadelphia Area did not attain the 2008 ozone NAAQS by its July 20, 2015 attainment date, based on ambient air quality monitoring data for the 2012–2014 monitoring period. EPA determined that the Philadelphia Area qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107, and granted that extension. EPA established a new attainment date of July 20, 2016, with attainment to be based on ambient air quality monitoring data for the 2013–2015 monitoring period. *See* 81 FR 26697. (May 4, 2016). EPA's decision to extend the attainment date has been challenged by the State of Delaware in *Delaware* v. *EPA*, No. 16–1230 (D.C. Cir.). That case is currently pending before the Court and has not been decided.

readings for the Brandywine or MLK monitor on days when those monitors were missing data by using actual ozone readings from the Bellefonte2 monitor (TSD at p.11) in the equation. The values calculated using the linear regression equations for the MLK and Brandywine monitors are shaded green in Table 6 of the TSD on pages 11–16. EPA took a conservative approach and added, as complete days, only those days at the Brandywine monitor where the predicted ozone value was less than 0.060 ppm. That is, EPA only employed the regression analysis method to add days toward the data completeness requirement for the Brandywine monitor where EPA's predicted ozone value was well below the level of the NAAQS. The days added as ''complete'' days to the Brandywine monitor via this method (linear regression equation showing less than 0.060 ppm ozone) are represented by the numeral ''2'' in Table 9 of the TSD. The regression analysis added 8 complete days in 2013 and 16 complete days in 2014 to the Brandywine monitor (TSD, p.16) and also validated and confirmed EPA's conclusions from its temperature method analysis at this monitor. Since the analysis of temperature method provided sufficient complete data for the MLK monitor, EPA performed a similar regression analysis for the MLK monitor only for the purpose of confirming and validating its conclusions drawn from the temperature analysis. Both the temperature analysis and regression methods produced the same results at the MLK monitor.

EPA also used a third method—a data substitution analysis—as a further check on the validity of the first two methods on the Brandywine and MLK monitors. When any of the four monitors in New Castle County, Delaware, was missing a valid day of data during the 2013–2015 ozone seasons, EPA looked at ambient data in the form of actual recorded ozone values at the other New Castle County monitors and substituted the highest recorded ozone value for the missing value(s) at the other monitor(s). After adding these substituted data values, a 2013–2015 ''test design value'' was calculated for all four monitors. None of the four monitors' calculated test design values, including Brandywine and MLK, exceeded the ozone standard of 75 ppb. *See* Table 8, TSD at p. 17.

Comment 2: The monitor data relied upon by EPA do not actually demonstrate that exceedances of the NAAQS will not occur at temperatures below 78 degrees. (Sierra Club, p. 2). For both of the monitors (Brandywine and MLK), EPA relies heavily on a simplistic comparison of monitored ozone values at monitors within the Philadelphia Nonattainment Area and daily high temperature data from the Wilmington Delaware National Airport to purportedly show that meteorological conditions on days with high temperatures of 77 °F or below are not conducive to ozone formation. TSD at p. 3. But EPA's conclusion regarding the 77 °F temperature threshold is not supported by data upon which EPA relies and is inconsistent with prior statements by the agency regarding the parameters that influence ozone formation. With regard to the data, EPA's sample of monitor-days is far too small a data set from which to conclude that 77 °F represents a magical limit below which ozone concentrations are assured to be below the NAAQS. Indeed, Figure 1 of the TSD shows that at 78 °F—just one degree above the level at which EPA expresses confidence that no NAAQS violations will occur—the maximum monitored ozone level in the Philadelphia Nonattainment Area was close to 85 parts per billion, well above the 75 part per billion (ppb) NAAQS. Moreover, Figure 1 also shows that at 68 °F—nine degrees below the temperature threshold identified by EPA—maximum monitored ozone levels in the Philadelphia Nonattainment Area were within one part per billion of the NAAQS.

Response 2: It is not necessary to demonstrate that exceedances of the NAAQS would never occur at temperatures below 78 °F, nor was the purpose of the analysis of temperature method to do so. The methods used to determine data completeness are consistent with 40 CFR part 50, Appendix P, Section 2.3(b) and are grounded in science. As an example, EPA approved a similar demonstration from Delaware in 2010 for the same Brandywine ozone monitoring site which relied on a similar ozone and temperature comparison. This demonstration was referenced in a clean data determination, which is a different type of rulemaking action that also relies on air quality data, for the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD nonattainment area for the 1997 ozone NAAQS which was finalized in 2012 (77 FR 17341–17343). The Delaware demonstration relied on ambient ozone and temperature data for years 1997–2009, and reached a similar conclusion that ozone levels did not exceed 0.075 ppm in the Philadelphia area on any days where the daily maximum temperature was less than 77 °F. While not necessary for the data completeness determination for this Philadelphia determination of attainment, this example is provided to demonstrate that data completeness procedures conducted by Delaware in the past have arrived at the same conclusion with regard to the use of temperature data thresholds. Thus, EPA does not agree that the 77 °F temperature threshold below which no ozone exceedances have occurred in the Philadelphia Area is not supported by the evidence. The fact that sometimes very high levels of ozone occur at 78 degrees or that sometimes high levels of ozone (yet still below 0.075 ppm) occur at much lower temperatures does not invalidate the 77 °F threshold in this instance. Also, one measured ozone value above 0.075 ppm does not equal a NAAQS exceedance because of the definition of design value, which is a statistically-based measure of the 4th high over a 3-year period. Regarding the sample size, EPA notes that Delaware's analysis of temperature versus ozone concentrations for the period of 1997 to 2009, when combined with EPA's analysis of temperature versus ozone concentrations for the period of 2010 through 2015, provides nineteen years of data supporting the temperature analysis conclusion. The following sources further discuss the importance of the relationship between temperature and ozone formation as established by both EPA and the scientific literature for decades:

(1) Camalier, L., Cox, W., and Dolwick, P. (2007). The effects of meteorology in urban areas and their use in assessing ozone trends. Atmospheric Environment, Volume 41, Issue 33, pages 7127–7137; (2) Cox, W. and Chu, S (1996). Assessment of interannual ozone variation in urban areas from a climatological perspective. Atmospheric Environment, Volume 30, Issue 14, pages 2615–2615; (3) U.S. EPA (2016). Trends in Ozone Concentrations Adjusted for Weather Conditions. *https://www.epa.gov/air-trends/trends-ozone-adjusted-weather-conditions;* and; (4) Walcek, C. and Yuan, H. (1995). Calculated influence of temperature-related factors on ozone formation rates in the Lower Troposphere. Journal of Applied Meteorology, Volume 34, pages 1056–1069.

Comment 3: EPA's proposed attainment determination is not protective of public health because monitoring data from the 2016 ozone season no longer supports a finding that the Philadelphia Area is meeting the 2008 ozone NAAQS.

Response 3: To determine whether an area attained by the 2008 ozone NAAQS attainment date of July 20, 2016, EPA is

required to rely on the three previous full years of data, which is 2013–2015. CAA section 181(b)(2)(A); 40 CFR part 50, Appendix P, section 2.3(b). Any data occurring in calendar year 2016 cannot be used in this determination because July 20, 2016 is in the middle of the 2016 ozone season and would produce only incomplete non-quality assured, and uncertified data, as of the July 2016 attainment date. The statutory provision governing the type of determination of attainment EPA is finalizing today is very clear: ''the Administrator shall determine, *based on the area's design value (as of the attainment date),* whether the area attained the standard by that date.'' CAA section 181(b)(2)(A) (emphasis added). When making determinations of attainment by the attainment deadline, EPA has consistently applied this unambiguous language as restricting its analysis to the years of data that constitute the basis for an area's design value as of the specific attainment deadline. EPA's regulations at 40 CFR part 50, Appendix P further clarify that the design value be derived from ''three consecutive, *complete calendar years* of air quality monitoring data.'' 40 CFR part 50, Appendix P, section 2.3(b) (emphasis added). The commenter's request that EPA use non-quality assured, uncertified, incomplete calendar year 2016 data for this section 181(b)(2) determination is not permitted under the statute and regulations.

Comment 4: EPA illegally extended the attainment date deadline.

Response 4: As noted in the proposed rule (82 FR 18269, fn 2), the issue of whether EPA ''illegally'' extended the attainment date deadline from July 20, 2015 to July 20, 2016 is the subject of a petition for review filed by the State of Delaware on July 5, 2016 in the U.S. Court of Appeals for the District of Columbia Circuit. The petition has been fully briefed, and oral argument was held on October 5, 2017. *State of Delaware Department of Natural Resources & Environmental Control* v. *U.S. Environmental Protection Agency,* No. 16–1230. The final rule extending the Philadelphia Area's attainment date is therefore legally effective at this time and outside the scope of this rulemaking.

Comment 5: The CAA requires that a finding of attainment be made only when all measures needed for attainment have been implemented, and the current air quality meets the standard.

Response 5: Commenters are incorrect regarding the CAA's requirements for a section 181(b)(2) determination of attainment by the attainment date. Nowhere in that provision does the CAA require that such a finding can only be made ''when all measures needed for attainment have been implemented'' and ''current air quality meets the standard.'' Demonstrations of attainment of the 2008 ozone NAAQS by the attainment date require using the three calendar years of certified air quality data preceding the attainment date, which is 2013–2015.

Comment 6: Section 181(b)(2) does not restrict EPA to considering only fully certified, quality assured and complete data from 2013–2015, and the resulting 3-year design values calculated from those data. EPA should consider the preliminary 2016 data, and has considered data other than the three years of data prior to the attainment date in past rulemakings, including:

(1) The January 25, 2012 proposed determination of attainment and clean data determination for the 1997 ozone NAAQS for the New York-New Jersey-Connecticut Nonattainment Area (NY-NJ-CT NAA) at 77 FR 3720; and

(2) The July 18, 2012 final determination of attainment and clean data determination for the NY-NJ-CT NAA at 77 FR 36163; and

(3) The May 15, 2014 proposal to rescind the clean data determination for the NY-NJ-CT NAA at 79 FR 27830.

The commenter asserts that these actions ''. . . prove[ ] that EPA has considered uncertified data in proposals involving findings of attainment/clean data determinations.''

Response 6: All of the EPA actions cited by the Commenter support EPA's use of only the three years of complete, quality-assured and certified ozone monitoring data preceding the attainment date when making this section 181(b)(2) determination of attainment by the attainment date. EPA often makes 181(b)(2) determinations of attainment by the attainment date in the same actions as clean data determinations, but these are two distinct actions with different statutory and regulatory requirements and consequences. Therefore, it is reasonable for EPA to consider air quality monitoring data differently for these two types of actions. EPA's regulations governing clean data determinations for the various pollutants, including ozone, interpret the CAA as suspending attainment planning requirements for only as long as the area continues to attain the standard. *See, e.g.,* 40 CFR 51.1118. Thus, for a CDD, EPA requires an attaining design value based on three full years of data, and also may consider any additional preliminary data as well. Because the regulatory consequences of a clean data determination depend on continued attaining air quality, review of data until the final rulemaking as well as post-rulemaking review of data is appropriate. By contrast, section 181(b)(2) has the specific statutory consequence of deciding whether or not an area is reclassified to a higher classification. Under the CAA, if an area attains the NAAQS by its statutory attainment date, it cannot be ''bumped up'' or reclassified, even if it later violates the standard after that date. The Act therefore instructs the EPA to make a determination of an area's air quality attainment status as of a date certain—the area's attainment deadline.

The January 25, 2012 proposal cited by Commenter contains both a determination of attainment by the attainment date *and* a clean data determination. The 2012 proposal specifically states that ''EPA proposes to determine, in accordance with section 181(b)(2), that the NY-NJ-CT area attained the 1997 eight-hour ozone standard by the applicable deadline for that standard, June 15, 2010. This proposed determination is based on complete, quality-assured and certified data for 2007–2009.'' 77 FR 3720, 3722. In the next paragraph, the proposal states ''[i]n addition, EPA is separately and independently proposing to determine that the NY-NJ-CT area is currently attaining the 1997 eight-hour ozone standard, based on complete, quality-assured and certified data for 2008–2010 and preliminary data for 2011 that indicate continued attainment.'' *Id.* This second paragraph describes EPA's clean data determination (CDD), and therefore may consider all data up to the point of the rulemaking, including preliminary data. In this action, EPA is only making a section 181(b)(2) determination of attainment by the attainment date for the Philadelphia Area. If EPA were making a clean data determination for the Philadelphia Area, the preliminary 2016 data could be considered as a supplement.

Similarly, the June 18, 2012 [2] final action for the NY-NJ-CT NAA uses only complete, quality-assured and certified 2007–2009 data for the determination of attainment by the June 15, 2010 attainment date, while using complete, quality-assured and certified 2008–2010 data and preliminary 2011 ozone data in making its clean data determination. *See* 77 FR 36163 (June 18, 2012). EPA's 2014 action proposing to rescind the 2012

[2] The comment incorrectly cites July 18, 2012 as the **Federal Register** date for this final determination. The correct date is June 18, 2012. *See* 77 FR 36163.

clean data determination for the NY-NJ-CT NAA followed the same practice of considering all recent data. *See* 79 FR 27830, 27832 (May 15, 2014). Thus, these previous actions cited by the comment do not show that EPA uses or considers incomplete, uncertified and preliminary data when making a section 181(b)(2) determinations of attainment by the attainment date. Today's action is therefore consistent with the other actions cited by the Commenter.

Comment 7: DNREC objects to EPA performing the data substitution analysis for the two Delaware monitors without notifying Delaware and giving Delaware an opportunity to review prior to publication.

Response 7: EPA is required to make this determination of attainment by the attainment date. This determination of attainment cannot be made without complete air quality data for 2013–2015. Because DNREC did not submit a data substitution analysis for the two Delaware monitors with incomplete data, EPA was required to perform this analysis.

Comment 8: Early 2017 ozone season data show that the Philadelphia Area has already experienced two episodes of nonattaining air quality based on preliminary maximum ozone concentrations of 79 ppb in Delaware and 86 ppb in Philadelphia.

Response 8: EPA's determination of attainment for the 2008 ozone NAAQS for the Philadelphia Area is based on complete, quality assured, and certified data for the 2013–2015 ozone seasons in accordance with section 181(b)(2) of the Act and 40 CFR parts 50, 51 and 58.

Comment 9: EPA's notice did not explain the implications of a finding of attainment in its proposal, and Delaware believes that a finalization of this finding will suspend CAA obligations for the area. Therefore, if EPA makes a final determination of attainment based on the 2013–2015 data, it must immediately make a finding of nonattainment using 2014–2016 data.

Response 9: EPA's notice did not explain in detail all the implications of the section 181(b)(2) determination of attainment by the attainment date. One consequence of the determination of attainment by the extended attainment date is that the Philadelphia Area will not be reclassified as a Moderate nonattainment area. *See* CAA section 181(b)(2)(A). However, although the Philadelphia Area will remain a Marginal nonattainment area, since it is part of the ozone transport region (OTR) it will need to continue to comply with the additional requirements applicable to OTR states, including moderate area requirements. Furthermore, EPA clearly stated in the Summary section of the NPR that this action was not a redesignation of the Philadelphia Area to attainment. EPA also reiterates that this action is also not a clean data determination under 40 CFR 51.1118. A clean data determination, if it were to occur at some future time, would have the effect of suspending any attainment planning requirements. Regarding the commenter's statement that EPA must immediately make a finding of nonattainment (or a nonattainment designation) using the 2014–2016 ozone data, such a finding would be meaningless in this context. The Philadelphia Area continues to be designated nonattainment for the 2008 ozone NAAQS, and EPA is not, in this notice, issuing a clean data determination such that the Agency would need to rescind such determination based on more recent air quality data. Given that today's action is not changing the Philadelphia Area's marginal nonattainment designation, the suggestion that the Agency issue a nonattainment designation is inappropriate. If certified air quality data indicates issues with continuing attainment of the 2008 ozone NAAQS, the EPA will work with the relevant states in the Philadelphia Area and, to the extent necessary, use appropriate CAA authorities to address those air quality issues.

Comment 10: EPA should not make a determination of attainment for the 2008 ozone NAAQS when data shows that the 2015 ozone NAAQS of 70 ppm is not currently being met.

Response 10: EPA's determination of attainment for the 2008 ozone NAAQS by the attainment date of July 20, 2016, is statutorily required by section 181(b)(2), and requires that EPA use 2013–2015 ozone air quality data in determining whether the 2008 NAAQS has been met, as of the July 20, 2016 attainment date for the 2008 ozone NAAQS. The 2015 ozone NAAQS is not germane to the specific question of whether the area attained the 2008 ozone NAAQS by the attainment date.

Comment 11: Delaying the determination of nonattainment for the Philadelphia Area will only delay adoption of needed SIP measures to bring the area into attainment.

Response 11: The determination of attainment by the attainment date under 181(b)(2) does not suspend any state planning requirements that are in place for the 2008 ozone NAAQS. The effect of this action will result in the Philadelphia Area remaining as a marginal nonattainment area for the 2008 ozone NAAQS, and keeping all currently applicable planning requirements in place, including OTR requirements.

Comment 12: The commenter objects to efforts by Pennsylvania Department of Environmental Protection (PADEP) to remove 2016 ozone data based on ''exceptional events,'' especially if the exceptional event is an increasing number of heat waves caused by global warning.

Response 12: This comment is not germane to this determination of attainment because EPA did not rely on any Pennsylvania ozone monitoring data from 2016 in making its determination of attainment. As required by the CAA and EPA regulations regarding determinations of attainment by the attainment date, EPA used only complete, quality-assured and certified ozone data from calendar years 2013–2015.

Comment 13: The Center has further concerns about EPA's approach for meeting data completeness requirements, especially given the exceedances of the 2008 and 2015 NAAQS as noted above. The proposed rule notes that EPA was able to ''add'' missing data from the Brandywine and MLK monitors by conducting ''an analysis of the meteorological data and a regression analysis'' and performed a ''substitution analysis as a check on the validity'' of that analysis. *See,* 82 FR 18270 (April 18, 2017). It would be more appropriate to require redundancy at monitoring stations prone to malfunctioning as opposed to relying on data substitutions in areas suffering from ozone levels at or above the NAAQS to assure that the most accurate data is collected.

Response 13: Please see the responses to comments 1 and 2 above with regard to the adequacy of the methods used to meet the minimum data completeness requirements at the MLK and Brandywine monitors. As to requiring redundant monitors, the Philadelphia Metropolitan Statistical Area (MSA) is currently meeting monitoring requirements specified in 40 CFR part 58 Appendix D. Appendix D does not require redundant monitoring for ozone. EPA has made recommendations to Delaware Department of Natural Resources and Environmental Control (DNREC) to try to reduce the data loss at the Brandywine air monitoring site. EPA is required to perform technical systems audits on each primary quality assurance organization at a frequency of once every three years. DNREC was audited by EPA Region 3 on May 10–12, 2016. One of the major findings of this audit was the incompleteness issues at the Brandywine site. EPA recommended as corrective action to mitigate potential

data loss due to down power lines that DNREC do preemptive tree trimming each year. In addition, EPA recommended having a backup power source at the site. DNREC's response to EPA's recommendation was that a back-up power source is not feasible. DNREC will consider purchasing a battery-operated FEM monitor as a back-up in case of sustained power loss at the site, if resources are available.

Comment 14: EPA also received comments that were not germane to this final ruling but referred generally to the support of continuing implementation of air quality standards and regulations. The comments included support of keeping EPA regulations in place to protect human health and the environment.

Response 14: EPA appreciates the supportive comments, and notes that ozone air quality monitoring will continue and existing air quality standards and regulations will remain in place. This determination of attainment by the attainment date does not reduce or revoke any existing ozone monitoring or control requirements.

IV. Final Action

EPA is making a final determination, in accordance with its obligations under section 181(b)(2)(A) of the CAA and 40 CFR 51.1103, that the Philadelphia Area attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. This determination of attainment does not constitute a redesignation to attainment, and is also not a clean data determination.

V. Statutory and Executive Order Reviews

A. General Requirements

This rulemaking action finalizes a determination of attainment for the 2008 ozone NAAQS based on air quality and does not impose additional requirements. For that reason, this determination of attainment:

- 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 2018. 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 determining that the Philadelphia Area attained the 2008 ozone NAAQS by its July 20, 2016 attainment date 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, Ozone, Reporting and recordkeeping requirements.

Dated: October 11, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: October 6, 2017.

Catherine R. McCabe,

Acting Regional Administrator, Region 2.

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 I—Delaware

■ 2. In § 52.425, paragraph (d) is added to read as follows:

§ 52.425 Determinations of attainment.

* * * * *

(d) Based upon EPA's review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area will not be reclassified for failure to attain by its

applicable attainment date pursuant to section 181(b)(2)(A).

Subpart V—Maryland

■ 3. In § 52.1082, paragraph (j) is added to read as follows:

§ 52.1082 Determinations of attainment.

* * * * *

(j) Based upon EPA's review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart FF—New Jersey

■ 4. In § 52.1576, paragraph (d) is added to read as follows:

§ 52.1576 Determinations of attainment.

* * * * *

(d) Based upon EPA's review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart NN—Pennsylvania

■ 5. In § 52.2056, paragraph (o) is added to read as follows:

§ 52.2056 Determinations of attainment.

* * * * *

(o) Based upon EPA's review of the air quality data for the 3-year period 2013 to 2015, Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area has attained the 2008 8-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date of July 20, 2016. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal ozone nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

[FR Doc. 2017–23226 Filed 11–1–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 18, 73, 74, 78, 80, 87, 90, and 101

[ET Docket No. 15–170; FCC 17–93]

Authorization of Radiofrequency Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) amends its equipment authorization regulations, increasing the Commission's agility to respond to changes in technology and industry standards. This rule consolidates, simplifies, and streamlines certain procedures, and removes the requirement to file the import declaration FCC Form 740 under certain circumstances.

DATES: Effective November 2, 2017.

The incorporation by reference listed in the rule was approved by the Director of the Federal Register as of November 2, 2017.

ADDRESSES: FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554 for full text of ''First Report and Order, FCC 17–93'' (also at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-93A1.docx*) and inspection of material incorporated by reference. See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Office of Engineering and Technology, (202) 418–2702, email: *Brian.Butler@fcc.gov,* TTY (202) 418–2989. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Nicole Ongele, OMD/PERM, (202) 418–2991, or send an email to *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order (R&O),* ET Docket No. 15–170, FCC 17–93, adopted July 13, 2017, and released July 14, 2017. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554, or by downloading the text from the Commission's Web site at [*http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1003/FCC-17-93A1.pdf].* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. First Report and Order

1. On July 17, 2015, the Commission adopted a *Notice of Proposed Rulemaking* (*NPRM*) in this proceeding. 80 FR 46900, August 6, 2015. In the *First Report and Order,* the Commission amended parts 0, 1, 2, 15, and 18 of its rules to update and improve its equipment authorization program. Section 302 of the Communications Act of 1934, as amended (the Act), authorizes the Commission to make reasonable regulations governing the interference potential of devices that emit RF energy and such devices must demonstrate compliance with the Commission's technical and equipment authorization requirements before they can be imported to or marketed in the United States. The Office of Engineering and Technology (OET) administers the day-to-day operation of the equipment authorization program, providing supplemental guidance that is available via public notices and in its online Knowledge Database (KDB). The Commission's actions are described in greater detail below.

2. Supplier's Declaration of Conformity. The Commission adopted its proposal to replace two of the existing equipment authorization procedures (Declaration of Conformity (DoC) and verification) with a single process—''Supplier's Declaration of Conformity'' (SDoC). Verification and DoC are both self-approval processes under which the party responsible for the compliance of the RF device has been required to take the necessary steps (testing or analysis) to ensure that

the equipment complies with the appropriate technical standards. DoC incorporates additional requirements: Compliance testing must be performed by an accredited testing laboratory and the manufacturer must include of a written compliance statement (*i.e.,* a ''Declaration of Conformity'') in the literature furnished to the user and affix a specific FCC logo on the equipment identification label to signify that the equipment meets the Commission's regulations.

3. The Commission determined that, with the advancement in testing technologies, equipment and standards, there is no longer a need to require DoC devices to be tested for compliance by accredited test laboratories. It further noted that without the requirement for laboratory accreditation, the DoC and verification procedures are quite similar. The Commission concluded that adoption of SDoC as single self-approval process would simplify the equipment authorization requirements and reduce confusion as to which process may apply to any given device, while continuing to adequately ensure compliance with its rules. Under SDoC, the responsible party for equipment will test equipment for compliance to specified standards or requirements and supply a statement with the product that certifies that the equipment complies with the rules and identifies the responsible party. This information can be included with other information provided to the user instead of being displayed on the device itself.

4. The Commission found the few arguments against merging DoC and verification (primarily that the Commission should not relax its testing requirements) did not diminish its overall confidence in the adopted SDoC process or its belief that streamlining the procedures by eliminating selected elements would not appreciably raise the risk of harmful interference from devices so approved.

5. *Testing and laboratory accreditation.* The Commission modified its proposal to eliminate the rule common to verification and DoC that permitted responsible parties to ''take other necessary steps'' instead of testing to ensure compliance. To resolve commenter's concerns, the Commission decided to continue to specify in its rules that other ''measures'' will be acceptable to validate the compliance of a device. Such specific acceptable testing procedures would draw upon the types of standardized procedures and voluntary standards that have been incorporated by reference and endorsed in its guidance documents.

6. *Compliance information and logo.* The Commission adopted its proposal to require all SDoC devices to be marketed with a compliance statement. It found that such a statement will offer assurance that equipment has been determined to be compliant for use in the United States according to the Commission's technical regulations, will allow the Commission to more readily associate the equipment with the party responsible for compliance, and will meet the public's need for information about manufacturers and origins of products.

7. The Commission had initially proposed not to require a specific logo be placed on the device (an element of the existing DoC requirements). It declined the suggestion of several commenters to allow the FCC logo to be used in lieu of the compliance statement, finding that the compliance statement conveys specific information about a product that a consumer cannot independently ascertain from the FCC logo, and that continuing to require the FCC logo would create an unnecessary burden on device manufacturers. Accordingly, it adopted a rule that allows the FCC logo to be physically placed on a device at the discretion of the responsible party consistent with the practices currently specified in §§ 15.19 and 18.209, and only if its device complies with the applicable equipment authorization rules. While the use of such a logo may provide conveniences for the responsible party, its presence will not obviate the need to provide required compliance information or maintain pertinent records related to device testing.

8. *Other requirements.* The Commission did not adopt its proposal to require a statement with additional information when equipment has been modified, but is nevertheless still subject to the self-approval process. Noting that, when considered as a whole, the rules require the responsible party to provide up-to-date compliance information with each device, the Commission found this information to be sufficient. The existing technical standards pertaining to Class A (commercial/industrial) and Class B (residential/home) digital devices remains otherwise unchanged.

9. *Scope.* The Commission applied the new SDoC process to all equipment currently subject to the DoC and verification procedures. It took no action to re-visit which equipment authorization process is most appropriate for certain specific categories of devices, but recognized that, in the event specific types of RF devices authorized via SDoC are later found more likely to cause harmful interference due to difficulties in the design, manufacturing, or testing processes, it has the option to remove such devices from the self-approval procedure and subject them to the certification process. Certification is a more stringent approval process that requires, among other things, the use of accredited laboratories.

10. Under parts 15 and 18 of its rules, a responsible party can choose to use the certification process in lieu of DoC for the approval of certain unintentional radiators. The Commission explicitly provided in the SDoC rules that parties may opt to undergo the more rigorous certification process for the equipment authorization for any device. This regulatory option places no burdens on a responsible party, as it is only an option, and parties can later decide to revert to the SDoC procedures, if, for example they decide that the costs associated with certification outweighs the benefits.

11. *Transition Period.* The Commission permitted manufacturers to continue to use the existing DoC or verification procedures for up to one year from the effective date of the rules if they so choose.

12. *E-Labeling.* In furtherance of the Enhance Labeling, Accessing, and Branding of Electronic Licenses Act (E-LABEL Act), the Commission adopted new rules to will codify its existing electronic labeling procedures. The E-LABEL Act, which applies to all radiofrequency devices authorized by the Commission that have the ''capability to digitally display labeling and regulatory information,'' directed it ''to promulgate regulations or take other appropriate action, as necessary, to allow manufacturers of radiofrequency devices with display the option to use electronic labeling for the equipment in place of affixing physical labels to the equipment.'' The adopted rules generally allow a radiofrequency device to electronically display any labels required by our rules, including the FCC ID required for certified devices, as well as any warning statements or other information that our rules require to be placed on a physical label on the device.

13. *Capability of a device to digitally display information.* The E-LABEL Act applies to ''radiofrequency device[s] with display,'' which are defined as equipment or devices that require Commission authorization prior to marketing and sale, and that ''ha[ve] the capability to digitally display'' required information. The Commission concluded that if the labeling and regulatory information cannot be displayed to the intended recipient ''in

a manner that effects its purpose,'' the device is incapable of digitally displaying the required information as required by the E-LABEL Act.

14. ''*Three-step*'' *access.* The Commission determined to require that labeling and regulatory information, when digitally displayed, should be accessible in no more than three steps. This determination is consonant with the suggestion of an industry group, is similar to other international regulations, and mirrors staff guidance currently provided in the KDB publications. It provided one example of a characteristic sequence: A user accessing the device settings menu (step one); accessing a submenu of legal information (step two); and accessing a further submenu of FCC compliance information (step three). The Commission directed OET to provide guidance in response to any specific questions on how to determine a particular device's compliance with this requirement via the KDB inquiry process.

15. *Access Instructions.* The Commission decided to require that device users be provided with prominent and specific instructions on how to access the required labeling and regulatory information that be must be included with the device (packaging material, operating instruction booklet, etc.) or on a product-related Web site so long as the packaging material includes a statement that information on accessing this information is available on the Internet, along with effective instructions on how to access the direct Web site containing the required information. These instructions must be available in either the packaging material or another easily accessible format at the time of purchase, and be available on the product-related Web site, if one exists. The responsible party must ensure that the Web site access instructions provided with the packaging material does not lead to a dead link or otherwise fail to provide information necessary for access to the required labeling and regulatory information online. If the party responsible for the marketing of the device changes over time, maintaining this information shall become the responsibility of the party that most recently packaged the specific version of the device and made it available for sale.

16. *Codes, permissions, and accessories.* Accessing the labeling and regulatory information must not require any special codes or permissions. Other forms of electronic labeling such as Radio Frequency Identification (RFID) tags or Quick Response (QR) codes may not substitute for the on-screen information display, and displays that require the use of special accessories, supplemental software, or similar plug-ins are not permitted. By contrast, screen locks, passcodes, or similar security protections that are designed to control overall device access and use and implemented by the owner(s)/user(s) of a device, are integral to securing personal access to a device and its information, do not inappropriately restrict access to labeling-related information, and are therefore not precluded by the prohibition on special codes.

17. *Devices that require connection to a second device to function.* Electronic labeling is permitted for devices that do not include an integrated screen but that can only operate in conjunction with a device that has a screen. Such devices are subject to the same requirements as any other RF device that is eligible to use the electronic labeling rules. The Commission further stated that merely being capable of such an association would not qualify a display-free device to use electronic labeling if the device retains any utility in a stand-alone configuration, and, thus, this provision only applies to devices that have no operation or functionality as a radiofrequency device unless connected to an electronic display.

18. *Electronic labeling legibility and permanence.* The Commission concluded that, regardless of the method of display, electronic or physical, if the required information is not legible, or if a display that is too dim or displayed for too short a duration to be easily read, then the basic purpose of having a labeling requirement is undermined. Accordingly, electronic labeling information must be electronically displayed in a manner that is ''clearly legible without the aid of magnification.'' Similarly, because electronic labels cannot be easily removed or replaced if they are to be effective, manufacturers that choose to display required labeling information electronically must ensure that the information may not be removed or modified by anyone other than the responsible party.

19. *When electronic labels may be used.* The Commission found that in defining ''electronic labeling,'' the E-LABEL Act statute does not limit itself to just the basic equipment labels that the Commission requires (*e.g.,* FCC IDs), and so it should be read broadly to cover any labeling that the Commission may require without regard to the subject matter. The rule the Commission adopted permits, with limited exceptions, e-labeling for ''any . . . information that the Commission's rules would otherwise require to be shown on a physical label attached to the device.'' Only in those limited cases where an electronic label would be incapable of conveying the information in a timely manner, such that it would undermine the purpose of providing the information in the first place, does the Commission still require the use of physical labels. It provided specific examples, including mandatory labeling requirements and warnings for 406 MHz personal locator beacons, notice of prior coordination requirement for wireless medical telemetry devices, non-interference warnings and serial number identification for MedRadio equipment, and labeling requirements for Emergency Position Indicating Radiobeacons and Emergency Locator Transmitters. Where a rule has a variety of information disclosure requirements, only those elements that relate to labeling the device itself will be eligible for electronic labeling.

20. *Temporary External Labels.* In the NPRM, the Commission noted that labels are intended to provide consumers with important information about RF devices and inform government officials that the devices meet the technical requirements of its rules and it expressed concerns that these abilities are limited when access to the electronic display is precluded. Thus, the Commission initially proposed that devices using an electronic label instead of a permanent physical label would be required to include the pertinent regulatory information on the product packaging or on a physical label placed on the device at the time of importation, marketing, and sales. In response, some commenters asserted that requiring the removable labels would reduce many of the benefits of e-labeling and that such a requirement was not part of Congress' direction in the E-LABEL Act.

21. The Commission stated that while the E-LABEL Act did not specifically prescribe the use of temporary external labels, it did not directly proscribe them either. It noted that the Act's legislative history stated that the purpose of the bill was ''to promote the non-exclusive use of electronic labeling for certain [RF] devices.'' It continued that, while the statutory language generically refers to physical labels, the legislative history makes it clear that Congress did not intend to frustrate or disrupt the underlying purpose of the equipment authorization program. Toward this end the Commission asserted that a temporary physical label would support ongoing oversight and provide everyone in the supply chain, including

wholesalers, distributors, and retailers, as well as initial purchasers, an obvious assertion that a device comports with our technical requirements and is legal to import/sell/purchase in the U.S. While acknowledging the burdens associated with its temporary labeling proposal, it affirmed its belief that temporary labels or packaging markings would be significantly less burdensome than permanent labels. Accordingly, the Commission concluded that requiring temporary labeling provides a reasonable means for it to meet its objectives in maintaining the ready identification of devices while supporting the overall streamlining and cost-saving objectives embodied in the E-LABEL Act.

22. The Commission accordingly adopted a limited version of its original labeling proposal, specifically requiring a device or its packaging be labeled such that the device can be identified as complying with the FCC's equipment authorization requirements. This could be accomplished via stick-on label, printing on the packaging, or other similar means. In many cases, the label might simply display be the FCC ID, or it can also be sufficient to identify the device by model or name, if the Web page with the relevant regulatory information is readily identifiable. The Commission found that this requirement would afford parties with considerably more flexibility than its existing rules—many of which require external labeling to be readily visible—as well as the existing KDB guidance and it would significantly reduce the potential burdens that parties had identified in the original proposal.

23. *Labeling for small devices.* The Commission adopted a rule specifying that, in the event that a device is so small that its identifying information cannot be displayed on its surface in four-point type or larger, and it does not have a capability for electronic display, then that device's identifying information may be placed in its user manual.

24. *Importation Rules.* To ensure that RF devices brought into the United States comply with the Commission's technical standards, the Commission rules set out specific conditions under which RF devices that are capable of causing harmful interference to radio communications may be imported into the United States. The Commission eliminated the FCC-specific customs declaration filing requirement (effected by FCC Form 740) and modified rules specifying responsibility for the compliance of imported RF products to account for this change.

25. *Importation declaration/FCC Form 740.* The Commission discontinued use of FCC Form 740 and eliminated §§ 2.1205 and 2.1203(b), thus removing the Form 740 filing requirements. It found nothing in the record to indicate that the existing Form 740 filing process provides a substantial deterrent to illegal importation of RF devices, that the existing filing requirement creates large burdens in light of the growth in the number and type of RF devices being imported, and that there is now a wider availability of product and manufacturer information, including that available to the FCC from the Custom and Border Protection (CBP)'s database.

26. *Compliance Responsibilities.* The Commission retained the requirement that there must be an entity that assumes responsibility for the compliance of the device and modified the rules to ensure the existence and identity (and a domestic presence under the new SDoC rules), of such a responsible party.

27. The responsible party can be the importer or the consignee or the customs broker. The Commission noted that customs brokers have the ability to decline to broker shipments for which no other party will take responsibility, and they can take added steps to ensure that their clients follow our rules for shipments they broker (*e.g.*, by requiring a compliance statement from clients or obtaining an indemnification agreement or suitable bonding). The new rule also requires the submission of supporting documentation of compliance upon request by the Commission.

28. *Increasing the number of trade show devices.* The Commission modified § 2.1204(a)(4), which allows for the importation of RF devices for demonstration purposes at a trade show, provided that those devices will not be sold or marketed, to permit the importation of up to 400 devices of any type for that purpose. The prior rule allowed for 200 units for devices used in licensed services (including the ''licensed by rule'' services) and 10 units for all other products, but also allowed for the importation of a greater number of devices upon written approval from OET. The revised limits are appropriate and will reduce overall administrative burdens. Based on past experiences with trade shows in which parties have sought approval to import and demonstrate more devices than the current rules allow, the new limit should accommodate future needs while still maintaining a check on the potential that too many imported trade show devices could lead to interference concerns. The option to seek written approval to import more than 400 devices will remain available under new § 2.1204(a)(4)(ii) for any such cases that might occur.

29. *Excluded devices.* The Commission did not adopt its proposal to remove the exclusion contained in § 2.1202(a) of the rules for certain unintentional radiators ''which utilize low level battery power and which do not contain provisions for operation while connected to AC power lines'' from complying with the Commission's importation conditions. In response to commenters' concerns, it retained the exclusion and its description in the rules, but removed the list of example devices (*e.g.*, cameras, musical greeting cards, and hand-held calculators) contained in the rules that, in many cases, are obsolete and can be misleading.

30. *Devices imported for personal use.* The Commission revised § 2.1204(a)(7) to allow an individual to import for personal use up to three devices, including those covered under the current exemption and adding intentional RF transmitters whether or not used in conjunction with licensed service and identified under our rules as client or subscriber devices. It limited the expansion of the rule to encompass client or subscriber devices to account for modern use scenarios while still ensuring that the importation rules continue to offer adequate protection against the types of devices that have the greatest potential to lead to cases of harmful interference.

31. *Measurement Procedures.* These rule modifications will make it easier to keep up with changes in technology and industry measurement standards and address the evolution of how new technologies are incorporated into ensuing generations of devices, thus making it easier to ensure that RF devices are tested properly.

32. *Streamlining and Consolidating References to KDB Guidance.* The Commission modified § 2.947(a)(3), which had referred to ''any measurement procedure acceptable to the Commission,'' to specifically include a reference to the advisory information that is available in the KDB. This assists manufacturers and the public by providing a clear reference to an existing resource that provides technical guidance. A new provision (subsection (g)) requires test reports to contain adequate test data or sufficient justification as to why test data was not required. This will help ensure consistency among submissions, particularly when a party is not submitting all possible testing data that could be performed. The Commission

also added references to KDB Publications in Parts 15 (for unlicensed RF devices) and Part 18 (for Industrial, Scientific, and Medical (ISM) Equipment).

33. *References to Industry Standards.* The Commission revised the specific measurement procedures contained in §§ 15.31, 15.32 and 15.35 to remove any redundancy with the ANSI C63.4–2014 and ANSI C63.10–2013 procedures that are specified by reference in §§ 15.31(a)(3) and (a)(4) and, in the case of § 15.35(a), to reference ANSI C63.4–2014 clause 4 for specifications on measuring instrumentation using a CISPR-quasi peak detector function and related measurement bandwidths. It did not modify §§ 2.1057 and 15.33(a) so that it could retain clear requirements in the rules on the specified range for frequency measurements.

34. *Composite systems.* Many products now include devices that operate under multiple rules sections that have distinct authorization requirements and the measurement procedures for the certification of these so-called ''composite systems'' are included in §§ 15.31(h) and 15.31(k) of the rules. The Commission modified its rules to move most provisions for composite systems to part 2 of its rules since they generally apply to all types of advices. Certain requirements that specifically apply to unlicensed devices remain in §§ 15.31(h) and 15.31(k).

35. *ANSI C63.26 (Compliance Testing for Licensed Radio Services).* The Commission amended §§ 2.910(c) and 2.1041 to include ANSI C63.26–2015, ''American National Standard for Compliance Testing of Transmitters Used in Licensed Radio Services'' as an acceptable measurement procedure for equipment that operates in authorized radio services covered by the measurement standard. This standard can be used for measurements that are required by §§ 2.1046, 2.1047, 2.1049, 2.1051, 2.1053, 2.1055, and 2.1057. Use of ANSI standards is long-standing Commission practice and this standard is in the public domain; although there is a fee for its use. It retained all current options in § 2.947 that can be considered in selecting a measurement procedure to be used for demonstrating compliance. Finally, it allowed accredited laboratories to test to the ANSI C63.26 standards for up to two years from the date of adoption of the *First Report and Order* without an explicit expansion of their scope by an accrediting body.

36. *Incorporation by Reference.* The FCC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. The OFR's regulations require that agencies must discuss in the preamble of the final rule ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the final rule must summarize the material being incorporated by reference. 1 CFR 51.5(b).

37. In accordance with OFR's requirements, the discussion in this section summarizes ANSI standards. They can be viewed during normal business hours at the Commission address found in **ADDRESSES**. Copies of the standards are available for purchase from these organizations: The Institute of Electrical and Electronic Engineers (IEEE), 3916 Ranchero Drive, Ann Arbor, MI 48108, 1–800–699–9277, *http://www.techstreet.com/ieee;* and the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, *http://webstore.ansi.org/ansidocstore.*

38. (1) ANSI C63.26–2015, ''American National Standard for Compliance Testing of Transmitters Used in Licensed Radio Services,'' ANSI approved December 11, 2015, IBR approved for § 2.1041.

39. This standard, ANSI C63.26–2015, covers the procedures for testing a wide variety of licensed transmitters; including but not limited to transmitters operating under parts 22, 24, 25, 27, 90, 95 and 101 of the FCC Rules, transmitters subject to the general procedures in part 2 of the FCC Rules and procedures for transmitters not covered in the FCC Rules. The standard also addresses specific topics; *e.g.,* ERP/EIRP, average power measurements and instrumentation requirements.

40. (2) ANSI C63.4–2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz,'' ANSI approved June 13, 2014, IBR approved for § 15.35(a).

41. This standard, ANSI C63.4–2014, contains methods, instrumentation, and facilities for measurement of radiofrequency (RF) signals and noise emitted from electrical and electronic devices in the frequency range of 9 kHz to 40 GHz, as usable, for example, for compliance testing to U.S. (47 CFR part 15) and Industry Canada (ICES–003) regulatory requirements.

II. Procedural Matters

A. Paperwork Reduction Act

1. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. On August 11, 2017, the Office of Management and Budget determined that the rule changes made in the *First Report and Order* represent nonsubstantive changes to currently approved collections. Therefore, the existing approvals, OMB control numbers 3060–0329 and 3060–0636, continue to apply to the rules addressed herein.

B. Congressional Review Act

2. The Commission will send a copy of the *First Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Act

3. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA), set forth in Appendix B of the *First Report and Order* concerning the possible impact of the rule changes.

III. Ordering Clauses

4. Accordingly, *it is ordered* that pursuant to Sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307(e), 332, and 720 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307(e), 332, 622, and Sections 0.31(g), 0.31(i), and 0.31(j) of the Commission's rules, 47 CFR 0.31(g), 0.31(i), 0.31(j), this Report and Order *is adopted.*

5. *It is further ordered* that the rules and requirements adopted herein *will become effective* upon publication in the **Federal Register**.

6. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *First Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Incorporation by reference, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 15

Communications equipment, Incorporation by reference, Labeling, Radio, Reporting and recordkeeping requirements.

47 CFR Part 18

Business and industry, Radio, Reporting and recordkeeping requirements.

47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 78

Cable television, Television, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 80

Communications equipment, Marine safety, Radio, Reporting and recordkeeping requirements, Vessels.

47 CFR Part 87

Air transportation, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Administrative practice and procedure, Business and industry, Common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, 18, 73, 74, 78, 80, 87, 90, and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Revise § 2.803(b)(2) to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

* * * * *

(b) * * *

(2) For devices subject to authorization under Supplier's Declaration of Conformity in accordance with the rules in subpart J of this part, the device complies with all applicable technical, labeling, identification and administrative requirements; or

* * * * *

■ 3. Revise § 2.901 to read as follows:

§ 2.901 Basis and purpose.

(a) In order to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and in order to promote efficient use of the radio spectrum, the Commission has developed technical standards for radio frequency equipment and parts or components thereof. The technical standards applicable to individual types of equipment are found in that part of the rules governing the service wherein the equipment is to be operated. In addition to the technical standards provided, the rules governing the service may require that such equipment be authorized under Supplier's Declaration of Conformity or receive a grant of certification from a Telecommunication Certification Body.

(b) Sections 2.906 through 2.1077 describe the procedure for a Supplier's Declaration of Conformity and the procedures to be followed in obtaining certification and the conditions attendant to such a grant.

§ 2.902 [Removed]

■ 4. Remove § 2.902.

■ 5. Revise § 2.906 to read as follows:

§ 2.906 Supplier's Declaration of Conformity.

(a) Supplier's Declaration of Conformity (SDoC) is a procedure where the responsible party, as defined in § 2.909, makes measurements or completes other procedures found acceptable to the Commission to ensure that the equipment complies with the appropriate technical standards. Submittal to the Commission of a sample unit or representative data demonstrating compliance is not required unless specifically requested pursuant to § 2.945.

(b) Supplier's Declaration of Conformity is applicable to all items subsequently marketed by the manufacturer, importer, or the responsible party that are identical, as defined in § 2.908, to the sample tested and found acceptable by the manufacturer.

(c) The responsible party may, if it desires, apply for Certification of a device subject to the Supplier's Declaration of Conformity. In such cases, all rules governing certification will apply to that device.

■ 6. Revise § 2.909 to read as follows:

§ 2.909 Responsible party.

(a) In the case of equipment that requires the issuance of a grant of certification, the party to whom that grant of certification is issued is responsible for the compliance of the equipment with the applicable standards. If the radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to § 2.929(b), the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this chapter.

(b) For equipment subject to Supplier's Declaration of Conformity the party responsible for the compliance of the equipment with the applicable standards, who must be located in the United States (see § 2.1077), is set forth as follows:

(1) The manufacturer or, if the equipment is assembled from individual component parts and the resulting system is subject to authorization under Supplier's Declaration of Conformity, the assembler.

(2) If the equipment by itself, or, a system is assembled from individual parts and the resulting system is subject to Supplier's Declaration of Conformity and that equipment or system is imported, the importer.

(3) Retailers or original equipment manufacturers may enter into an agreement with the responsible party designated in paragraph (b)(1) or (b)(2) of this section to assume the responsibilities to ensure compliance of equipment and become the new responsible party.

(4) If the radio frequency equipment is modified by any party not working under the authority of the responsible party, the party performing the modifications, if located within the U.S., or the importer, if the equipment

is imported subsequent to the modifications, becomes the new responsible party.

(c) If the end product or equipment is subject to both certification and Supplier's Declaration of Conformity (*i.e.,* composite system), all the requirements of paragraphs (a) and (b) of this section apply.

(d) If, because of modifications performed subsequent to authorization, a new party becomes responsible for ensuring that a product complies with the technical standards and the new party does not obtain a new equipment authorization, the equipment shall be labeled, following the specifications in § 2.925(d), with the following: ''This product has been modified by [insert name, address and telephone number or internet contact information of the party performing the modifications].''

(e) In the case of transfer of control of equipment, as in the case of sale or merger of the responsible party, the new entity shall bear the responsibility of continued compliance of the equipment.

■ 7. Amend § 2.910 as follows:

■ a. In the introductory text of paragraph (c), remove ''ISO'' and add in its place ''IEEE'';

■ b. In paragraph (c)(1)(i), remove the last ''and''; and

■ c. Add paragraph (c)(3).

The addition reads as follows:

§ 2.910 Incorporation by reference.

* * * * *

(c) * * *

(3) ANSI C63.26–2015, ''American National Standard of Procedures for Compliance Testing of Transmitters Used in Licensed Radio Services,'' ANSI approved December 11, 2015, IBR approved for § 2.1041(b).

* * * * *

■ 8. Amend § 2.925 by revising the introductory text of paragraph (a), paragraphs (a)(3), (b), and (f), redesignating the Note following paragraph (f) as ''Note to paragraph (f)'', and removing paragraph (g) to read as follows:

§ 2.925 Identification of equipment.

(a) Each equipment covered in an application for equipment authorization shall bear a label listing the following:

* * * * *

(3) The information required may be provided electronically pursuant to § 2.935.

(b) Any device subject to more than one equipment authorization procedure may be assigned a single FCC Identifier. However, a single FCC Identifier is required to be assigned to any device consisting of two or more sections assembled in a common enclosure, on a common chassis or circuit board, and with common frequency controlling circuits. Devices to which a single FCC Identifier has been assigned shall be identified pursuant to paragraph (a) of this section.

(1) Separate FCC Identifiers may be assigned to a device consisting of two or more sections assembled in a common enclosure, but constructed on separate sub-units or circuit boards with independent frequency controlling circuits. The FCC Identifier assigned to any transmitter section shall be preceded by the term *TX FCC ID,* the FCC Identifier assigned to any receiver section shall be preceded by the term *RX FCC ID* and the identifier assigned to any remaining section(s) shall be preceded by the term *FCC ID.*

(2) Where terminal equipment subject to part 68 of this chapter, and a radiofrequency device subject to equipment authorization requirements are assembled in a common enclosure, the device shall be labeled in accordance with the Hearing Aid Compatibility-related requirements in part 68 of this chapter and the requirements published by the Administrative Council for Terminal Attachments, and shall also display the FCC Identifier in the format specified in paragraph (a) of this section.

(3) For a transceiver, the receiver portion of which is subject to Supplier's Declaration of Conformity pursuant to § 15.101 of this chapter, and the transmitter portion is subject to certification, the FCC Identifier required for the transmitter portion shall be preceded by the term FCC ID.

* * * * *

(f) The FCC Identifier including the term ''*FCC ID*'' shall be in a size of type large enough to be readily legible, consistent with the dimensions of the equipment and its label. However, the type size for the FCC Identifier is not required to be larger than eight-point. If a device is so small that it is impractical to label it with the FCC Identifier in a font that is four-point or larger, and the device does not have a display that can show electronic labeling, then the FCC Identifier shall be placed in the user manual and must also either be placed on the device packaging or on a removable label attached to the device.

* * * * *

■ 9. Revise § 2.926(e) to read as follows:

§ 2.926 FCC identifier.

* * * * *

(e) No FCC Identifier may be used on equipment to be marketed unless that specific identifier has been validated by a grant of equipment certification. This shall not prohibit placement of an FCC identifier on a transceiver which includes a receiver subject to Suppliers Declaration of Conformity pursuant to § 15.101 of this chapter, provided that the transmitter portion of such transceiver is covered by a valid grant of certification. The FCC Identifier is uniquely assigned to the grantee and may not be placed on the equipment without authorization by the grantee. See § 2.803 for conditions applicable to the display at trade shows of equipment which has not been granted equipment authorization where such grant is required prior to marketing. Labeling of such equipment may include model or type numbers, but shall not include a purported FCC Identifier.

■ 10. Amend § 2.927 by revising the section heading and paragraph (a) to read as follows:

§ 2.927 Limitations on grants.

(a) A grant of certification is valid only when the device is labeled in accordance with § 2.925 and remains effective until set aside, revoked or withdrawn, rescinded, surrendered, or a termination date is otherwise established by the Commission.

* * * * *

■ 11. Revise § 2.931 to read as follows:

§ 2.931 Responsibilities.

(a) The responsible party warrants that each unit of equipment marketed under its grant of certification and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) filed with the application for certification continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.

(b)–(c) [Reserved]

(d) In determining compliance for devices subject to Supplier's Declaration of Conformity, the responsible party warrants that each unit of equipment marketed under Supplier's Declaration of Conformity will be identical to the unit tested and found acceptable with the standards and that the records maintained by the responsible party continue to reflect the equipment being produced under such Supplier's Declaration of Conformity within the variation that can be expected due to quantity production and testing on a statistical basis.

(e) For equipment subject to Supplier's Declaration of Conformity,

the responsible party must reevaluate the equipment if any modification or change adversely affects the emanation characteristics of the modified equipment. The responsible party bears responsibility for continued compliance of subsequently produced equipment.

■ 12. Add § 2.935 to read as follows:

§ 2.935 Electronic labeling of radiofrequency devices.

(a) Any radiofrequency device equipped with an integrated electronic display screen, or a radiofrequency device without an integrated screen that can only operate in conjunction with a device that has an electronic display screen, may display on the electronic display the FCC Identifier, any warning statements, or other information that the Commission's rules would otherwise require to be shown on a physical label attached to the device.

(b) Devices displaying their FCC Identifier, warning statements, or other information electronically must make this information readily accessible on the electronic display. Users must be provided with prominent instructions on how to access the information in the operating instructions, inserts in packaging material, or other easily accessible format at the time of purchase. The access instructions may also be provided via the product-related Web site, if such a Web site exists; the packaging material must provide specific instructions on how to locate the Web site information, and a copy of these instructions must be included in the application for equipment certification.

(c) Devices displaying their FCC Identifier, warning statements, or other information electronically must permit access to the information without requiring special codes, accessories or permissions and the access to this information must not require more than three steps from the device setting menu. The number of steps does not include those steps for use of screen locks, passcodes or similar security protection designed to control overall device access.

(d) The electronically displayed FCC Identifier, warning statements, or other information must be displayed electronically in a manner that is clearly legible without the aid of magnification;

(e) The necessary label information must be programmed by the responsible party and must be secured in such a manner that third-parties cannot modify it.

(f) Devices displaying their FCC Identifier, warning statements, or other information electronically must also be labeled, either on the device or its packaging, with the FCC Identifier or other information (such as a model number and identification of a Web page that hosts the relevant regulatory information) that permits the devices to be identified at the time of importation, marketing, and sales as complying with the FCC's equipment authorization requirements. Devices can be labeled with a stick-on label, printing on the packaging, a label on a protective bag, or by similar means. Any removable label shall be of a type intended to survive normal shipping and handling and must only be removed by the customer after purchase.

■ 13. Revise § 2.938 to read as follows:

§ 2.938 Retention of records.

(a) For equipment subject to the equipment authorization procedures in this part, the responsible party shall maintain the records listed as follows:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the standards and the requirements of § 2.931.

(2) A record of the procedures used for production inspection and testing to ensure conformance with the standards and the requirements of § 2.931.

(3) A record of the test results that demonstrate compliance with the appropriate regulations in this chapter.

(b) For equipment subject to Supplier's Declaration of Conformity, the responsible party shall, in addition to the requirements in paragraph (a) of this section, maintain a record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations in this chapter. The record shall:

(1) Indicate the actual date all testing was performed;

(2) State the name of the test laboratory, company, or individual performing the testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the tests;

(3) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used;

(4) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT;

(5) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number;

(6) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing;

(7) Contain at least two drawings or photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must clearly show the test configuration used;

(8) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations in this chapter;

(9) Include all of the data required to show compliance with the appropriate regulations in this chapter;

(10) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in § 2.909; and

(11) A copy of the compliance information, as described in § 2.1077, required to be provided with the equipment.

(c) The provisions of paragraph (a) of this section shall also apply to a manufacturer of equipment produced under an agreement with the original responsible party. The retention of the records by the manufacturer under these circumstances shall satisfy the grantee's responsibility under paragraph (a) of this section.

(d) For equipment subject to more than one equipment authorization procedure, the responsible party must retain the records required under all applicable provisions of this section.

(e) For equipment subject to rules that include a transition period, the records must indicate the particular transition provisions that were in effect when the equipment was determined to be compliant.

(f) For equipment subject to certification, records shall be retained for a one year period after the marketing of the associated equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the responsible party (or, under paragraph (c) of this section, the manufacturer) is officially notified that an investigation or any other administrative proceeding involving its equipment has been instituted. For all other records kept pursuant to this section, a two-year period shall apply.

(g) If radio frequency equipment is modified by any party other than the original responsible party, and that party is not working under the authorization of the original responsible party, the party performing the modifications is not required to obtain the original design drawings specified

in paragraph (a)(1) of this section. However, the party performing the modifications must maintain records showing the changes made to the equipment along with the records required in paragraph (a)(3) of this section. A new equipment authorization may also be required.

■ 14. Amend § 2.945 by revising paragraphs (b)(1) and (c) to read as follows:

§ 2.945 Submission of equipment for testing and equipment records.

* * * * *

(b) * * *

(1) The Commission may request that the responsible party or any other party marketing equipment subject to this chapter submit a sample of the equipment, or provide a voucher for the equipment to be obtained from the marketplace, to determine the extent to which production of such equipment continues to comply with the data filed by the applicant or on file with the responsible party for equipment subject to Supplier's Declaration of Conformity. The Commission may request that a sample or voucher to obtain a product from the marketplace be submitted to the Commission, or in the case of equipment subject to certification, to the TCB that certified the equipment.

* * * * *

(c) *Submission of records.* Upon request by the Commission, each responsible party shall submit copies of the records required by § 2.938 to the Commission. Failure of a responsible party or other party marketing equipment subject to this chapter to comply with a request from the Commission for records within 21 days may be cause for forfeiture, pursuant to § 1.80 of this chapter. The Commission may consider extensions of time upon submission of a showing of good cause.

* * * * *

■ 15. Amend § 2.947 by revising paragraphs (a)(3) and (c), and adding paragraphs (f) and (g), to read as follows:

§ 2.947 Measurement procedure.

(a) * * *

(3) Any measurement procedure acceptable to the Commission may be used to prepare data demonstrating compliance with the requirements of this chapter. Advisory information regarding measurement procedures can be found in the Commission's Knowledge Database, which is available at *www.fcc.gov/labhelp.*

* * * * *

(c) In the case of equipment requiring measurement procedures not specified in the references set forth in paragraphs (a)(1) through (3) of this section, the applicant shall submit a detailed description of the measurement procedures actually used.

* * * * *

(f) A composite system is a system that incorporates different devices contained either in a single enclosure or in separate enclosures connected by wire or cable. If the individual devices in a composite system are subject to different technical standards, each such device must comply with its specific standards. In no event may the measured emissions of the composite system exceed the highest level permitted for an individual component. Testing for compliance with the different standards shall be performed with all of the devices in the system functioning. If the composite system incorporates more than one antenna or other radiating source and these radiating sources are designed to emit at the same time, measurements of conducted and radiated emissions shall be performed with all radiating sources that are to be employed emitting.

(g) For each technical requirement in this chapter, the test report shall provide adequate test data to demonstrate compliance for the requirement, or in absence of test data, justification acceptable to the Commission as to why test data is not required.

■ 16. Amend § 2.948 by revising paragraph (a), the introductory text of paragraph (b), and paragraphs (b)(3) and (e) to read as follows:

§ 2.948 Measurement facilities.

(a) Equipment authorized under the certification procedure shall be tested at a laboratory that is accredited in accordance with paragraph (e) of this section.

(b) A laboratory that makes measurements of equipment subject to an equipment authorization under the certification procedure or Supplier's Declaration of Conformity shall compile a description of the measurement facilities employed.

* * * * *

(3) The description of the measurement facilities shall be retained by the party responsible for authorization of the equipment and provided to the Commission upon request.

(i) The party responsible for authorization of the equipment may rely upon the description of the measurement facilities retained by an independent laboratory that performed the tests. In this situation, the party responsible for authorization of the equipment is not required to retain a duplicate copy of the description of the measurement facilities.

(ii) No specific site calibration data is required for equipment that is authorized for compliance based on measurements performed at the installation site of the equipment. The description of the measurement facilities may be retained at the site at which the measurements were performed.

* * * * *

(e) A laboratory that has been accredited with a scope covering the measurements required for the types of equipment that it will test shall be deemed competent to test and submit test data for equipment subject to certification. Such a laboratory shall be accredited by a Commission recognized accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission International Standard ISO/IEC 17025, (incorporated by reference, see § 2.910). The organization accrediting the laboratory must be recognized by the Commission's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on International Standard ISO/IEC 17011 (incorporated by reference, see § 2.910). The frequency for reassessment of the test facility and the information that is required to be filed or retained by the testing party shall comply with the requirements established by the accrediting organization, but shall occur on an interval not to exceed two years.

* * * * *

■ 17. Amend § 2.950 by adding paragraphs (i) and (j) to read as follows:

§ 2.950 Transition periods.

* * * * *

(i) Radio frequency devices that would have been considered eligible for authorization under either the verification or Declaration of Conformity procedures that were in effect prior to November 2, 2017 may continue to be authorized until November 2, 2018 under the appropriate procedure in accordance with the requirements that were in effect immediately prior to November 2, 2017.

(j) All radio frequency devices that were authorized under the verification or Declaration of Conformity procedures prior to November 2, 2017 must continue to meet all requirements associated with the applicable procedure that were in effect immediately prior to November 2, 2017. If any changes are made to such devices

after November 2, 2018, the requirements associated with the Supplier's Declaration of Conformity will apply.

Undesignated Center Heading ''Verification'' [Removed]

■ 18. Remove the undesignated center heading ''Verification''.

§§ 2.951 through 2.955 [Removed]

■ 19. Remove §§ 2.951 through 2.955.

■ 20. Revise § 2.1041 to read as follows:

§ 2.1041 Measurement procedure.

(a) For equipment operating under parts 15 and 18, the measurement procedures are specified in the rules governing the particular device for which certification is requested.

(b) For equipment operating in the authorized radio services, measurements are required as specified in §§ 2.1046, 2.1047, 2.1049, 2.1051, 2.1053, 2.1055 and 2.1057. The measurement procedures in ANSI C63.26–2015 (incorporated by reference, see § 2.910) are acceptable for performing compliance measurements for equipment types covered by the measurement standard. See also § 2.947 for acceptable measurement procedures.

Undesignated Center Heading ''Declaration of Conformity'' [Revised]

■ 21. Revise the undesignated center heading ''Declaration of Conformity'' to read ''Supplier's Declaration of Conformity''.

■ 22. Revise § 2.1071 to read as follows:

§ 2.1071 Cross reference.

The general provisions of this subpart shall apply to equipment subject to Supplier's Declaration of Conformity.

■ 23. Revise § 2.1072 read as follows:

§ 2.1072 Limitation on Supplier's Declaration of Conformity.

(a) Supplier's Declaration of Conformity signifies that the responsible party, as defined in § 2.909, has determined that the equipment has been shown to comply with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. Compliance with these standards shall not be construed to be a finding by the responsible party with respect to matters not encompassed by the Commission's rules.

(b) Supplier's Declaration of Conformity by the responsible party, as defined in § 2.909, is effective until a termination date is otherwise established by the Commission.

(c) No person shall, in any advertising matter, brochure, etc., use or make reference to Supplier's Declaration of Conformity in a deceptive or misleading manner or convey the impression that such Supplier's Declaration of Conformity reflects more than a determination by the manufacturer, importer, integrator, or responsible party, as defined in § 2.909, that the device or product has been shown to be capable of complying with the applicable technical standards of the Commission's rules.

§ 2.1073 [Removed]

■ 24. Remove § 2.1073.

■ 25. Revise § 2.1074 to read as follows:

§ 2.1074 Identification.

(a) Devices subject only to Supplier's Declaration of Conformity shall be uniquely identified by the party responsible for marketing or importing the equipment within the United States. However, the identification shall not be of a format which could be confused with the FCC Identifier required on certified equipment. The responsible party shall maintain adequate identification records to facilitate positive identification for each device.

(b) Devices subject to authorization under Supplier's Declaration of Conformity may be labeled with the following logo on a voluntary basis as a visual indication that the product complies with the applicable FCC requirements. The use of the logo on the device does not alleviate the requirement to provide the compliance information required by § 2.1077.

§ 2.1075 [Removed]

■ 26. Remove § 2.1075.

■ 27. Revise § 2.1077 to read as follows:

§ 2.1077 Compliance information.

(a) If a product must be tested and authorized under Supplier's Declaration of Conformity, a compliance information statement shall be supplied with the product at the time of marketing or importation, containing the following information:

(1) Identification of the product, *e.g.,* name and model number;

(2) A compliance statement as applicable, *e.g.,* for devices subject to part 15 of this chapter as specified in § 15.19(a)(3) of this chapter, that the product complies with the rules; and

(3) The identification, by name, address and telephone number or Internet contact information, of the responsible party, as defined in § 2.909. The responsible party for Supplier's Declaration of Conformity must be located within the United States.

(b) If a product is assembled from modular components (*e.g.,* enclosures, power supplies and CPU boards) that, by themselves, are authorized under a Supplier's Declaration of Conformity and/or a grant of certification, and the assembled product is also subject to authorization under Supplier's Declaration of Conformity but, in accordance with the applicable regulations, does not require additional testing, the product shall be supplied, at the time of marketing or importation, with a compliance information statement containing the following information:

(1) Identification of the assembled product, *e.g.,* name and model number.

(2) Identification of the modular components used in the assembly. A modular component authorized under Supplier's Declaration of Conformity shall be identified as specified in paragraph (a)(1) of this section. A modular component authorized under a grant of certification shall be identified by name and model number (if applicable) along with the FCC Identifier number.

(3) A statement that the product complies with part 15 of this chapter.

(4) The identification, by name, address and telephone number or Internet contact information, of the responsible party who assembled the product from modular components, as defined in § 2.909. The responsible party for Supplier's Declaration of Conformity must be located within the United States.

(5) Copies of the compliance information statements for each modular component used in the system that is authorized under Supplier's Declaration of Conformity.

(c) The compliance information statement shall be included in the user's manual or as a separate sheet. In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form. The information may be provided electronically as permitted in § 2.935.

■ 28. Revise § 2.1201(b) to read as follows:

§ 2.1201 Purpose.

* * * * *

(b) The rules in this subpart set out the conditions under which radio frequency devices as defined in § 2.801 that are capable of causing harmful

interference to radio communications may be imported into the U.S.A.

* * * * *

■ 29. Revise § 2.1202 to read as follows:

§ 2.1202 Exclusions.

The provisions of this subpart do not apply to the importation of:

(a) Unintentional radiators that are exempted from technical standards and other requirements as specified in § 15.103 of this chapter or utilize low level battery power and that do not contain provisions for operation while connected to AC power lines.

(b) Radio frequency devices manufactured and assembled in the U.S.A. that meet applicable FCC technical standards and that have not been modified or received further assembly.

(c) Radio frequency devices previously properly imported that have been exported for repair and re-imported for use.

(d) Subassemblies, parts, or components of radio frequency devices unless they constitute an essentially completed device which requires only the addition of cabinets, knobs, speakers, or similar minor attachments before marketing or use. This exclusion does not apply to computer circuit boards that are actually peripheral devices as defined in § 15.3(r) of this chapter and all devices that, by themselves, are subject to FCC marketing rules.

■ 30. Revise § 2.1203 to read as follows:

§ 2.1203 General requirement for entry into the U.S.A.

(a) No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee, or their designated customs broker, determines that the device meets one of the conditions for entry set out in § 2.1204.

(b) Failure to satisfy at least one of the entry conditions for importation of radio frequency devices may result in refused entry, refused withdrawal for consumption, required redelivery to the Customs port, and other administrative, civil and criminal remedies provided by law.

(c) Whoever makes a determination pursuant to § 2.1203(a) must provide, upon request made within one year of the date of entry, documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements.

■ 31. Revise § 2.1204(a)(4)(i) through (iii) and (a)(7) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(4) * * *

(i) 400 or fewer devices.

(ii) Prior to importation of a greater number of units than shown above, written approval must be obtained from the Chief, Office of Engineering and Technology, FCC.

(iii) Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

* * * * *

(7) Three or fewer radio frequency devices are being imported for the individual's personal use and are not intended for sale. Unless exempted otherwise in this chapter, the permitted devices must be from one or more of the following categories:

(i) Unintentional radiator as defined in part 15 of this chapter which may include radio receivers, computers or other Class B digital devices in part 15 of this chapter.

(ii) Consumer ISM equipment as defined in part 18 of this chapter.

(iii) Intentional radiators subject to part 15 rules only if they can be used in client modes as specified in § 15.202 of this chapter.

(iv) Transmitters operating under rules which require a station license as subscribers permitted under § 1.903 of this chapter and operated under the authority of an operator license issued by the Commission.

* * * * *

§ 2.1205 [Removed]

■ 32. Remove § 2.1205.

PART 15—RADIO FREQUENCY DEVICES

■ 33. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 34. Revise § 15.1(c) to read as follows:

§ 15.1 Scope of this part.

* * * * *

(c) Unless specifically exempted, the operation or marketing of an intentional or unintentional radiator that is not in compliance with the administrative and technical provisions in this part, including prior equipment authorization, as appropriate, is prohibited under section 302 of the Communications Act of 1934, as amended, and subpart I of part 2 of this chapter. The equipment authorization procedures are detailed in subpart J of part 2 of this chapter.

■ 35. Amend § 15.19 by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 15.19 Labeling requirements.

(a) In addition to the requirements in part 2 of this chapter, a device subject to certification, or Supplier's Declaration of Conformity shall be labeled as follows:

(1) Receivers associated with the operation of a licensed radio service, *e.g.,* FM broadcast under part 73 of this chapter, land mobile operation under part 90 of this chapter, etc., shall bear the following statement in a conspicuous location on the device:

This device complies with part 15 of the FCC Rules. Operation is subject to the condition that this device does not cause harmful interference.

(2) A stand-alone cable input selector switch, shall bear the following statement in a conspicuous location on the device:

This device complies with part 15 of the FCC Rules for use with cable television service.

(3) All other devices shall bear the following statement in a conspicuous location on the device:

This device complies with part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation.

(4) Where a device is constructed in two or more sections connected by wires and marketed together, the statement specified under paragraph (a) of this section is required to be affixed only to the main control unit.

(5) When the device is so small or for such use that it is impracticable to label it with the statement specified under paragraph (a) of this section in a font that is four-point or larger, and the device does not have a display that can show electronic labeling, then the information required by this paragraph shall be placed in the user manual and must also either be placed on the device packaging or on a removable label attached to the device.

(b) [Reserved]

* * * * *

■ 36. Revise § 15.25(b) and (c) to read as follows:

§ 15.25 Kits.

* * * * *

(b) At least two units of the kit shall be assembled in exact accordance with the instructions supplied with the product to be marketed. If all components required to fully complete the kit (other than those specified in paragraph (a) of this section that are needed for compliance with the

technical provisions and must be included with the kit) are not normally furnished with the kit, assembly shall be made using the recommended components. The assembled units shall be certified or authorized under Supplier's Declaration of Conformity, as appropriate, pursuant to the requirements of this part.

(1) The measurement data required for a TV interface device subject to certification shall be obtained for each of the two units and submitted with an application for certification pursuant to subpart J of part 2 of this chapter.

(2) The measurement data required for a TV interface device subject to Supplier's Declaration of Conformity shall be obtained for the units tested and retained on file pursuant to the provisions of subpart J of part 2 of this chapter.

(c) A copy of the exact instructions that will be provided for assembly of the device shall be submitted with an application for certification. Those parts that are not normally furnished shall be detailed in the application for certification.

* * * * *

■ 37. Revise § 15.27(a) to read as follows:

§ 15.27 Special accessories.

(a) Equipment marketed to a consumer must be capable of complying with the necessary regulations in the configuration in which the equipment is marketed. Where special accessories, such as shielded cables and/or special connectors, are required to enable an unintentional or intentional radiator to comply with the emission limits in this part, the equipment must be marketed with, *i.e.,* shipped and sold with, those special accessories. However, in lieu of shipping or packaging the special accessories with the unintentional or intentional radiator, the responsible party may employ other methods of ensuring that the special accessories are provided to the consumer, without additional charge, at the time of purchase. Information detailing any alternative method used to supply the special accessories shall be included in the application for a grant of equipment authorization or retained in the Supplier's Declaration of Conformity records, as appropriate. The party responsible for the equipment, as detailed in § 2.909 of this chapter, shall ensure that these special accessories are provided with the equipment. The instruction manual for such devices shall include appropriate instructions on the first page of the text concerned with the installation of the device that these special accessories must be used with the device. It is the responsibility of the user to use the needed special accessories supplied with the equipment. In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form.

* * * * *

■ 38. Revise § 15.29(d) to read as follows:

§ 15.29 Inspection by the Commission.

* * * * *

(d) The Commission, from time to time, may request the party responsible for compliance, including an importer, to submit to the FCC Laboratory in Columbia, Maryland, various equipment to determine that the equipment continues to comply with the applicable standards. Shipping costs to the Commission's Laboratory and return shall be borne by the responsible party. Testing by the Commission will be performed using the measurement procedure(s) that was in effect at the time the equipment was authorized.

■ 39. Amend § 15.31 by adding Note 1 to paragraph (a)(4) and revising paragraphs (b), (d), (f)(4), (h), (j), and (k) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(a) * * *

(4) * * *

Note 1 to paragraph (a)(4): Digital devices tested to show compliance with the provisions of § 15.109(g)(2) must be tested following the ANSI C63.4–2014 procedure described in paragraph (a)(4) of this section.

(b) All parties making compliance measurements on equipment subject to the requirements of this part are urged to use these measurement procedures. Any party using other procedures should ensure that such other procedures can be relied on to produce measurement results compatible with the FCC measurement procedures. The description of the measurement procedure used in testing the equipment for compliance and a list of the test equipment actually employed shall be made part of an application for certification or included with the data required to be retained by the party responsible for devices authorized pursuant to Supplier's Declaration of Conformity.

* * * * *

(d) Field strength measurements shall be made, to the extent possible, on an open area test site. Test sites other than open area test sites may be employed if they are properly calibrated so that the measurement results correspond to what would be obtained from an open area test site. In the case of equipment for which measurements can be performed only at the installation site, such as perimeter protection systems, carrier current systems, and systems employing a ''leaky'' coaxial cable as an antenna, measurements for Supplier's Declaration of Conformity or for obtaining a grant of equipment authorization shall be performed at a minimum of three installations that can be demonstrated to be representative of typical installation sites.

* * * * *

(f) * * *

(4) The applicant for a grant of certification shall specify the extrapolation method used in the application filed with the Commission. For equipment subject to Supplier's Declaration of Conformity, this information shall be retained with the measurement data.

* * * * *

(h) A composite system, as defined in § 2.947(f) of this chapter, that incorporates a carrier current system shall be tested as if the carrier current system were incorporated in a separate device; that is, the device shall be tested for compliance with whatever rules would apply to the device were the carrier current system not incorporated, and the carrier current system shall be tested for compliance with the rules applicable to carrier current systems.

* * * * *

(j) If the equipment under test consists of a central control unit and an external or internal accessory(ies) (peripheral) and the party declaring compliance of the equipment or applying for a grant of equipment authorization manufactures or assembles the central control unit and at least one of the accessory devices that can be used with that control unit, testing of the control unit and/or the accessory(ies) must be performed using the devices manufactured or assembled by that party, in addition to any other needed devices which the party does not manufacture or assemble. If the party declaring compliance of the equipment or applying for a grant of equipment authorization does not manufacture or assemble the central control unit and at least one of the accessory devices that can be used with that control unit or the party can demonstrate that the central control unit or accessory(ies) normally would be

marketed or used with equipment from a different entity, testing of the central control unit and/or the accessory(ies) must be performed using the specific combination of equipment which is intended to be marketed or used together. Only one test using peripherals or accessories that are representative of the devices that will be employed with the equipment under test is required. All possible equipment combinations are not required to be tested. The accessories or peripherals connected to the device being tested shall be unmodified, commercially available equipment.

(k) Composite systems (*i.e.,* systems that incorporate different devices contained in a single enclosure or in separate enclosures connected by wire or cable) shall be measured for compliance with the technical standards of this part in accordance with the procedures in § 2.947(f) of this chapter. For digital devices that consist of a combination of Class A and Class B devices, the total combination of which results in a Class A digital device, it is only necessary to demonstrate that the equipment combination complies with the limits for a Class A device. This equipment combination may not be employed for obtaining a grant of equipment authorization or declaring compliance of a Class B digital device. However, if the digital device combination consists of a Class B central control unit, *e.g.,* a personal computer, and a Class A internal peripheral(s), it must be demonstrated that the Class B central control unit continues to comply with the limits for a Class B digital device with the Class A internal peripheral(s) installed but not active.

* * * * *

■ 40. Revise § 15.32 to read as follows:

§ 15.32 Test procedures for CPU boards and computer power supplies.

Power supplies and CPU boards used with personal computers and for which separate authorizations are required to be obtained shall be tested in accordance with the specific procedures published or otherwise authorized by the Commission.

■ 41. Revise § 15.35 to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

The conducted and radiated emission limits shown in this part are based on the following, unless otherwise specified in this part:

(a) On any frequency or frequencies below or equal to 1000 MHz, the limits shown are based on measuring equipment employing a CISPR quasi-peak detector function and related measurement bandwidths, unless otherwise specified. The specifications for the measuring instrumentation using the CISPR quasi-peak detector can be found in ANSI C63.4–2014, clause 4 (incorporated by reference, see § 15.38). As an alternative to CISPR quasi-peak measurements, the responsible party, at its option, may demonstrate compliance with the emission limits using measuring equipment employing a peak detector function as long at the same bandwidth as indicated for CISPR quasi-peak measurements are employed.

(b) Unless otherwise specified, on any frequency or frequencies above 1000 MHz, the radiated emission limits are based on the use of measurement instrumentation employing an average detector function. Unless otherwise specified, measurements above 1000 MHz shall be performed using a minimum resolution bandwidth of 1 MHz. When average radiated emission measurements are specified in this part, including average emission measurements below 1000 MHz, there also is a limit on the peak level of the radio frequency emissions. Unless otherwise specified, *e.g.,* see §§ 15.250, 15.252, 15.253(d), 15.255, 15.256, and 15.509 through 15.519, the limit on peak radio frequency emissions is 20 dB above the maximum permitted average emission limit applicable to the equipment under test. This peak limit applies to the total peak emission level radiated by the device, *e.g.,* the total peak power level. Note that the use of a pulse desensitization correction factor may be needed to determine the total peak emission level. The instruction manual or application note for the measurement instrument should be consulted for determining pulse desensitization factors, as necessary.

(c) Unless otherwise specified, *e.g.,* §§ 15.255(b), and 15.256(l)(5), when the radiated emission limits are expressed in terms of the average value of the emission, and pulsed operation is employed, the measurement field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative (provided the transmitter operates for longer than 0.1 seconds) or in cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the average absolute voltage during a 0.1 second interval during which the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for certification or shall be retained in the measurement data file for equipment subject to Supplier's Declaration of Conformity.

■ 42. Revise § 15.37(c) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(c) All radio frequency devices that are authorized on or after July 12, 2004 under the certification, or Supplier's Declaration of Conformity procedures (or the prior verification or declaration of conformity procedures, as applicable) shall comply with the conducted limits specified in § 15.107 or § 15.207 as appropriate. All radio frequency devices that are manufactured or imported on or after July 11, 2005 shall comply with the conducted limits specified in § 15.107 or § 15.207, as appropriate. Equipment authorized, imported or manufactured prior to these dates shall comply with the conducted limits specified in § 15.107 or § 15.207, as appropriate, or with the conducted limits that were in effect immediately prior to September 9, 2002.

* * * * *

■ 43. Amend § 15.38 by redesignating paragraphs (g)(1) and (2) as paragraphs (g)(2) and (3) and adding new paragraph (g)(1) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(g) * * *

(1) ANSI C63.4–2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz,'' ANSI approved June 13, 2014, IBR approved for § 15.35(a).

* * * * *

■ 44. Revise § 15.101 to read as follows:

§ 15.101 Equipment authorization of unintentional radiators.

(a) Except as otherwise exempted in §§ 15.23, 15.103, and 15.113, unintentional radiators shall be authorized prior to the initiation of marketing, pursuant to the procedures for certification or Supplier's Declaration of Conformity (SDoC) given in subpart J of part 2 of this chapter, as follows:

TABLE 1 TO PARAGRAPH (a)

Type of device	Equipment authorization required
TV Broadcast Receiver	SDoC or Certification.
FM Broadcast Receiver	SDoC or Certification.
CB Receiver	SDoC or Certification.
Superregenerative Receiver	SDoC or Certification.
Scanning Receiver	Certification.
Radar Detector	Certification.
All other receivers subject to Part 15	SDoC or Certification.
TV Interface Device	SDoC or Certification.
Cable System Terminal Device	SDoC or Certification.
Stand-alone Cable input selector switch	SDoC or Certification.
Class B personal computers and peripherals	SDoC or Certification.
CPU boards and internal power supplies used with Class B personal computers	SDoC or Certification.
Class B personal computers assembled using authorized CPU boards or power supplies	SDoC or Certification.
Class B external switching power supplies	SDoC or Certification.
Other Class B digital devices & peripherals	SDoC or Certification.
Class A digital devices, peripherals & external switching power supplies	SDoC or Certification.
Access Broadband over Power Line (Access BPL)	Certification.
All other devices	SDoC or Certification.

(b) Only those receivers that operate (tune) within the frequency range of 30–960 MHz, CB receivers and radar detectors are subject to the authorizations shown in paragraph (a) of this section. Receivers operating above 960 MHz or below 30 MHz, except for radar detectors and CB receivers, are exempt from complying with the technical provisions of this part but are subject to § 15.5.

(c) Personal computers shall be authorized in accordance with one of the following methods:

(1) The specific combination of CPU board, power supply and enclosure is tested together and authorized under Supplier's Declaration of Conformity or a grant of certification;

(2) The personal computer is authorized under Supplier's Declaration of Conformity or a grant of certification, and the CPU board or power supply in that computer is replaced with a CPU board or power supply that has been separately authorized under Supplier's Declaration of Conformity or a grant of certification; or

(3) The CPU board and power supply used in the assembly of a personal computer have been separately authorized under Supplier's Declaration of Conformity or a grant of certification; and

(4) Personal computers assembled using either of the methods specified in paragraphs (c)(2) or (c)(3) of this section must, by themselves, also be authorized under Supplier's Declaration of Conformity if they are marketed. However, additional testing is not required for this Supplier's Declaration of Conformity, provided the procedures in § 15.102(b) are followed.

(d) Peripheral devices, as defined in § 15.3(r), shall be authorized under Supplier's Declaration of Conformity, or a grant of certification, as appropriate, prior to marketing. Regardless of the provisions of paragraphs (a) or (c) of this section, if a CPU board, power supply, or peripheral device will always be marketed with a specific personal computer, it is not necessary to obtain a separate authorization for that product provided the specific combination of personal computer, peripheral device, CPU board and power supply has been authorized under Supplier's Declaration of Conformity or a grant of certification as a personal computer.

(1) No authorization is required for a peripheral device or a subassembly that is sold to an equipment manufacturer for further fabrication; that manufacturer is responsible for obtaining the necessary authorization prior to further marketing to a vendor or to a user.

(2) Power supplies and CPU boards that have not been separately authorized and are designed for use with personal computers may be imported and marketed only to a personal computer equipment manufacturer that has indicated, in writing, to the seller or importer that they will obtain Supplier's Declaration of Conformity or a grant of certification for the personal computer employing these components.

(e) Subassemblies to digital devices are not subject to the technical standards in this part unless they are marketed as part of a system in which case the resulting system must comply with the applicable regulations. Subassemblies include:

(1) Devices that are enclosed solely within the enclosure housing the digital device, except for: Power supplies used in personal computers; devices included under the definition of a peripheral device in § 15.3(r); and personal computer CPU boards, as defined in § 15.3(bb);

(2) CPU boards, as defined in § 15.3(bb), other than those used in personal computers, that are marketed without an enclosure or power supply; and

(3) Switching power supplies that are separately marketed and are solely for use internal to a device other than a personal computer.

■ 45. Revise § 15.102(b)(4) to read as follows:

§ 15.102 CPU boards and power supplies used in personal computers.

* * * * *

(b) * * *

(4) If the system is marketed, the resulting equipment combination is authorized under Supplier's Declaration of Conformity pursuant to § 15.101(c)(4) and a compliance information statement, as described in § 2.1077(b) of this chapter, is supplied with the system. Marketed systems shall also comply with the labeling requirements in § 15.19 and must be supplied with the information required under §§ 15.21, 15.27 and 15.105; and

* * * * *

■ 46. Revise § 15.123(c)(3) and (c)(5)(iii) to read as follows:

§ 15.123 Labeling of digital cable ready products.

* * * * *

(c) * * *

(3) Subsequent to the testing of its initial unidirectional digital cable product model, a manufacturer or importer is not required to have other

models of unidirectional digital cable products tested at a qualified test facility for compliance with the procedures of Uni–Dir–PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma,'' September 03, 2003 (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in paragraph (c)(1) of this section. The manufacturer or importer shall ensure that all subsequent models of unidirectional digital cable products comply with the procedures in the Uni–Dir–PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma,'' September 03, 2003 (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with Supplier's Declaration of Conformity requirements in part 2, subpart J of this chapter. The manufacturer or importer shall further submit documentation demonstrating compliance with the procedures in the Uni–Dir–PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma,'' September 03, 2003 (incorporated by reference, see § 15.38) to the qualified test facility.

* * * * *

(5) * * *

(iii) Subsequent to the successful testing of its initial M–UDCP, a manufacturer or importer is not required to have other M–UDCP models tested at a qualified test facility for compliance with M–UDCP–PICS–I04–080225, ''Uni-Directional Cable Product Supporting M-Card: Multiple Profiles; Conformance Checklist: PICS,'' February 25, 2008 (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in paragraph (c)(5)(i) of this section. The manufacturer or importer shall ensure that all subsequent models of M–UDCPs comply with M–UDCP–PICS–I04–080225, ''Uni-Directional Cable Product Supporting M-Card: Multiple Profiles; Conformance Checklist: PICS,'' February 25, 2008 (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with Supplier's Declaration of Conformity requirements in part 2, subpart J of this chapter. For each M–UDCP model, the manufacturer or importer shall further submit documentation demonstrating compliance with M–UDCP–PICS–I04–080225, ''Uni-Directional Cable Product Supporting M-Card: Multiple Profiles; Conformance Checklist: PICS,'' February 25, 2008 (incorporated by reference, see § 15.38) to the qualified test facility.

* * * * *

■ 47. Revise § 15.201(a) through (c) to read as follows:

§ 15.201 Equipment authorization requirement.

(a) Intentional radiators operated as carrier current systems, devices operated under the provisions of §§ 15.211, 15.213, and 15.221, and devices operating below 490 kHz in which all emissions are at least 40 dB below the limits in § 15.209 are subject to Suppliers Declaration of Conformity pursuant to the procedures in subpart J of part 2 of this chapter prior to marketing.

(b) Except as otherwise exempted in paragraph (c) of this section and in § 15.23, all intentional radiators operating under the provisions of this part shall be certified by the Telecommunication Certification Bodies pursuant to the procedures in subpart J of part 2 of this chapter prior to marketing.

(c) For devices such as perimeter protection systems which, in accordance with § 15.31(d), are required to be measured at the installation site, each application for certification must be accompanied by a statement indicating that the system has been tested at three installations and found to comply at each installation. Until such time as certification is granted, a given installation of a system that was measured for the submission for certification will be considered to be in compliance with the provisions of this chapter, including the marketing regulations in subpart I of part 2 of this chapter, if tests at that installation show the system to be in compliance with the relevant technical requirements. Similarly, where measurements must be performed on site for equipment subject to Supplier's Declaration of Conformity, a given installation that has been found compliant with the applicable standards will be considered to be in compliance with the provisions of this chapter, including the marketing regulations in subpart I of part 2 of this chapter.

* * * * *

■ 48. Revise § 15.615(a)(4) to read as follows:

§ 15.615 General administrative requirements.

(a) * * *

(4) The manufacturer and type of Access BPL equipment and its associated FCC ID number, or, in the case of Access BPL equipment that has not been subject to certification in the past, the Trade Name and Model Number, as specified on the equipment label.

* * * * *

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

■ 49. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

■ 50. Revise § 18.203 to read as follows:

§ 18.203 Equipment authorization.

(a) Consumer ISM equipment, unless otherwise specified, must be authorized under either the Supplier's Declaration of Conformity or the certification procedure prior to use or marketing. An application for certification shall be filed with a Telecommunication Certification Body (TCB), pursuant to the relevant sections in part 2, subpart J of this chapter.

(b) Consumer ultrasonic equipment generating less than 500 watts and operating below 90 kHz, and non-consumer ISM equipment shall be subject to Supplier's Declaration of Conformity, in accordance with the relevant sections of part 2, subpart J of this chapter.

(c) Grants of equipment authorization issued, as well as on-site certifications performed, before March 1, 1986, remain in effect and no further action is required.

■ 51. Revise § 18.209 to read as follows:

§ 18.209 Identification of authorized equipment.

Each device for which a grant of equipment authorization is issued under this part shall be identified pursuant to the applicable provisions of subpart J of part 2 of this chapter.

■ 52. Revise § 18.212 to read as follows:

§ 18.212 Compliance information.

(a) Equipment authorized under Supplier's Declaration of Conformity shall include a compliance statement that contains the information set forth in § 2.1077 of this chapter and a statement identical or similar to the following: ''*This device complies with part 18 of the FCC Rules.*''

(b) The compliance information may be placed in the instruction manual, on a separate sheet, on the packaging, or electronically as permitted under § 2.935 of this chapter. There is no specific format for this information.

■ 53. Revise § 18.311 to read as follows:

§ 18.311 Methods of measurement.

The measurement techniques used to determine compliance with the technical requirements of this part are set out in FCC MP–5, ''FCC Methods of Measurements of Radio Noise Emissions from Industrial, Scientific, and Medical equipment,'' or compliance measurements made in accordance with the specific procedures otherwise authorized by the Commission.

PART 73—RADIO BROADCAST SERVICES

■ 54. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

■ 55. Amend § 73.53 by:
■ a. Revising paragraphs (a) and (b)(10); and
■ b. Redesignating the Note following (b)(12)(viii) as Note 1 to paragraph (b).

The revisions read as follows:

§ 73.53 Requirements for authorization of antenna monitors.

(a) Antenna monitors shall be approved with Supplier's Declaration of Conformity that demonstrates compliance with the technical requirements in this section. The procedure for Supplier's Declaration of Conformity is specified in subpart J of part 2 of this chapter.

Note 1 to paragraph (a): The verification procedure has been replaced by Supplier's Declaration of Conformity. Antenna monitors previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

(b) * * *

(10) Complete and correct schematic diagrams and operating instructions shall be retained by the party responsible for Supplier's Declaration of Conformity of the equipment and submitted to the FCC upon request. For the purpose of equipment authorization, these diagrams and instructions shall be considered as part of the monitor.

* * * * *

■ 56. Amend § 73.1660 by:
■ a. Revising paragraphs (a), (b) and (e); and
■ b. Removing ''part 2 of the FCC rules'' and adding in its place ''part 2 of this chapter'' in paragraph (d).

The revisions read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

(a)(1) An AM, FM, or TV transmitter shall be approved for compliance with the requirements of this part following the Supplier's Declaration of Conformity procedures described in subpart J of part 2 of this chapter.

Note 1 to paragraph (a)(1): the verification procedure has been replaced by Supplier's Declaration of Conformity. AM, FM, and TV transmitters previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950(j) of this chapter.

(2) An LPFM transmitter shall be certified for compliance with the requirements of this part following the procedures described in part 2 of this chapter.

(b) A permittee or licensee planning to modify a transmitter which has been certified or approved with Supplier's Declaration of Conformity must follow the requirements contained in § 73.1690.

* * * * *

(e) Additional rules covering certification and Supplier's Declaration of Conformity, modification of authorized transmitters, and withdrawal of a grant of authorization are contained in part 2 of this chapter.

■ 57. Amend § 73.1665 by:

■ a. Designating the table following paragraph (b) as ''Table 1 to paragraph (b)''; and

■ b. Revising paragraph (c).

The revision reads as follows:

§ 73.1665 Main transmitters.

* * * * *

(c) A licensee may, without further authority or notification to the FCC, replace an existing main transmitter or install additional main transmitter(s) for use with the authorized antenna if the replacement or additional transmitter(s) has been approved with Supplier's Declaration of Conformity. Within 10 days after commencement of regular use of the replacement or additional transmitter(s), equipment performance measurements, as prescribed for the type of station are to be completed.

Note 1 to paragraph (c): The verification procedure has been replaced by Supplier's Declaration of Conformity. Transmitters previously authorized under subpart J of this chapter may remain in use. See § 2.950 of this chapter.

Note 2 to paragraph (c): Pending the availability of AM broadcast transmitters that are authorized for use in the 1605–1705 kHz band, transmitters that are approved or verified for use in the 535–1605 kHz band may be utilized in the 1605–1705 kHz band if it is shown that the requirements of § 73.44 have been met. Equipment authorization for the transmitter will supersede the applicability of this note.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 58. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

■ 59. Amend § 74.535 by revising paragraph (d)(4) to read as follows:

§ 74.535 Emissions and bandwidth.

* * * * *

(d) * * *

(4) Stations licensed pursuant to an application filed before March 17, 2005, using equipment not conforming with the emission limitations specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal. existing equipment and equipment of product lines in production before April 16, 2003, authorized via certification or Declaration of Conformity before March 17, 2005, for equipment not conforming to the emission limitations requirements specified above, may continue to be manufactured and/or marketed, but may not be authorized for use under a station license except at stations licensed pursuant to an application filed before March 17, 2005. Any non-conforming equipment authorized under a station license, and replaced on or after March 17, 2005, must be replaced by conforming equipment.

Note 1 to paragraph (d)(4): the Declaration of Conformity procedure has been replaced by the Supplier's Declaration of Conformity procedure. See § 2.950 of this chapter.

* * * * *

■ 60. Section 74.550 is revised to read as follows:

§ 74.550 Equipment authorization.

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of equipment which has received a grant of certification or authorized under a Supplier's Declaration of Conformity. Equipment which has not been approved under the equipment authorization program and which was in service prior to July 1, 1993, may be retained solely for temporary uses necessary to restore or maintain regular service provided by approved equipment, because the main or primary unit has failed or requires servicing. Such temporary uses may not interfere with or impede the establishment of other aural broadcast auxiliary links and may not occur during more than 720 cumulative hours per year. Should interference occur, the

licensee must take all steps necessary to eliminate it, up to and including cessation of operation of the auxiliary transmitter. All unapproved equipment retained for temporary use must have been in the possession of the licensee prior to July 1, 1993, and may not be obtained from other sources. Equipment designed exclusively for fixed operation shall be authorized under Supplier's Declaration of Conformity procedure. The equipment authorization procedures are contained in subpart J of part 2 of this chapter.

Note 1 to § 74.550: The Declaration of Conformity procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 to this chapter.

Note 2 to § 74.550: Consistent with the note to § 74.502(a), grandfathered equipment in the 942–944 MHz band and STL/ICR users of these frequencies in Puerto Rico are also required to come into compliance by July 1, 1993. The backup provisions described above apply to these stations also.

■ 61. Amend § 74.637 by:
■ a. Revising paragraph (c)(4); and
■ b. Designating the table following paragraph (g) as ''Table 1 to paragraph (g)''.

The revision reads as follows:

§ 74.637 Emissions and emission limitations.

* * * * *

(c) * * *

(4) Stations licensed pursuant to an application filed before March 17, 2005, using equipment not conforming with the emission limitations specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal. Existing equipment and equipment of product lines in production before April 16, 2003, authorized via certification or Declaration of Conformity before March 17, 2005, for equipment not conforming to the emission limitations requirements specified above, may continue to be manufactured and/or marketed, but may not be authorized for use under a station license except at stations licensed pursuant to an application filed before March 17, 2005. Any non-conforming equipment authorized under a station license, and replaced on or after March 17, 2005, must be replaced by conforming equipment.

Note 1 to paragraph (c)(4): The Declaration of Conformity procedure has been replaced by Supplier's Declaration of Conformity. See § 2.950 of this chapter.

* * * * *

■ 62. Amend § 74.655 by:
■ a. Revising paragraphs (a), (b), (d) and (f);
■ b. Removing ''part 2 of the FCC rules'' and adding in its place ''part 2 of this chapter'' in paragraph (c); and
■ c. Removing ''part 2 of the FCC rules and regulations'' and adding in its place ''part 2 of this chapter'' in paragraph (e).

The revisions read as follows:

§ 74.655 Authorization of equipment.

(a) Except as provided in paragraph (b) of this section, all transmitting equipment first marketed for use under this subpart or placed into service after October 1, 1981, must be authorized under the certification procedure or Declaration of Conformity procedure, as detailed in paragraph (f) of this section. Equipment which is used at a station licensed prior to October 1, 1985, which has not been authorized as detailed in paragraph (f) of this section, may continue to be used by the licensee or its successors or assignees, provided that if operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart, the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference. However, such equipment may not be further marketed or reused under part 74 after October 1, 1985.

Note 1 to paragraph (a): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

(b) Certification or Supplier's Declaration of Conformity is not required for transmitters used in conjunction with TV pickup stations operating with a peak output power not greater than 250 mW. Pickup stations operating in excess of 250 mW licensed pursuant to applications accepted for filing prior to October 1, 1980 may continue operation subject to periodic renewal. If operation of such equipment causes harmful interference the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

* * * * *

(d) Any manufacturer of a transmitter to be used in this service may authorize the equipment under the certification or Supplier's Declaration of Conformity procedures, as appropriate, following the procedures set forth in subpart J of part 2 of this chapter.

* * * * *

(f) Transmitters designed to be used exclusively for a TV STL station, a TV intercity relay station, a TV translator relay station, or a TV microwave booster station, shall be authorized under Supplier's Declaration of Conformity. All other transmitters will be authorized under the certification procedure.

■ 63. Amend § 74.661 by:
■ a. Designating the table following the introductory text as ''Table 1 to § 74.661'';
■ b. Revising footnote 2 to Table 1; and
■ c. Adding Note 1 to § 74.661.

The revision and addition read as follows:

§ 74.661 Frequency tolerance.

* * * * *

[2] Stations licensed pursuant to an application filed before March 17, 2005, for tolerance values exceeding those specified above, may continue to operate indefinitely in accordance with the terms of their current authorizations, subject to periodic renewal. Existing equipment and equipment of product lines in production before April 16, 2003, authorized via certification or Declaration of Conformity before March 17, 2005, for tolerance values exceeding those specified above, may continue to be manufactured and/or marketed, but may not be authorized for use under station license except at stations licensed pursuant to an application filed before March 17, 2005. Any non-conforming equipment authorized under a station license, and replaced on or after March 17, 2005, must be replaced by conforming equipment.

Note 1 to § 74.661: The Declaration of Conformity procedure has been replaced by Supplier's Declaration of Conformity. See § 2.950 of this chapter.

■ 64. Amend § 74.1250 by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 74.1250 Transmitters and associated equipment.

(a) FM translator and booster transmitting apparatus, and exciters employed to provide a locally generated and modulated input signal to translator and booster equipment, used by stations authorized under the provisions of this subpart must be certified upon the request of any manufacturer of transmitters in accordance with this section and subpart J of part 2 of this chapter. In addition, FM translator and booster stations may use FM broadcast transmitting apparatus authorized via Supplier's Declaration of Conformity or approved under the provisions of part 73 of this chapter.

Note 1 to paragraph (a): The Declaration of Conformity procedure has been replaced by Supplier's Declaration of Conformity.

Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

* * * * *

(c) The following requirements must be met before translator, booster or exciter equipment will be certified in accordance with this section:

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

■ 65. The authority citation for part 78 continues to read as follows:

Authority: 47 U.S.C. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 66. Amend § 78.107 by revising the introductory text to paragraph (a), and the introductory text to paragraph (a)(2) to read as follows:

§ 78.107 Equipment and installation.

(a) Applications for new cable television relay stations, other than fixed stations, will not be accepted unless the equipment specified therein has been certified in accordance with subpart J of part 2 of this chapter. In the case of fixed stations, the equipment must be authorized under Supplier's Declaration of Conformity for use pursuant to the provisions of this subpart. Transmitters designed for use in the 31.0 to 31.3 GHz band shall be authorized under Supplier's Declaration of Conformity.

Note 1 to the introductory text to paragraph (a): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

* * * * *

(2) Neither certification nor Supplier's Declaration of Conformity is required for the following transmitters:

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 67. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 68. Amend § 80.203 by revising paragraphs (a), (f), (g), (l), and (m)(2) to read as follows:

§ 80.203 Authorization of transmitters for licensing.

(a) Each transmitter authorized in a station in the maritime services after September 30, 1986, except as indicated in paragraphs (g), (h) and (i) of this section, must be certified by the Commission for part 80 operations. The procedures for certification are contained in part 2 of this chapter. Transmitters of a model that have received equipment authorization before October 1, 1986 will be considered acceptable for use in ship or coast stations as appropriate.

* * * * *

(f) Transmitters certified for single sideband suppressed carrier radiotelephone transmissions may be used for facsimile transmissions without filing for a certification modification provided the transmitters retain certification and comply with the applicable standards in this part.

(g) Manufacturers of ship earth station transmitters intended for use in the INMARSAT space segment are subject to Supplier's Declaration of Conformity pursuant to the procedures given in subpart J of part 2 of this chapter. Such equipment must be approved in accordance with the technical requirements provided by INMARSAT and must be type approved by INMARSAT for use in the INMARSAT space segment. The ship earth station input/output parameters, the data obtained when the equipment is integrated in system configuration and the pertinent method of test procedures that are used for type approval of the station model which are essential for the compatible operation of that station in the INMARSAT space segment must be disclosed by the manufacturer upon request of the FCC. Witnessing of the type approval tests and the disclosure of the ship earth station equipment design or any other information of a proprietary nature will be at the discretion of the ship earth station manufacturer.

Note 1 to paragraph (g): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

* * * * *

(l) Ship station transmitters may be certified for emissions not shown in § 80.205. However, such emissions are not authorized for use in the United States or for communications with U.S. coast stations.

(m) * * *

(2) A transmitter and any internal device capable of transmitting a synthesized voice message must be certified as an integral unit.

* * * * *

■ 69. Amend § 80.1103 by revising paragraphs (a) and (c) to read as follows:

§ 80.1103 Equipment authorization.

(a) All equipment specified in § 80.1101 must be certified in accordance with subpart J of part 2 of this chapter specifically for GMDSS use, except for equipment used in the INMARSAT space segment which must be type-approved by INMARSAT and are subject to Supplier's Declaration of Conformity pursuant to the procedures in subpart J of part 2 of this chapter specifically for GMDSS use. The technical parameters of the equipment must conform to the performance standards as specified in § 80.1101. For emergency position-indicating radiobeacons operating on 406.0–406.1 MHz (406.0–406.1 MHz EPIRBs) that were authorized prior to April 15, 1992, and meet the requirements of § 80.1101, the manufacturer may attest by letter that the equipment (indicate FCC ID#) meets the requirements of § 80.1101 and request that it be denoted as approved for GMDSS use.

* * * * *

(c) Applicants using Supplier's Declaration of Conformity must attest that the equipment complies with performance standards as specified in § 80.1101 and, where applicable, that measurements have been made that demonstrate the necessary compliance. Submission of representative data demonstrating compliance is not required unless requested by the Commission. An application must include the items listed in §§ 2.931 and 2.938 of this chapter and a copy of the type-approval certification indicating that equipment meets GMDSS standards and includes all peripheral equipment associated with the specific unit under review.

Note 1 to paragraph (c): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

* * * * *

PART 87—AVIATION SERVICES

■ 70. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 71. Amend § 87.147 by revising paragraph (e) to read as follows:

§ 87.147 Authorization of equipment.

* * * * *

(e) Supplier's Declaration of Conformity for ELTs capable of operating on the frequency 406.0–406.1 MHz must include sufficient documentation to show that the ELT meets the requirements of § 87.199(a). A letter notifying the FAA of the ELT Supplier's Declaration of Conformity must be mailed to: FAA, Office of Spectrum Policy and Management, ASR–1, 800 Independence Avenue SW., Washington, DC 20591.

Note 1 to paragraph (e): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

* * * * *

■ 72. Amend § 87.199 by revising paragraphs (c) and (d) to read as follows:

§ 87.199 Special requirements for 406.0–406.1 MHz ELTs.

* * * * *

(c) As part of its Supplier's Declaration of Conformity a 406.0–406.1 MHz ELT, the ELT must be certified by a test facility recognized by one of the COSPAS/SARSAT Partners that the equipment satisfies the design characteristics associated with the COSPAS/SARSAT document COSPAS/SARSAT 406 MHz Distress Beacon Type Approval Standard (C/S T.007). Additionally, an independent test facility must certify that the ELT complies with the electrical and environmental standards associated with the RTCA Recommended Standards.

Note 1 to paragraph (c): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

(d) The procedures for Supplier's Declaration of Conformity are contained in subpart J of part 2 of this chapter.

* * * * *

PART 90—PRIVATE LAND MOBILE SERVICES

■ 73. The authority citation for part 90 continues to read as follows:

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

■ 74. Amend § 90.203 by:

■ a. Revising the introductory text of paragraph (a), and paragraphs (e) and (g)(2);

■ b. Removing the phrase ''of the rules'' from paragraph (i);

■ c. Removing the phrase ''the Rules of'' from paragraph (j)(6)(ii); and

■ d. Revising paragraphs (j)(7) and (l).

The revisions read as follows:

§ 90.203 Certification required.

(a) Except as specified in paragraphs (b) and (l) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be of a type which has been certified for use under this part.

* * * * *

(e) Except as provided in paragraph (g) of this section, transmitters designed to operate above 25 MHz shall not be certified for use under this part if the operator can program and transmit on frequencies, other than those programmed by the manufacturer, service or maintenance personnel, using the equipment's external operation controls.

* * * * *

(g) * * *

(2) Requires the transmitter to be programmed for frequencies through controls normally inaccessible to the operator; or

* * * * *

(j) * * *

(7) Transmitters designed only for one-way paging operations may be certified with up to a 25 kHz bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

* * * * *

(l) Ocean buoy and wildlife tracking transmitters operating in the band 40.66–40.70 MHz or 216–220 MHz under the provisions of § 90.248 shall be authorized under Supplier's Declaration of Conformity pursuant to subpart J of part 2 of this chapter.

Note 1 to paragraph (l): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 75. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 76. Amend § 101.139 by revising paragraphs (a), (b), (d), (e), and (g)(1) to read as follows:

§ 101.139 Authorization of transmitters.

(a) Unless specified otherwise, transmitters used in the private operational fixed and common carrier fixed point-to-point microwave and point-to-multipoint services under this part must be a type that has been approved for compliance under Supplier's Declaration of Conformity.

Note 1 to paragraph (a): The verification procedure has been replaced by Supplier's Declaration of Conformity. Equipment previously authorized under subpart J of part 2 of this chapter may remain in use. See § 2.950 of this chapter.

(b) Any transmitter to be produced for use under the rules of this part may be approved under the equipment authorization procedures set forth in part 2 of this chapter.

* * * * *

(d) A transmitter presently shown on an instrument of authorization, which operates on an assigned frequency in the 890–940 MHz band and has not received a grant of certification, may continue to be used by the licensee without certification provided such transmitter continues otherwise to comply with the applicable requirements of this chapter.

(e) Certification or Supplier's Declaration of Conformity is not required for portable transmitters operating with peak output power not greater than 250 mW. If operation of such equipment causes harmful interference the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

* * * * *

(g) * * *

(1) The 0.001% frequency tolerance requirement for digital systems in § 101.107(a) or the 0.03–0.003% frequency tolerance for analog systems; and

* * * * *

[FR Doc. 2017–23217 Filed 11–1–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170803719–7719–01)]

RIN 0648–BH10

Temporary Rule To Establish Management Measures for the Limited Harvest and Possession of South Atlantic Red Snapper in 2017

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this final temporary rule to establish management measures to allow for the limited harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) in 2017 by changing the process used to set the annual catch limit (ACL), as requested by the South Atlantic Fishery Management Council (Council). This rule also announces the opening and closing dates of the 2017 recreational fishing season and the opening date for the 2017 commercial fishing season for red snapper. The intended effect of this temporary rule is to reduce, to the extent practicable, existing adverse socio-economic impacts to fishermen and fishing communities that utilize the red snapper portion of the snapper-grouper fishery, without allowing overfishing or preventing the stock from rebuilding. Additionally, limited commercial and recreational harvest of red snapper in 2017 will provide an opportunity to collect fishery-dependent data that will be useful for future red snapper stock assessments and management decisions.

DATES: This temporary rule is effective November 2, 2017, through December 31, 2017. The recreational red snapper season opens at 12:01 a.m., local time, on November 3, 2017, and closes at 12:01 a.m., local time, on November 6, 2017; then reopens at 12:01 a.m., local time, on November 10, 2017, and closes at 12:01 a.m., local time, on November 13, 2017. The commercial red snapper season opens at 12:01 a.m., local time, November 2, 2017.

ADDRESSES: Electronic copies of the documents in support of this temporary rule, which include an environmental assessment, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.html.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage South Atlantic snapper-grouper including red snapper under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

Harvest of red snapper from South Atlantic Federal waters was prohibited in 2010 through a temporary interim rule and then through Amendment 17A to the FMP when the stock was determined to be overfished and undergoing overfishing (Southeast Data, Assessment, and Review (SEDAR) 15, 2009) (74 FR 63673, December 4, 2009; 75 FR 76874, December 9, 2010). Amendment 17A also implemented a 35-year red snapper rebuilding plan that began in 2010, and set the red snapper ACL at zero. Amendment 28 to the FMP established a process that allowed red snapper harvest (ACL greater than zero) if total removals (landings plus dead discards) were less than the acceptable biological catch (ABC) in the previous fishing year (78 FR 44461, July 24, 2013). Limited harvest of red snapper was allowed in 2012, 2013, and 2014. However, because the estimated total removals of red snapper exceeded the ABC in 2014, 2015, and 2016 due to estimates of red snapper discards that were incidentally harvested as bycatch while targeting other species, there was no allowable harvest in 2015, 2016, and 2017.

The process established through Amendment 28 specifies that harvest would begin in July, and specifies when the commercial and recreational seasons would open and close and the applicable fishing regulations during any open season. The commercial red snapper season closes when the commercial ACL is met or projected to be met. The length of the recreational red snapper season is projected and announced before the start of the season, based on catch rate estimates from previous years. The NMFS Regional Administrator (RA) has the authority to delay the opening of red snapper fishing seasons in the event of a tropical storm or hurricane affecting the area of the Council's jurisdiction. Additionally, there is no minimum size limit for either the commercial or recreational sector; the commercial trip limit is 75 lb (34 kg), gutted weight, and the recreational bag limit is one fish per person per day.

This temporary rule will allow limited commercial and recreational harvest of red snapper in 2017 by implementing a total ACL of 42,510 fish, based on the landings observed during the limited red snapper season in 2014. The total ACL is divided into a commercial ACL of 124,815 lb (56,615 kg), round weight, and a recreational ACL of 29,656 fish, based the current sector allocation ratio developed by the Council for red snapper (28.07 percent commercial and 71.93 percent recreational). The commercial sector's ACL is set in pounds of fish because the commercial sector reports landings in weight and therefore weight is a more accurate representation of commercial landings. In this temporary rule, for the commercial sector, one red snapper is equivalent to 9.71 lb (4.40 kg), round weight. ACLs for the recreational sector are specified in numbers of fish because numbers of fish are a more reliable estimate for that sector than specifying the ACL in weight of fish. Surveys that estimate recreational landings collect information on numbers of fish and convert those numbers to weights using limited biological samples, so there is considerable uncertainty in estimates of recreational landings by weight.

The recreational bag limit will be one fish per person per day and the commercial trip limit will be 75 lb (34 kg), gutted weight. There will not be a minimum size limit set for either sector. The commercial sector will close when the commercial ACL is projected to be met during the limited 2017 fishing season. The opening and closing of the recreational sector is being specified before the recreational season begins and consists of two weekends only (Friday, Saturday, Sunday). The effectiveness of this temporary rule is only for the 2017 fishing year and does not authorize any harvest after December 31, 2017.

Status of the Stock

The most recent stock assessment for South Atlantic red snapper, SEDAR 41 (2017), was completed in 2016 and revised in 2017. SEDAR 41 (2017) evaluated data through 2014 and determined the red snapper stock was overfished and that overfishing was

occurring. The stock assessment indicated that overfishing was occurring because the estimated fishing mortality based on the average over the last three years of the assessment represented in the model (2012–2014) exceeded the maximum fishing mortality threshold. Though limited red snapper harvest was allowed during those years, the majority of the estimated fishing mortality occurred from estimated dead discards. The estimated red snapper discards during these years were very high as a result of fishermen targeting red snapper and species that co-occur with red snapper, such as vermilion snapper, gag, red grouper, black sea bass, gray triggerfish, greater amberjack, and scamp.

In May 2016, the Council's Scientific and Statistical Committee (SSC) stated that SEDAR 41 (2017) was based on the best scientific information available, but noted the assessment findings were highly uncertain regarding to what extent overfishing was occurring (*i.e.,* the actual numerical value of the current fishing mortality estimate). The SSC indicated that the most significant sources of uncertainty in the assessment include: the stock-recruitment relationship, natural mortality at age, the age structure of the unfished population, the composition and magnitude of recreational discards (where dead discards greatly outnumbered the landings during the years 2012 through 2014), and potential changes in catch per unit effort(CPUE).

The projections of yield streams used in SEDAR 41 (2017) included both landings and dead discards, which were added to get an estimate of the total removals. However, red snapper is primarily a discards-only fishery as a result of the harvest prohibitions. Therefore, the Council determined that discard-only projections (zero landings) would be more informative for management. In January 2017, the Council requested the NMFS Southeast Fishery Science Center (SEFSC) provide red snapper projections under the assumption that all fish caught are subsequently discarded. Following the request, the SEFSC advised the Council in February 2017 that the requested projections were not appropriate for management use because uncertainty in the assessment was already large, and the uncertainty would increase with a more complete evaluation of the effect of the upcoming changes to Marine Recreational Information Program (MRIP). Recreational catch and effort data, including discards, are monitored through MRIP, which is currently transitioning from the current Coastal Household Telephone Survey to a new mail survey design for estimating marine recreational shore and private boat fishing effort, known as the Fishing Effort Survey. NMFS expects that the Fishing Effort Survey will result in a more efficient representation of recreational fishing effort, including that of discards; however, in order for a new survey method to be implemented, historical catch statistics will need to be converted into the same 'currency' as the new estimates. This process is underway.

Additionally, in their February 2017 response, the SEFSC also advised the Council that the uncertainty in the stock assessment inhibits the ability to set an ABC that can be effectively monitored. The SEFSC further stated in an April 2017 letter to the Council, that the use of an ABC based primarily on fishery discards for monitoring the effectiveness of management action is likely ineffective due to the high level of uncertainty in measures of discards and the change in the effort estimation methodology that will be implemented in the MRIP survey.

NMFS informed the Council in a letter, dated March 3, 2017, that, based on the results of SEDAR 41 (2017) using data through 2014, the red snapper stock was still overfished but was rebuilding in accordance with the rebuilding plan. Further, NMFS stated that sufficient steps had been taken to address overfishing of red snapper while continuing to rebuild the stock through harvest prohibitions in 2015 and 2016. This determination is supported by an increase in stock biomass since 2010, and increasing abundance of older age classes (SEDAR 41 2017).

Justification and Need for This Temporary Rule

The intended effect of this temporary rule is to minimize adverse socio-economic effects to fishermen and fishing communities that utilize red snapper as part of the snapper-grouper fishery. Fishing seasons that prohibit the harvest of red snapper incur lost opportunities to fish among both the commercial and recreational sectors. NMFS and the Council expect that increased fishing opportunities resulting from these temporary measures should provide direct benefits to fishermen in the form of additional revenue and recreational opportunities, in addition to indirect benefits to businesses that provide supplies for fishing trips. NMFS expects the total aggregate increase in the 2017 fishing season ex-vessel revenues to commercial vessels as a result of these temporary measures would range from $176,940–$236,279 (2016 dollars), and that up to 658 federally permitted commercial snapper-grouper vessels could participate in this harvest in 2017. The recreational consumer surplus to anglers as a result of a limited 2017 harvest could increase by about $2,402,136 (in total; assuming that each of the 29,656 recreational fish is harvested by an individual angler). The potential also exists for revenues and profits generated by charter vessels and headboats (for-hire vessels) and fishing support businesses to increase, but such effects cannot be estimated with the current information.

NMFS determined that allowing limited harvest of red snapper in 2017 is not likely to result in overfishing, or prevent continued stock rebuilding. This determination is based on the uncertainty in the assessment associated with: The stock-recruitment relationship, natural mortality at age, the age structure of the unfished population, and the composition and magnitude of recreational discards inhibiting the ability of the SEFSC to project ABC into the future. Additional support comes from fishery-independent information collected through the Southeast Reef Fish Survey (SERFS) program, and the East Coast Fisheries Independent Monitoring information conducted by Florida Fish and Wildlife Conservation Commission (FWCC), presented to the Council at their June and September 2017 meetings, respectively. According to the SERFS, relative abundance (CPUE) of red snapper has increased since 2009, reaching the highest level observed in the entire time series (1990–2016) in 2016. According to the results of FWCC's study, CPUE for red snapper for hook gear (surveyed in 2012, 2014, 2016, and 2017) and the standardized index of abundance (surveyed from 2014–2017) was highest in 2017. The FWCC data also showed a greater number of large red snapper and a broader range of ages in recent years, which suggests rebuilding progress of the red snapper stock. The Council's SSC noted a red snapper population increase in their April 2017 report, stating that ''. . . a continuing upward trend in the fishery-independent index has a high probability of reflecting increases in population size.'' As noted by the new information presented to the Council in June and September 2017, the increase in relative abundance of red snapper indicated by the fishery-independent CPUE indices has taken place despite landings during the limited seasons in 2012–2014 and despite the large number of estimated

red snapper dead discards during harvest restrictions for red snapper since 2010. The amount of harvest allowed in this temporary rule is equivalent to the amount of observed landings in the 2014 fishing season. Therefore, NMFS has determined that allowing that same amount of harvest in this temporary rule in 2017 is unlikely to result in overfishing or change the red snapper rebuilding time period, and is based on the best scientific information available.

Emergency Rule Criteria

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists, and this temporary rule is promulgated under these criteria. Specifically, NMFS' policy guidelines require that an emergency:

(1) Result from recent, unforeseen events or recently discovered circumstances; and

(2) Present serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS has determined that allowing harvest in 2017 meets the three criteria required for an emergency rule. The new red snapper abundance and CPUE information collected through the SERFS program and FWCC's study constitutes recently discovered circumstances, since it was presented to the Council at their June 2017 and September 2017 meetings. In addition, the continued harvest prohibition of South Atlantic red snapper poses significant management problems to NMFS and the Council. Fishery closures result in the limited collection of fishery-dependent data, and that negatively impacts the stock assessment process. Additionally, the harvest prohibition of red snapper results in adverse socio-economic effects to fishermen and fishing communities through lost opportunities among the commercial and recreational sectors to fish for and possess red snapper during the fishing year. Input from fishers also indicates that they are increasingly frustrated with the perceived waste of the red snapper resource resulting from the continued discarding of red snapper when they target co-occurring species. Finally, the immediate benefits of implementing a limited red snapper commercial and recreational fishing season in 2017 outweigh the value of providing advance notice and public comment under the normal rulemaking process. Public comments on this action at the September 2017 Council meeting indicated that many fishermen favored a limited 2017 season. The Council considered these public comments when they recommended that NMFS proceed with a temporary rule for emergency action at their September 2017 meeting. Further, the time it would take to complete public notice and solicit public comments through rulemaking would not allow adequate time for a fishing season to take place in 2017.

Additionally, while harvest restrictions remain in place, fishers report they are encountering large numbers of red snapper, which is further supported by the long-term SERFS fishery-independent CPUE index. Allowing a limited amount of harvest in 2017 through this temporary emergency action would allow commercial and recreational fishermen to harvest this species, and would also generate revenue for businesses within these sectors. Also, limited commercial and recreational harvest of red snapper in 2017 will provide an opportunity to collect fishery-dependent data including catch, fishing effort estimates, and life history information that will be useful for future red snapper stock assessments and management decisions.

Measures Contained in This Temporary Rule

This temporary rule implements management measures to authorize the limited harvest and possession of red snapper in or from the South Atlantic EEZ in the 2017 fishing year. The 2017 commercial ACL is set at 124,815 lb (56,615 kg), round weight, and the 2017 recreational ACL is set at 29,656 fish. These ACLs are based on the total 2017 ACL, as determined by NMFS, of 42,510 fish and following the current allocation ratio for red snapper (28.07 percent commercial and 71.93 percent recreational).

NMFS and the Council are establishing several management measures that function as accountability measures to constrain red snapper harvest to these ACLs, including the establishment of limited commercial and recreational red snapper seasons for 2017. The recreational season will open for two consecutive weekends made up of Fridays, Saturdays, and Sundays. The recreational season opens at 12:01 a.m., local time, on November 3, 2017, and closes at 12:01 a.m., local time, on November 6, 2017; then reopens at 12:01 a.m., local time, on November 10, 2017, and closes at 12:01 a.m., local time, on November 13, 2017. The commercial season opens at 12:01 a.m., local time, November 2, 2017. NMFS will monitor commercial landings in-season and if commercial landings reach or are projected to reach the commercial ACL, then NMFS will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the 2017 fishing year. NMFS notes that if the commercial ACL has not been met or been projected to have been met by December 31, 2017, no commercial harvest would be allowed through this temporary rule after 11:59 p.m., local time, on December 31, 2017. Harvest will additionally be constrained through the implementation of commercial and recreational management measures such as trip limits and bag limits.

During these limited 2017 fishing seasons, the commercial sector will have a 75 lb (34 kg), gutted weight, daily commercial trip limit and the recreational sector will have a 1 fish per person daily recreational bag limit. The 1 fish per person recreational bag limit is included in the 10-fish aggregate snapper bag limit. No size limits are implemented for either sector through this temporary rule in an effort to decrease regulatory discards (fish returned to the water because they are below the minimum size limit). If severe weather conditions exist, the RA has the authority to modify these opening and closing dates. The RA will determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if NMFS determines the 2017 commercial or recreational ACLs were not harvested and a reopening of either or both sectors in 2017 is possible, the RA will file a notification to that effect with the Office of the Federal Register, and announce via NOAA Weather Radio and in a Fishery Bulletin any change in or reopening of the red snapper fishing seasons.

The Council is currently developing both Amendment 43 and Amendment 46 to the FMP. Amendment 43 contains actions to establish commercial and recreational ACLs and associated revisions to management measures for red snapper that would allow for a specific level of harvest each year. At its September 2017 meeting, the Council took final action and approved Amendment 43 and will submit the amendment to the Secretary for subsequent rulemaking and implementation during the 2018 fishing

year. Amendment 46, in preliminary development by the Council, would consider other red snapper management measures.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is necessary to promote an economic opportunity for South Atlantic snapper-grouper fishermen that otherwise would be foregone and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is being taken pursuant to the emergency provision of MSA and is exempt from OMB review.

The AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because they are contrary to the public interest. This temporary rule promotes an economic opportunity for South Atlantic snapper-grouper fishermen that would otherwise be forgone if harvest in 2017 were not to occur. Limited harvest and possession of red snapper in 2017 is expected to result in revenue increases to commercial vessels and benefit increases to recreational anglers, in addition to providing opportunity to for-hire vessels in booking more trips that could increase their revenues and profits. At the September 2017 Council meeting, South Atlantic snapper-grouper fishermen discussed the merits of opening red snapper in the South Atlantic for a short time period in 2017. Fishermen will be able to keep a limited number of the red snapper that they are currently required to discard. As previously discussed, commercial fishermen should be able to increase their revenues in 2017 by being able to sell a highly marketable fish during the limited opening. Additionally, short red snapper seasons will provide an opportunity to collect fishery-dependent data that likely may be useful for future stock assessments. Currently, the lack of available red snapper data hinders the ability to assess the status of the stock. Delaying the implementation of this rulemaking to provide prior notice and the opportunity for public comment would reduce the likelihood of opening the red snapper component of the snapper-grouper fishery in the 2017 fishing year. As a result of the recent receipt of scientific information indicating that harvest in 2017 is possible, there is insufficient time for NMFS to implement these measures earlier in this fishing year and/or possibly allow for prior notice and opportunity for public comment on the rulemaking. The harvest allowed in 2017 in this rule is not expected to result in overfishing or impede rebuilding of the stock.

For these same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the actions under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Red snapper, South Atlantic.

Dated: October 27, 2017.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.181, suspend paragraph (b)(2) and add paragraph (c)(2) to read as follows:

§ 622.181 Prohibited and limited-harvest species.

* * * * *

(c) * * *

(2) *Red snapper.* Red snapper may only be harvested or possessed in or from the South Atlantic EEZ during the commercial and recreational seasons as specified in § 622.183(b)(9) and § 622.193(aa). Any red snapper caught in the South Atlantic EEZ during a time other than the specified commercial or recreational seasons specified in § 622.193(aa) must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the prohibition on the harvest or possession of red snapper applies in the South Atlantic, regardless of where such fish are harvested or possessed, *i.e.,* in state or Federal waters.

■ 3. In § 622.183, suspend paragraph (b)(5) and add paragraph (b)(9) to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(9) *Closures of the commercial and recreational sectors for red snapper*—(i) The commercial and recreational sectors for red snapper are closed (*i.e.,* red snapper may not be harvested or possessed, or sold or purchased) in or from the South Atlantic EEZ, except as specified in § 622.193(aa). The recreational fishing season would consist of consecutive Fridays, Saturdays, and Sundays, unless otherwise specified. See § 622.193(aa), for establishing the end date of the commercial fishing season.

(ii) If the RA determines tropical storm or hurricane conditions exist, or are projected to exist, in the South Atlantic, during a commercial or recreational fishing season, the RA may modify the opening and closing dates of the fishing season by filing a notification to that effect with the Office of the Federal Register, and announcing via NOAA Weather Radio and a Fishery Bulletin any change in the dates of the red snapper commercial or recreational fishing season.

■ 4. In § 622.187, suspend paragraph (b)(9) and add paragraph (b)(12) to read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(12) *Red snapper*—1. See § 622.183(b)(9), and § 622.193(aa)(2) for details on the recreational fishing season.

* * * * *

■ 5. In § 622.191, suspend paragraph (a)(9) and add paragraph (a)(13) to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(13) *Red snapper.* Until the commercial ACL specified in § 622.193(aa)(1) is reached, 75 lb (34 kg), gutted weight. See § 622.193(aa)(1) for the limitations regarding red snapper after the commercial ACL is reached. See § 622.183(b)(9), and § 622.193(aa)(1) for details on the commercial fishing season.

* * * * *

■ 6. In § 622.193, suspend paragraph (y) and add paragraph (aa) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(aa) *Red snapper*—(1) *Commercial sector.* The commercial ACL for red

snapper is 124,815 lb (56,615 kg), round weight. See § 622.183(b)(9) for details on the commercial fishing season. NMFS will monitor commercial landings during the season, and if commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL, the AA will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the year. On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited and harvest or possession of red snapper is limited to the bag and possession limits. This bag and possession limit and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested or possessed, *i.e.,* in state or Federal waters.

(2) *Recreational sector.* The recreational ACL for red snapper is 29,656 fish. The recreational season, consists of weekends only (Fridays, Saturdays, and Sundays). The length of the recreational fishing season for red snapper serves as the in-season accountability measure. See § 622.183(b)(9) for details on the recreational fishing season. On and after the effective date of the recreational closure notification, the bag and possession limits for red snapper are zero.

[FR Doc. 2017–23839 Filed 10–30–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 211
Thursday, November 2, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2017–BT–TP–0047–0001]

Energy Conservation Program: Test Procedures for Electric Motors and Small Electric Motors

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

ACTION: Notice of petition and request for public comments.

SUMMARY: This notice announces receipt and publishes petitions from the National Electrical Manufacturers Association (NEMA) and UL LLC (UL) requesting that the U.S. Department of Energy (DOE) incorporate the IEC 60034–2–1:2014 (2014) test methods 2–1–1A and 2–1–1B as alternative test methods in addition to the existing test methods referenced in its regulations for determining the energy efficiency of certain electric motors and small electric motors: Institute of Electrical and Electronics Engineers (IEEE) standards 112–2004 Method B (2004) and 114–2010 (2010); and Canadian Standards Association standards (CSA) C390–10 (2010) and C747–09 (2009). NEMA found IEC 60034–2–1:2014 Method 2–1–1B to be equivalent to IEEE 112–2004 Method B and CSA C390–10 UL testing found IEC 60034–2–1:2004 Method 2–1–1B results to be in close agreement with those of CSA C390–10, and noted that the respective methodologies of IEC 60034–2–1:2014 Method 2–1–1A and CSA C747 were also in accord. DOE solicits comments, data, and information concerning NEMA's and UL's petitions.

DATES: Written comments and information are requested and will be accepted on or before January 2, 2018.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–TP–0047–0001, by any of the following methods:

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

2. *Email:* to *SmallElectricMotors2017TP0047@ee.doe.gov.* Include docket number EERE–2017–BT–TP–0047–0001 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6636. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Docket: The docket for this activity, which includes the two petitions, **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* Specifically, the petition and supporting documentation from NEMA is available at *https://www.regulations.gov/document?D=EERE-2017-BT-TP-0047-0028* and the petition from UL is available at *https://www.regulations.gov/document?D=EERE-2017-BT-TP-0047-0029.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket Web page can be found at *https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0047.* The docket Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, 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) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Mary Greene, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1817. Email: *mary.greene@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Authority and Background

Electric motors are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(A)). Additionally, EPCA directed DOE, subject to a determination of feasibility and justification, to establish energy conservation standards and test procedure for small electric motors. (42 U.S.C. 6317(b)) DOE's test procedures for electric motors are prescribed at appendix B to subpart B of part 431. DOE's test procedures for small electric motors are prescribed at 10 CFR part 431, subpart X.

DOE test procedures reference IEEE 112–2004 Method B [1] and CSA C390–10 [2] as the approved test methods for determining the energy efficiency of polyphase electric motors with a horsepower greater than or equal to 1 hp; and for determining the energy efficiency of polyphase small electric motors with a horsepower greater than 1 hp. Both industry standards are incorporated by reference at 10 CFR 431.15 and 10 CFR 431.443.

Additionally, DOE's small electric motors test procedures at subpart X of part 431 reference: (1) IEEE 114–2010 [3] and CSA C747–09 [4] as the approved test methods for determining the energy efficiency of single-phase small electric motors, and (2) IEEE 112–2004 Method A [5] and CSA C747–09 as the approved test methods for determining the energy efficiency of polyphase small electric motors with a horsepower less than or equal to 1.

On July 31, 2017, DOE published a request for information (the ''July 2017 RFI'') initiating a data collection process to consider whether to amend DOE's test procedure for small electric motors and electric motors, and whether new test procedures are needed for motors beyond those subject to the existing Federal test procedures. 82 FR 35468. The petitions of NEMA and UL request modifications to the current test procedures for small electric motors and electric motors, and accordingly, DOE is entering this petition into the same docket that houses the July 2017 RFI. The docket is available at: *https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0047.*

II. Petitions of NEMA and UL

A. Petition of NEMA for Incorporating IEC 60034–2–1:2014 Method 2–1–1B

NEMA submitted a petition letter requesting that DOE incorporate the IEC 60034–2–1:2014 Method 2–1–1B [6] test method as an alternative to the existing IEEE 112–2004 Method B and CSA C390–10 approved test methods of appendix B to subpart B of part 431. The petition further includes a ''work paper'' that summarizes an evaluation conducted by the NEMA Motor and Generator Section technical committee which found the IEC 60034–2–1:2014 Method 2–1–1B test method to be equivalent to the IEEE 112–2004 Method B and CSA C390–10 test methods.[7] This evaluation relied on: (1) A comparison of instrumentation accuracy, test method, and calculation approach among the IEC, IEEE, and CSA industry standards, (2) analysis of test results from over 500 motors tested at the Hydro-Quebec Research Institute, and (3) reference to one scientific research paper (the ''Angers *et al.* paper'') which also concluded that all three methods [8] were equivalent.[9]

NEMA's petition letter claimed that the results of the Hydro-Quebec Research Institute testing typically showed a loss deviation of less than ±2 percent. The NEMA petition letter also stated a loss difference of 2 percent is: (1) Within the variation of two tests performed using the same motor and test equipment but with different operators and at different times of day; and (2) well below the typical variation of 10 percent of losses when different labs are used to test the same motor.

B. Petition of UL for Incorporating IEC 60034–2–1:2014 Methods 2–1–1B and 2–1–1A

UL submitted a petition letter [10] requesting that DOE incorporate two IEC 60034–2–1:2014 IEC test methods in its test procedures for electric motors and certain small electric motors.

1. IEC 60034–2–1:2014 Method 2–1–1B

First, UL requested that IEC 60034–2–1:2014 test method 2–1–1B be approved for appendix B to subpart B of part 431 and section 431.444 of subpart X of part 431 (as an alternative to CSA C390–10). Regarding the first request, the petition further included two papers comparing the respective test standards.

The first paper,[11] which is the same paper (Angers *et al.*) cited in NEMA's petition's attachment, compared IEEE 112–2004, Method B (a 2013 year draft version), CSA C390–10, and IEC 60034–2–1, Method 2–1–1B (a 2013 year draft version). The comparison focused on instrumentation accuracy, test method, and calculation approach among the IEC, IEEE, and CSA industry standards and concluded that all three methods [12] were equivalent.

The second paper [13] (the ''Cao paper'') compared the respective methodologies of IEEE 112–2004, Method B and IEC 60034–2–1:2007, Method 2–1–1B and also conducted comparison testing, applying both standards' test methods to the same six motors of varied output power. The resulting efficiency values were found to be closely aligned, with respective maximum and mean deviations of 0.1 and 0.03 percentage points.

UL's petition letter claimed that the test results of the Cao paper testing aligned with UL's own, firsthand testing experience using the same methods. UL's own comparison testing found a difference in calculated efficiency of less than 0.1 percentage points, when using measurements from a single test to reduce variability.

2. IEC 60034–2–1:2014 Method 2–1–1A

Second, UL requested that IEC 60034–2–1:2014 test method 2–1–1A be approved for section 431.444 of subpart X of part 431 (as an alternative to CSA C747–09). UL stated that the IEC and CSA standards use the same method, but that the IEC equipment specifications are more rigorous. UL did not provide a quantitative test result comparison to support the similarity between the standards.

III. Request for Comments

DOE solicits comments from interested parties on any aspect of the petition. In particular, DOE seeks

[1] IEEE Std 112–2004, Test Procedure for Polyphase Induction Motors and Generators, approved February 9, 2004, Section 6.4, Efficiency Test Method B, Input-Output with Loss Segregation.

[2] CSA C390–10, Test methods, marking requirements, and energy efficiency levels for three-phase induction motors, March 2010.

[3] IEEE Std 114–2010, Test Procedure for Single-Phase Induction Motors, approved September 30, 2010.

[4] CSA C747–09, Energy efficiency test methods for small motors, October 2009.

[5] IEEE Std 112–2004, Test Procedure for Polyphase Induction Motors and Generators, approved February 9, 2004, Section 6.3, Efficiency Test Method A, Input-Output.

[6] IEC 60034–2–1:2014 Method 2–1–1B (2014), ''Rotating Electrical Machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles),'' ''Summation of losses, additional load losses according to the method of residual loss.''

[7] The NEMA petition and work paper are available *at https://www.regulations.gov/document?D=EERE-2017-BT-TP-0047-0028.*

[8] The paper compared 2013 draft updates of IEEE 112–2004 and IEC 60034–2–1:2007 (not the 2014 version the NEMA petition requests that DOE reference).

[9] Pierre Angers-Hydro-Québec's Research Institute, Andrew Baghurst—CalTest Laboratory, Martin Doppelbauer—Karlsruhe Institute of Technology (KIT), *Review of Energy Efficiency Measurement Standards for Induction Motors in the Context of the IECEE Global Efficiency Labeling Initiative.* EEMODS conference 2013. Available at: *https://e3p.jrc.ec.europa.eu/publications/proceedings-8th-international-conference-eemods2013-energy-efficiency-motor-driven.*

[10] The UL petition and supporting documentation is available at *https://www.regulations.gov/document?D=EERE-2017-BT-TP-0047-0029.*

[11] Pierre Angers—Hydro-Québec's Research Institute, Andrew Baghurst—CalTest Laboratory, Martin Doppelbauer—Karlsruhe Institute of Technology (KIT), *Review of Energy Efficiency Measurement Standards for Induction Motors in the Context of the IECEE Global Efficiency Labeling Initiative.* EEMODS conference 2013. Available at: *https://e3p.jrc.ec.europa.eu/publications/proceedings-8th-international-conference-eemods2013-energy-efficiency-motor-driven.*

[12] The paper compared 2013 draft updates of IEEE 112–2004 and IEC 60034–2–1:2007.

[13] Cao, W. Comparison of IEEE 112 and new IEC standard 60034–2–1. *IEEE Transactions on Energy Conversion.* 2009. 24(3): pp. 802–808.

comment on the matters described in this section.

DOE seeks comment on the differences among IEC 60034–2–1:2014 Method 2–1–1B, IEEE 112–2004 Method B, and CSA C390–10, and data characterizing the degree to which choice of test procedure alters measured efficiency.

DOE seeks comment on the differences among IEC 60034–2–1:2014 Method 2–1–1A, IEEE 114–2010, and CSA C747–09 and data characterizing the degree to which choice of test procedure alters measured efficiency.

DOE seeks comment regarding whether IEC 60034–2–1:2014 Method 2–1–1B should be considered as an alternate for testing certain small electric motors under 10 CFR part 431, subpart X. DOE also seeks comment on whether the comparison test results presented in the petitions, which concern the test procedures under 10 CFR part 431, subpart B, would also apply to testing of certain small electric motors under Subpart X of 10 CFR 431.

DOE seeks comment on NEMA's claims: (1) That the Hydro-Quebec test results support a typical loss deviation between IEEE 112–2004 Method B and IEC 60034–2–1:2004 Method 2–1–1B of less than ±2 percent, (2) that a 2 percent loss deviation is characteristic of substituting a test operator with the test equipment unchanged, and (3) that a 10 percent loss deviation is characteristic of testing the same motor at different laboratories.

DOE seeks comment on whether Angers *et al.* paper's findings of similarity between IEEE 112–2004 (2013 draft revision) and IEC 60034–2–1:2007 (2013 draft revision) would hold for the latest adopted versions of those standards: IEEE 112–2004 and IEC 60034–2–1:2014.

DOE seeks comment on UL's claims that the difference in calculated efficiency between IEC 60034–2–1:2014 Method 2–1–1B and IEEE 112–2004 method B is less than 0.1 percentage points, if using measurements from the same test.

DOE seeks comment regarding similarity in methods, differences in equipment specifications, and expected efficiency percentage point differences between the test results of IEEE 114–2010, CSA C747–09, and IEC 60034–2–1:2004, Method 2–1–1A.

IV. Submission of Comments

DOE invites all interested parties to submit in writing by January 2, 2018, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for electric and small electric motors. These comments and information will aid in the development of a test procedure NOPR for electric and small electric motors if DOE determines that amended test procedures may be appropriate for these products.

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

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

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

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

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

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

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

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

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

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the

information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

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

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 586–6636 or via email at *ApplianceStandardsQuestions@ee.doe.gov*.

Issued in Washington, DC, on October 19, 2017.

David Nemtzow,

Director, Building Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2017–23634 Filed 11–1–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0111; Product Identifier 2016–SW–079–AD]

RIN 2120–AA64

Airworthiness Directives; AgustaWestland S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain AgustaWestland S.p.A. (AgustaWestland) Model AW189 helicopters. This proposed AD would require replacing the seal and filler wedges of all emergency exit windows. The proposed actions are prompted by a report that some windows were improperly glued when installed. The actions of this proposed AD are intended to correct an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 2, 2018.

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–2017–0111; 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 Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *http://www.leonardocompany.com/-/bulletins*. 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: Martin R. Crane, Aviation Safety Engineer, Regulations & Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *martin.r.crane@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 Technical Agent for the Member States of the European Union, has issued EASA AD No. 2016–0216, dated October 28, 2016, to correct an unsafe condition for Leonardo Helicopters (previously Finmeccanica S.p.A., previously AgustaWestland) Model AW189 helicopters, serial numbers 49007 through 49021, 49023, 49029, 49033, 49035, 89001, 89003, 89004, 92001, 92003, and 92005. The EASA AD does not apply to windows that have been reinstalled at least once since helicopter delivery and windows that are part of bubble window kit part number (P/N) 8G5620F00111.

EASA advises that during a scheduled replacement of emergency exit window seals on helicopters in service, an excessively high level of pushing force was required to jettison some of the windows. According to EASA, further investigation determined the windows were installed with glue applied in locations that were not in accordance with the approved design.

This condition, if not corrected, could prevent the jettisoning of helicopter emergency exit windows, possibly affecting the evacuation of crew and passengers during an emergency situation, EASA advises. EASA consequently requires replacement of the seal and the filler wedges of the

emergency exit windows installed in the cockpit doors and cabin.

The FAA is in the process of updating AgustaWestland's name change to Leonardo Helicopters on its type certificate. Because this name change is not yet effective, this proposed AD specifies AgustaWestland.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, 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

We reviewed Leonardo Helicopters Bollettino Tecnico No. 189–118, dated October 20, 2016. This service information specifies replacing the seal and filler wedges on all cockpit door and cabin emergency exit windows of Model AW189 helicopters, except on those windows that have been replaced or that are part of bubble window kit P/N 8G5620F00111.

Proposed AD Requirements

This proposed AD would require within 75 hours time-in-service, replacing the seal and filler wedges on all emergency exit windows installed in the cockpit doors and cabin.

Costs of Compliance

We estimate that this proposed AD would affect 2 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect that removing and replacing the window seals and fillers would require 40 work-hours and parts would cost about $834, for a total cost of $4,234 per helicopter and $8,468 for the U.S. fleet.

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):

AgustaWestland S.p.A.: Docket No. FAA–2017–0111; Product Identifier 2016–SW–079–AD.

(a) Applicability

This AD applies to Model AW189 helicopters, serial number 49007 through 49021, 49023, 49029, 49033, 49035, 89001, 89003, 89004, 92001, 92003, and 92005, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as improperly glued emergency exit windows. This condition could result in the window failing to jettison, preventing the occupants from exiting the helicopter during an emergency.

(c) Comments Due Date

We must receive comments by January 2, 2018.

(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

Within 75 hours time-in-service, replace the seal and filler wedges of each cabin and cockpit door emergency exit window, except bubble windows installed in accordance with bubble window kit part number 8G5620F00111.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Martin R. Crane, Aviation Safety Engineer, Regulations & Policy Section, Rotorcraft Standards Branch, 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

(1) Leonardo Helicopters Bollettino Tecnico No. 189–118, dated October 20, 2016, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *http://www.leonardocompany.com/-/bulletins.* 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.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2016–0216, dated October 28, 2016. You may view the EASA AD on the Internet at *http://www.regulations.gov* in AD Docket No. FAA–2017–0111.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5600, Window/Windshield System.

Issued in Fort Worth, Texas, on October 17, 2017.

James A. Grigg,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2017–23199 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1010; Product Identifier 2016–SW–089–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AW189 helicopters. This proposed AD would require inspecting and altering the emergency flotation system (EFS). This proposed AD is prompted by a report of punctured EFS kits. The actions of this proposed AD are intended to prevent an unsafe condition on these helicopters.

DATES: We must receive comments on this proposed AD by January 2, 2018.

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–2017–1010; 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 Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *http://www.leonardocompany.com/-/bulletins.* 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: Martin R. Crane, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *martin.r.crane@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 Technical Agent for the Member States of the European Union, has issued EASA AD No. 2016–0263–E, dated December 24, 2016 (AD 2016–0263–E), to correct an unsafe condition for Leonardo S.p.A. Helicopters (previously Agusta) Model AW189 helicopters. EASA advises that during the first scheduled maintenance of an EFS kit, float bags were found punctured. According to EASA, an investigation revealed the damage was caused by protruding parts of the pressure relief/topping valves that were not adequately protected. EASA further states that this condition could result in a partial loss of buoyancy of the EFS float bags, possibly resulting in injury to the helicopter's occupants in a ditching event. To prevent this unsafe condition, EASA AD 2016–0263–E requires a one-time inspection of the EFS, repair of any discrepancies found, replacing the pressure relief/topping valve O-ring with a gasket, and replacing the inflate/deflate protection with a new design inflate/deflate protection.

The FAA is in the process of updating Agusta's name change to Leonardo Helicopters on its type certificate. Because this name change is not yet effective, this proposed AD specifies Agusta.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, 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

We reviewed Leonardo S.p.A. Bollettino Tecnico No. 189–135, dated December 20, 2016 (BT 189–135), and Aero Sekur Service Bulletin No. SB–189–25–003, dated November 30, 2016 (SB–189–25–003), which is attached to BT 189–135 as Annex 1. BT 189–135 specifies following the procedures in SB–189–25–003 to inspect and modify certain EFS kits installed on AW189 helicopters.

Proposed AD Requirements

This proposed AD would require, within 120 hours time-in-service (TIS), inspecting each float bag for punctures, replacing the pressure relief/topping (PRT) valve O-ring part number (P/N) P–G10025 with a PRT valve gasket P/N 316683A, and replacing the inflate/deflate protection P/N 304694A with inflate/deflate protection P/N 304694B.

If there are any cuts, tears, punctures, or abrasion on a float bag, the proposed AD would require repairing the float bag before further flight.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires compliance within 15 hours TIS or 10 days for helicopters flying overwater above sea state 4 or within 120 hours or 60 days for helicopters operating overwater up to sea state 4. The proposed AD would require compliance within 120 hours TIS regardless of sea state conditions.

Costs of Compliance

We estimate that this proposed AD would affect two helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Inspecting each float bag, replacing the PRT valve gasket, and replacing the inflate/deflate protection would require about 40 work-hours, and required parts would cost about $500, for a cost per helicopter of $3,900 and a total cost of $7,800 for the U.S. fleet. If required, repairing a float bag would require about 2 work-hours, and required parts would cost $90, for a cost per float bag of $260.

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):

Agusta S.p.A. Helicopters: Docket No. FAA–2017–1010; Product Identifier 2016–SW–089–AD.

(a) Applicability

This AD applies to Agusta S.p.A. (Agusta) Model AW189 helicopters, certificated in any category, with an emergency float system (EFS) float assembly part number (P/N) 8G9560V00131, serial number (S/N) 066 or lower; P/N 8G9560V00231, S/N 068 or lower; P/N 8G9560V00331, S/N 068 or lower; or P/N 8G9560V00431, S/N 067 or lower, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a punctured EFS float bag. This condition could result in loss of buoyancy of an EFS float bag being used in an emergency water ditching and subsequent injury to helicopter occupants.

(c) Comments Due Date

We must receive comments by January 2, 2018.

(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 120 hours time-in-service:

(i) Unfold and inspect each float bag assembly for any cuts, tears, punctures, or abrasion. If there is a cut, tear, puncture, or any abrasion, before further flight, repair the float bag assembly.

(ii) Replace each O-ring P/N S–B10104 with a pressure relief/topping (PRT) valve gasket P/N 316683A.

(iii) Install each PRT valve P/N P–G10025 and apply a torque of 4.5 to 5.5 Nm (39.8 to 48.6 inch-pounds).

(iv) Replace each inflate/deflate protection P/N 304694A with a PRT valve protection P/N 304694B.

(iv) Install a piece of tape approximately 220 millimeters long over each PRT valve protection P/N 304694B.

(2) After the effective date of this AD, do not install an EFS float assembly P/N 8G9560V00131, S/N 066 or lower; P/N 8G9560V00231, S/N 068 or lower; P/N 8G9560V00331, S/N 068 or lower; or P/N 8G9560V00431, S/N 067 or lower on any helicopter unless you have complied with the actions in paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, FAA, may approve AMOCs for this AD. Send your proposal to: Martin R. Crane, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, 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

(1) Leonardo S.p.A. Bollettino Tecnico No. 189–135, dated December 20, 2016, and Aero Sekur Service Bulletin No. SB–189–25–003, dated November 30, 2016, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Matteo Ragazzi, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–711756; fax +39–0331–229046; or at *http://www.leonardocompany.com/-/bulletins.* 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.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2016–0263–E, dated December 24, 2016. 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: 3212 Emergency Flotation Section.

Issued in Fort Worth, Texas, on October 16, 2017.

James A. Grigg,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2017–23200 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0479; FRL–9968–42–Region 3]

Air Quality Plans; Pennsylvania; Lebanon County 2012 Fine Particulate Matter Standard Determination of Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Lebanon County, Pennsylvania nonattainment area (the Lebanon County Area) has attained the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). This proposed determination of attainment, also known as a clean data determination, is based on quality assured and certified ambient air quality data for the 2014–2016 monitoring period. If finalized, the effect of this determination of attainment would be to suspend certain planning requirements for the area, including the requirement to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures. These requirements would be suspended for as long as the area continues to meet the 2012 annual $PM_{2.5}$ NAAQS. However, this proposed action is not a redesignation to attainment for the area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 4, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0479 at *http://www.regulations.gov,* or via email to *stahl.cynthia@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2012, EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health from fine particle pollution (the 2012 $PM_{2.5}$ NAAQS). *See* 78 FR 3086 (January 15, 2013). In that action, EPA strengthened the primary annual $PM_{2.5}$ standard, lowering the level from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$. The 2012 $PM_{2.5}$ NAAQS is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 mg/m^3. *See* 40 CFR 50.18. On December 18, 2014 (80 FR 2206), EPA made designation determinations, as required by CAA section 107(d)(1), for the 2012 $PM_{2.5}$ NAAQS. In that action, EPA designated the Lebanon County Area as moderate nonattainment for the 2012 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.339.

Under EPA's longstanding Clean Data Policy,[1] which was codified in EPA's Clean Air Fine Particulate Implementation Rule (72 FR 20586, April 25, 2007), EPA may issue a determination of attainment after notice and comment rulemaking determining that a specific area is attaining the relevant standard. *See* 40 CFR 51.1004. The effect of a clean data determination is to suspend the requirement for the area to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment for as long as the area continues to attain the standard.

In EPA's Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (81 FR 58010, August 24, 2016), EPA reaffirmed the Clean Data Policy at 40 CFR 51.1015. The rule states that, upon a determination by EPA that a moderate $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, RACM (including reasonably available control technology (RACT) for stationary sources), RFP, quantitative milestones and quantitative milestone reports, and contingency measures for the area shall be suspended until such time as: (1) The area is redesignated to attainment, after which such requirements are permanently discharged; or, (2) EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the moderate nonattainment area by a future date to be determined by EPA and announced through publication in the **Federal Register** at the time EPA determines the area is violating the $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1015.

II. EPA's Evaluation

Under EPA regulations at 40 CFR part 50, § 50.18 and appendix N, the annual primary $PM_{2.5}$ standard is met when the 3-year average of $PM_{2.5}$ annual mean mass concentrations for each eligible monitoring site is less than or equal to 12 $\mu g/m^3$. Three years of valid annual means are required to produce a valid annual $PM_{2.5}$ NAAQS design value. A year meets data completeness requirements when quarterly data capture rates for all four quarters are at least 75 percent (%) from eligible monitoring sites. *See* 40 CFR part 50, appendix N.

By letter dated May 17, 2017, Pennsylvania certified its 2016 ambient air quality monitoring data. EPA issued final 2014–2016 design values on July 27, 2017. There is one $PM_{2.5}$ monitor in the Lebanon County Area. Table 1 shows the Lebanon County Area design value for the 2012 annual $PM_{2.5}$ NAAQS for the years 2014–2016 at the Lebanon County monitor.

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the $PM_{2.5}$ ambient air quality monitoring data for the 2014–2016

[1] ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards,'' Memorandum from Stephen D. Page, December 14, 2004.

monitoring period for the Lebanon County Area, as recorded in EPA's Air Quality System (AQS) database. This data can be found at *http://www.regulations.gov* in the docket for this action, Docket ID No. EPA–R03–OAR–2017–0479. As shown in Table 1, the data indicate a declining trend in $PM_{2.5}$ levels, with annual means decreasing steadily from 2014 to 2016.

As shown in Table 2, all but one quarter in 2014–2016 is complete, reporting data capture rates of at least 75%. The second quarter in 2015 had a data capture rate of 70%. However, EPA can calculate a valid design value for a monitor that doesn't meet the 75% capture rate each quarter, as long as there is at least 50% data capture in each quarter. In that case, EPA can perform a data substitution test, known as the maximum quarter test, pursuant to 40 CFR part 50, appendix N, section 4.1(c)(ii). EPA routinely performs this test for monitors with deficient quarters (*i.e.,* those with less than 75% but at least 50% data capture). EPA first identifies the highest reported daily value for that quarter, looking at that same quarter for all three years used to calculate the design value. EPA substitutes the highest reported daily $PM_{2.5}$ value for that quarter for all missing daily data in the deficient quarter to make that quarter 100% complete. Then, EPA calculates a test design value (TDV) for the three-year period. If that recalculated annual $PM_{2.5}$ design value is less than or equal to the level of the standard, then the annual $PM_{2.5}$ design value passes the test and is valid, and the annual $PM_{2.5}$ NAAQS is deemed to have been met in that 3-year period.

In this case, the second quarter in 2015 was deficient. The monitor recorded 64 out of the 91 possible daily values in that quarter, which included April, May, and June of 2015. Therefore, EPA looked at data recorded at the Lebanon monitor in the second quarters of 2014, 2015, and 2016, and identified the highest daily value, which was 30.5 $\mu g/m^3$. EPA substituted that value 27 times to account for the 27 missing daily values in 2017 and calculated a TDV of 11.7 $\mu g/m^3$ which is lower than the level of the 2012 $PM_{2.5}$ NAAQS. Therefore, the Lebanon County monitor passed the maximum quarter test, and has a valid design value for the 2014–2016 monitoring period. The certified annual design value for 2014–2016 is 11.2 $\mu g/m^3$, which is below the 2012 annual primary $PM_{2.5}$ standard of 12 $\mu g/m^3$. Therefore, the Lebanon County Area has attained the 2012 annual $PM_{2.5}$ NAAQS in accordance with the requirements in 40 CFR part 50, § 50.18 and appendix N.

TABLE 1—2014–2016 ANNUAL $PM_{2.5}$ VALUES FOR LEBANON COUNTY, PENNSYLVANIA

Monitor ID	Annual mean ($\mu g/m^3$)			Complete quarters			2014–2016 Certified annual design value ($\mu g/m^3$)
	2014	2015	2016	2014	2015	2016	
420750100	12.73	11.15	9.72	4	3	4	11.2

TABLE 2—DATA CAPTURE RATES (%) AND CREDITABLE SAMPLES BY QUARTER (Q)

	2014				2015				2016			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Creditable Samples	89	89	90	84	90	64	76	85	91	91	91	92
Capture Rate	99	98	98	91	100	70	83	92	100	100	99	100

III. Proposed Action

EPA is proposing to determine that the Lebanon County Area has attained the 2012 annual $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1015, finalization of this determination suspends the requirements for this area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other planning SIP requirements related to the attainment of the 2012 $PM_{2.5}$ NAAQS, so long as this area continues to meet the standard. This determination of attainment does not constitute a redesignation to attainment. The Lebanon County Area will remain designated nonattainment for the 2012 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan, pursuant to sections 107 and 175A of the CAA.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

This rulemaking action proposes to make a determination of attainment of the 2012 $PM_{2.5}$ NAAQS based on air quality and, if finalized, would not impose additional requirements. For that reason, this proposed determination of attainment:

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

application of those requirements would be inconsistent with the CAA; and

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

In addition, this proposed rule to determine that the Lebanon County Area attained the 2012 $PM_{2.5}$ NAAQS does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this proposed determination of attainment does not apply in Indian country located in the states and because EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 19, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2017–23568 Filed 11–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0323; FRL–9970–16–Region 5]

Air Plan Approval; Illinois; Volatile Organic Compounds Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state submission as a revision to the Illinois state implementation plan (SIP) for ozone. The revision, submitted on May 30, 2017, incorporates changes to the Illinois Administrative Code definition of volatile organic material, otherwise known as volatile organic compounds (VOC). The revision removes recordkeeping and reporting requirements related to the use of t-butyl acetate (also known as tertiary butyl acetate) as a VOC, and is in response to an EPA rulemaking that occurred in 2016. Illinois also added information to provide clarity to the list of compounds excluded from the definition of VOC.

DATES: Comments must be received on or before December 4, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0323 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this issue of the **Federal Register**, EPA is approving the Illinois's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this issue of the **Federal Register**.

Dated: October 17, 2017.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017–23706 Filed 11–1–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1092; FRL–9969–65–Region 5]

Air Plan Approval; Michigan Minor New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for a proposed Clean Air Act rule published August 15, 2017. Multiple commenters requested additional time to provide comments; therefore, EPA is reopening the comment period for 30 days.

DATES: Comments must be received on or before December 4, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1092 at *http://www.regulations.gov,* or via email to *damico.genvieve@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission

methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *Rineheart.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

On August 15, 2017, EPA proposed to approve certain changes to Michigan's minor new source review program which is contained in Part 2 of the Michigan Administrative Code. Specifically, EPA proposed to approve 336.1209, effective 07/26/1995; 336.1201a, 336.1203, 336.1204, 336.1206, 336.1212, 336.1216, effective 07/01/2003; 336.1201, 336.1202, 336.1207, 336.1219, 336.1240, 336.1241, 336.1278, 336.1299, effective 06/20/2008; and 336.1278a, 336.1280, 336.1281, 336.1282, 336.1283, 336.1284, 336.1285, 336.1286, 336.1287, 336.1288, 336.1289, 336.1290, effective 12/20/2016. Multiple commenters requested additional time to provide comments; therefore, EPA is reopening the comment period for 30 days. The comment period now closes on December 4, 2017.

Dated: September 28, 2017.

Robert Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2017–23470 Filed 11–1–17; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 82, No. 211
Thursday, November 2, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Tribal Relations; Council for Native American Farming and Ranching

AGENCY: Office of Tribal Relations, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a forthcoming meeting of The Council for Native American Farming and Ranching (CNAFR), a public advisory committee of the Office of Tribal Relations (OTR). Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended. This will be the first meeting held during fiscal year 2018 and will consist of, but not be limited to: Hearing public comments, subcommittee report outs, and discussion of potential recommendations. This meeting will be open to the public.

DATES: The teleconference meeting will be held on November 29, 2017. The meeting will be open to the public with time set aside for public comment on November 29 at approximately 1:30–2:30 p.m. The OTR will make the agenda available to the public via the OTR Web site (*http://www.usda.gov/tribalrelations*) no later than 10 business days before the meeting and at the meeting.

ADDRESSES: The meeting will be conducted using teleconference technology. This meeting will not be convened in person. The agenda, with the call in information, will be made public via the OTR Web site (*http://www.usda.gov/tribalrelations*) no later than 10 business days before the meeting.

Written Comments: Written comments may be submitted to the CNAFR Contact Person: Abby Cruz, Designated Federal Officer and Senior Policy Advisor for the Office of Tribal Relations, 1400 Independence Ave. SW., Whitten Bldg., 501–A, Washington, DC 20250; by Fax: (202) 720–1058; or by email: *Abigail.Cruz@osec.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Questions should be directed to the CNAFR Contact Person: Abby Cruz, Designated Federal Officer and Senior Policy Advisor for the Office of Tribal Relations, 1400 Independence Ave. SW., Whitten Bldg., 501–A, Washington, DC 20250; by Fax: (202) 720–1058; or by email: *Abigail.Cruz@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), USDA established an advisory council for Native American farmers and ranchers. The CNAFR is a discretionary advisory committee established under the authority of the Secretary of Agriculture, in furtherance of the *Keepseagle* v. *Perdue* settlement agreement that was granted final approval by the District Court for the District of Columbia on April 28, 2011.

The CNAFR will operate under the provisions of the FACA and report to the Secretary of Agriculture. The purpose of the CNAFR is (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA programs; (2) to transmit recommendations concerning any changes to USDA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created by USDA programs through enhanced extension and financial literacy services; (4) to examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing solutions to the challenges of the aforementioned purposes. Equal opportunity practices were considered in all appointments to the CNAFR in accordance with USDA policies. The Secretary selected the members in December 2016.

Interested persons may present views, orally or in writing, on issues relating to agenda topics before the CNAFR. Written submissions may be submitted to the CNAFR Contact Person on or before November 22, 2017. Oral presentations from the public will be heard approximately 1:30 p.m. to 2:30 p.m. on November 29, 2017. Individuals interested in making formal oral presentations should also notify the CNAFR Contact Person and submit a brief statement of the general nature of the issue they wish to present and the names, tribal affiliations, and addresses of proposed participants by November 22, 2017. All oral presentations will be given three (3) to five (5) minutes depending on the number of participants.

The OTR will also make the agenda available to the public via the OTR Web site (*http://www.usda.gov/tribalrelations*) no later than 10 business days before the meeting and at the meeting. The minutes from the meeting will be posted on the OTR Web site. OTR welcomes the attendance of the public at the CNAFR meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Abby Cruz at least 10 business days in advance of the meeting.

Dated: October 27, 2017.

Linda Cronin,

Acting Director, Office of Tribal Relations.

[FR Doc. 2017–23898 Filed 11–1–17; 8:45 am]

BILLING CODE 3420–AG–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0071]

Availability of an Environmental Assessment for the Biological Control of Yellow Toadflax

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments; extension of comment period.

SUMMARY: We are extending the comment period for our draft environmental assessment relative to the control of yellow toadflax (*Linaria vulgaris*), which considers the effects of, and alternatives to, the field release of a stem gall weevil, *Rhinusa pilosa,* into the continental United States for use as a biological control agent to reduce the severity of yellow toadflax infestations. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the notice of availability and request for comments published on October 2, 2017 (82 FR 45796–45797), is extended. We will consider all comments that we receive on or before November 16, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0071.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2017–0071, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0071* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2327, email: *Colin.Stewart@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: On October 2, 2017, we published in the **Federal Register** (82 FR 45796–45797, Docket No. APHIS–2017–0071) a notice of availability and request for comments [1] on our draft environmental assessment relative to the control of yellow toadflax (*Linaria vulgaris*), which considers the effects of, and alternatives to, the field release of a stem gall weevil, *Rhinusa pilosa,* into the continental United States for use as a biological control agent to reduce the severity of yellow toadflax infestations.

Comments on the draft environmental assessment were required to be received on or before November 1, 2017. We are extending the comment period on Docket No. APHIS–2017–0071 for an additional 15 days. This action will allow interested persons additional time to prepare and submit comments.

Done in Washington, DC, this 30th day of October 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–23895 Filed 11–1–17; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and environmental assessment, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0071.*

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

RIN 0584–AD87

Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of approval of Information Collection Request (ICR).

SUMMARY: The final rule and interim final rule titled Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008 was published on January 6, 2017 (82 FR 2010). The Office of Management and Budget (OMB) cleared the associated information collection requirements on July 13, 2017. This document announces approval of the ICR.

DATES: The ICR associated with the final rule was published in the **Federal Register** on January 6, 2017, and was approved by OMB on July 13, 2017, under OMB Control Number 0584–0064.

FOR FURTHER INFORMATION CONTACT: Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service (FNS), at (703) 305–2507, *sasha.gersten-paal@fns.usda.gov.*

Dated: October 24, 2017.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2017–23824 Filed 11–1–17; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities; Comment Request: Collection of Contact Information of Schools That Participate in the National School Lunch Program (NSLP) and Organizations That Participate in the USDA's Child and Adult Care Food Program (CACFP) for Sharing Team Nutrition's Nutrition Education, Training, and Technical Assistance Resources

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new collection for facilitating a communication network among CACFP organizations and USDA Food and Nutrition Service (FNS) Child Nutrition Programs, as well as between schools participating in the National School Breakfast Program and National School Lunch programs, both via the Team Nutrition initiative.

DATES: Written comments must be received on or before January 2, 2018.

ADDRESSES: Comments may be sent to: Kaylyn Padovani, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 628, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Kaylyn Padovani at 703–305–2549 or via email to *TeamNutrition@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Team Nutrition at 703–305–1624.

SUPPLEMENTARY INFORMATION: 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,

including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Collection of Contact Information of Schools That Participate in the National School Lunch Program (NSLP) and Organizations That Participate in the USDA's Child and Adult Care Food Program (CACFP) for Sharing Team Nutrition's Nutrition Education, Training, and Technical Assistance Resources.

Form Number: FNS 891 (Team Nutrition Schools) and FNS 892 (Team Nutrition CACFP Organizations).

OMB Number: 0584—NEW.

Expiration Date: 60 days after publication of this notice.

Type of Request: New collection.

Abstract: Team Nutrition is an initiative of the United States Department of Agriculture's Food and Nutrition Service to support national efforts to promote lifelong healthy food choices and physical activity by improving the nutrition practices of the Child Nutrition Programs, including the Child and Adult Care Food Program (CACFP), the National School Lunch Program (NSLP) and the School Breakfast and Special Milk Programs (SBP and SMP), in addition to the Fresh Fruit and Vegetable Program (FFVP), Afterschool Snacks, and Seamless Summer Option (SSO). This initiative provides resources to schools, child care settings, and summer meal and afterschool sites that participate in these programs.

Team Nutrition uses the Socio-cognitive behavior theory to change behavior through three main strategies. The first is to provide training and technical assistance to child nutrition professionals to enable them to prepare and serve nutritious meals that appeal to children. Team Nutrition also increases opportunities for nutrition education through multiple communication channels to help children gain the knowledge, skills, and motivation to make healthy food and physical activity choices as part of a healthy lifestyle. Finally, Team Nutrition helps to build and bolster support for healthy school and child care environments that encourage nutritious food choices and physically active lifestyles.

Since 1995, Team Nutrition has collected information from schools via the Team Nutrition Database, to communicate releases and updates of Team Nutrition resources. In order to reach CACFP program operators and providers, FNS is expanding the database to collect the contact information of interested CACFP organizations (such as Sponsoring Agencies and Independent Centers). Those eligible entities that choose to input their information into the database, via the online enrollment forms either for Team Nutrition Schools or for Team Nutrition CACFP Organizations, will receive electronic correspondence, such as monthly newsletters and promotions that announce the availability of new and updated Team Nutrition materials that support nutrition education and provide technical assistance to foster an environment of health. This database allows the opportunity for the enrolled entities to affirm their commitment to childhood nutrition & wellness while gives the opportunity to collaborate with other peers.

The collection of the school contact information is currently approved under OMB #0584–0524 Generic Clearance to Conduct Formative Research, which expires on September 30, 2019. Since FNS wants to expand this data collection to include CACFP program operators and providers, FNS is creating a new information collection which will cover both activities. Once this new collection request has been reviewed by the Office of Management and Budget, FNS will remove the burden associated with the Team Nutrition school contact information from OMB #0584–0524.

Affected Public: Business or Other For Profit; Not For Profit; and State, Local and Tribal Government: Respondent groups identified include: (1) Organizations that have a CACFP agreement with the States and (2) Schools that participate in the NSLP.

Estimated Number of Respondents: The total estimated number of respondents is approximately 122,664; 22,664 are CACFP's organizations and 100,000 are schools. For CACFP organizations, the total is broken down as follows: 20,095 CACFP sponsors: Centers only; 791 CACFP sponsors of all home care; and 1,778 CACFP sponsors of adult care.

Estimated Number of Responses per Respondent: The total estimated number of responses per all of the respondents for the entire collection is 2. The CACFP's organization and the schools will be asked to voluntarily complete one (1) enrollment form and submit changes as needed.

Estimated Total Annual Responses: 245,328.

Estimated Time per Response: The estimated time of response varies from 0.083 to 0.25 hour (5–15 minutes), with an average estimated time of 0.13 hour for all participants.

Estimated Total Annual Burden on Respondents: 32,847.11 hours. See the table below for estimated total annual burden for each type of respondent.

Affected public	Respondent type	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated average number of hours per response	Estimated total hours (col. dxe)
Reporting Burden						
Businesses or Other for Profit, Not-for-Profit	CACFP Organizations (completed form)—CACFP Sponsors: Centers Only.	20,095	1	20,095	0.25	5,023.75
	CACFP Organizations (completed form)—CACFP Sponsors of All Home Care.	791	1	791	0.25	197.75
	CACFP Organizations (completed form)—CACFP Sponsors of Adult Care.	1,778	1	1,778	0.25	444.5
Changes/Updates		22,664	1	22,664	0.083	1,881.11
Subtotal of Businesses or Other for Profit, Not-for Profit.				45,328		7,547.11
State, Local, or Tribal Government	Schools (completed form)	100,000	1	100,000	0.17	17,000
Changes/Updates		100,000	1	100,000	0.083	8,300

Affected public	Respondent type	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated average number of hours per response	Estimated total hours (col. dxe)
Subtotal for State, Local, or Tribal Government.	.....	.....	.....	200,000	.....	25,300
Total Reporting Burden	.....	122,664	.....	245,328	.....	32,847.11

Dated: October 23, 2017.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2017–23879 Filed 11–1–17; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Agency: Economic Development Administration (EDA or Agency).

Title: Revolving Loan Fund Reporting and Compliance Requirements.

OMB Control Number: 0610–0095.

Form Number(s): ED–209 and ED–209I.

Type of Review: Regular submission (extension of a currently approved information collection).

Number of Respondents: 1,328.

Average Hours per Response: ED–209, 3 hours; ED–209I, 1 hour.

Burden Hours: 3,796 hours.

Needs and Uses: The EDA Revolving Loan Fund (RLF) Program, authorized under section 209 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3149), has been part of EDA investment programs since the establishment of the RLF Program in 1975. The purpose of the RLF Program is to provide regions with a flexible and continuing source of capital, to be used with other economic development tools, for creating and retaining jobs and inducing private investment that will contribute to long-term economic stability and growth. EDA provides RLF grants to eligible recipients, which include State and local governments, Indian tribes, and non-profit organizations, to operate a lending program that offers loans with flexible repayment terms, primarily to small businesses in distressed communities that are unable to obtain traditional bank financing. These loans enable small businesses to expand and lead to new employment opportunities that pay competitive wages and benefits.

A unique feature of the RLF Program is that, by law, EDA must exercise fiduciary responsibility over its RLF portfolio in perpetuity. EDA RLF regulations therefore require RLF recipients to submit Form ED–209, Revolving Loan Fund Financial Report, every six months for each RLF they operate (13 CFR 307.14(a)). In addition, RLF recipients must submit Form ED–209I, RLF Income and Expense Statement, every six months if either of the following conditions apply to their RLF: Administrative expenses for the reporting period exceeded $100,000, or RLF administrative expenses for the reporting period exceeded 50 percent of RLF income earned during the reporting period (13 CFR 307.14(c)). EDA requires that both of these reports be completed using an authorized and EDA-provided fillable PDF (Portable Document Format) Form.

Affected Public: EDA RLF recipients: State, local and tribal governments; community organizations; not-for-profit organizations.

Frequency: ED–209, Semiannual; ED–209I, on occasion, as explained above.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view DOC collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–23818 Filed 11–1–17; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2017]

Foreign-Trade Zone (FTZ) 68—El Paso, Texas; Authorization of Production Activity; PGTEX USA, Inc.; (Fiber Glass Fabrics); El Paso, Texas

On May 19, 2017, PGTEX USA, Inc. (PGTEX) submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 68—Site 3, in El Paso, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 27797–27798, June 19, 2017). On September 18, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that foreign-status glass fiber rovings be admitted to the subzone in privileged foreign status (19 CFR 146.41).

Dated: October 30, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–23870 Filed 11–1–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053]

Antidumping Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain aluminum foil

(aluminum foil) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less-than-fair value (LTFV). The period of investigation is July 1, 2016, through December 31, 2016. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. We invite interested parties to comment on this preliminary determination.

DATES: Applicable November 2, 2017.

FOR FURTHER INFORMATION CONTACT: Tom Bellhouse or Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2057 and (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this LTFV investigation on March 30, 2017.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum that is dated concurrently with this determination and is hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and electronic version of Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is aluminum foil from the PRC. For a complete description of the scope of this investigation, *see* Appendix II.

Scope Comments

In accordance with the preamble to the Department's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* ''scope'').[4] We received comments from three interested parties on April 18, 2017,[5] as well as rebuttal scope comments filed by The Aluminum Association Trade Enforcement Working Group (the petitioner) on April 28, 2017.[6] We received no other comments on scope since publication of the *Initiation Notice.* The Department has decided preliminarily to not modify the scope language as it appeared in the *Initiation Notice.*[7]

Methodology

The Department is conducting this investigation in accordance with section 731 of the Tariff Act of 1930, as amended (the Act). We calculated export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, we calculated normal value (NV) in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[8] Policy Bulletin 05.1 describes this practice.[9]

Preliminary Determination

The preliminary weighted-average antidumping margins are as follows:

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd./Hangzhou Teemful Aluminum Co., Ltd./Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd./Hangzhou Five Star Aluminum Co., Ltd./Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd./Walson (HK) Trading Co., Limited/Hangzhou Dingsheng Import & Export Co., Ltd.[10]	Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd./Hangzhou Teemful Aluminum Co., Ltd./Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd./Hangzhou Five Star Aluminum Co., Ltd./Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd./Walson (HK) Trading Co., Limited/Hangzhou Dingsheng Import & Export Co., Ltd.	162.24	149.64
Jiangsu Zhongji Lamination Materials Stock Co., Ltd./Jiangsu Huafeng Aluminium Industry Co., Ltd.[11]	Jiangsu Zhongji Lamination Materials Co., (HK) Ltd	96.81	86.27
Jiangsu Alcha Aluminum Co., Ltd	Alcha International Holdings Limited	138.16	126.59
Baotou Alcha Aluminum Co., Ltd	Alcha International Holdings Limited	138.16	126.59
Jiangyin Dolphin Pack Ltd. Co	Jiangyin Dolphin Pack Ltd. Co	138.16	126.59
Granges Aluminum (Shanghai) Co., Ltd	Granges Aluminum (Shanghai) Co., Ltd	138.16	126.59

[1] *See Certain Aluminum Foil from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 82 FR 15691 (March 30, 2017) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[3] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice,* 82 FR at 15692.

[5] *See* Letter from MAHLE Behr Troy Inc., ''Comments on Scope of the Investigation: Certain Aluminum Foil from the People's Republic of China,'' dated April 18, 2017; *see also* Letter from Valeo North America, Inc., ''Aluminum Foil from the People's Republic of China: Request for Confirmation of Scope Exclusion for Automotive Fin Stock,'' dated April 18, 2017, *and* Letter from Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., Jiangsu Zhongji Lamination Materials Co., Ltd., and Jiangsu Zhongji Lamination Materials Stock Co., Ltd., ''Certain Aluminum Foil from the People's Republic of China: Request that Aluminum Foil of a Thickness Below .0003'' Be Excluded from the Scope or Treated as a Separate Class or Kind of Merchandise,'' dated April 18, 2017.

[6] *See* Letter from the Petitioner, ''Certain Foil from the People's Republic of China Petitioners' Scope Rebuttal Comments,'' dated April 28, 2017.

[7] *See* Memorandum to James Maeder, ''Certain Aluminum Foil from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated October 26, 2017.

[8] *See Initiation Notice,* 82 FR at 15695.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Producer	Exporter	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Huafon Nikkei Aluminium Corporation	Huafon Nikkei Aluminium Corporation	138.16	126.59
Suntown Technology Group Limited	Hunan Suntown Marketing Limited	138.16	126.59
Luoyang Longding Aluminium Industries Co., Ltd	Luoyang Longding Aluminium Industries Co., Ltd	138.16	126.59
Shandong Yuanrui Metal Material Co., Ltd	Shandong Yuanrui Metal Material Co., Ltd	138.16	126.59
Suntown Technology Group Limited	SNTO International Trade Limited	138.16	126.59
North China Aluminum Co., Ltd., Hunan Suntown Marketing Limited, and Guangxi Baise Xinghe Aluminum Industry Co., Ltd.	Suzhou Manakin Aluminum Processing Technology Co., Ltd.	138.16	126.59
Xiamen Xiashun Aluminium Foil Co. Ltd	Xiamen Xiashun Aluminium Foil Co. Ltd	138.16	126.59
Yantai Donghai Aluminum Foil Co., Ltd	Yantai Jintai International Trade Co., Ltd	138.16	126.59
Yinbang Clad Material Co., Ltd	Yinbang Clad Material Co., Ltd	138.16	126.59
Zhejiang Zhongjin Aluminum Industry Co., Ltd	Zhejiang Zhongjin Aluminum Industry Co., Ltd	138.16	126.59
PRC–Wide Entity		162.24	151.70

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of aluminum foil from the PRC as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Disclosure and Public Comment

We will disclose to interested parties the calculations performed in this proceeding within five days of the date of announcement of this preliminary determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments on the preliminary determination described above may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this proceeding.[12] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[13]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the **Federal Register**.[15] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[16] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.[17]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondents Dingsheng and Zhongji requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination, *i.e.,* issue its final determination no later than 135 days after the publication of the preliminary determination in the **Federal Register**, and that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[18]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) Our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than February 22, 2018, and are extending the provisional measures from a four-month period to a period not greater than six months.[19]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the International

[10] The Department preliminarily determines that Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd., Hangzhou Teemful Aluminium Co., Ltd., Hangzhou Five Star Aluminium Co., Ltd., Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd., Dingsheng Aluminum Industries (Hong Kong) Trading Co. Ltd., Walson (HK) Trading Co., Limited, and Hangzhou Dingsheng Import & Export Co., Ltd. are a single entity (collectively, Dingsheng). *See* Preliminary Decision Memorandum.

[11] The Department preliminarily determines that Jiangsu Zhongji Lamination Materials Stock Co., Ltd. and Jiangsu Huafeng Aluminium Industry Co., Ltd. are a single entity (collectively, Zhongji). *See* Preliminary Decision Memorandum.

[12] *See* 19 CFR 351.309 (b)(2)(c)(i).

[13] *See* 19 CFR 351.309, *see also* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.303(b)(2)(i).

[17] *See* 19 CFR 351.303(b)(1).

[18] *See* Letter from Dingsheng, ''Dingsheng's Request to Extend the Final Determination in the Antidumping Duty Investigation of Aluminum Foil from the People's Republic of China, A–570–053,'' dated September 6, 2017; *see also* Letter from Zhongji, ''Certain Aluminum Foil from the People's Republic of China: Request to Postpone Final Determination,'' dated September 6, 2017.

[19] *See* 19 CFR 351.210(b)(2) and (e).

Trade Commission (ITC) of our preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Determination of Non-Market Economy Status

As part of this investigation, the Department initiated an inquiry into whether the PRC should continue to be treated as a nonmarket economy (NME) country under the antidumping and countervailing duty laws. The Department provided an opportunity for the public to comment and submit information with respect to the PRC on the six factors enumerated by section 771(18)(B) of the Act, which the Department must take into account in making a market/nonmarket economy determination. The Department has completed its inquiry and concludes that the PRC is a NME country because it does not operate sufficiently on market principles to permit the use of prices and costs in that country for purposes of the Department's antidumping analysis.[20] Having already solicited and considered comments from the public, the Department will not revisit its analysis or consider further comments from interested parties on its conclusion that the PRC is a NME country in the final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(I) of the Act and 19 CFR 351.205(c).

Dated: October 26, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Scope of the Investigation
VI. Postponement of Final Determination and Extension of Provisional Measures
VII. Discussion of the Methodology
A. Non-Market Economy Country
B. Surrogate Country and Surrogate Values
C. Separate Rates
D. Combination Rates
E. Collapsing and Affiliation
F. The PRC-Wide Entity
G. Application of Facts Available and Adverse Inferences
H. Date of Sale
I. Comparisons to Fair Value
J. Normal Value
K. Factor Valuation Methodology
L. Determination of the Comparison Method
VII. Currency Conversion
VIII. Adjustment under Section 777A(F) of the Act
IX. Adjustment for Countervailable Subsidies
X. Disclosure and Public Comment
XI. Verification
XII. Conclusion

Appendix II

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on only one side of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product 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. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 760.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[FR Doc. 2017–23866 Filed 11–1–17; 8:45 am]

BILLING CODE 3510–DS–P

[20] *See* Memorandum to Gary Taverman, ''China's Status as a Non-Market Economy,'' dated October 26, 2017.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Organization of Scientific Area Committees for Forensic Science (OSAC) Membership Application

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice. Agency Information Collection Activities, Proposals, Submissions and Approvals.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 2, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Paul Jones II, Program Manager, Office of Special Programs, NIST, 100 Bureau Drive, Mailstop 8102, Gaithersburg, MD 20899; 301–975–2782; *john.jones@nist.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST established the Organization of Scientific Area Committees for Forensic Science (OSAC) to enable a coordinated U.S. approach to standards for the forensic science disciplines. NIST seeks broad participation from forensic science practitioners, researchers, metrologists, statisticians, accreditation bodes, defense, and prosecution. NIST solicits self-nominations from these communities, using the OSAC Membership Application, to identify individuals interested and qualified to contribute.

II. Method of Collection

The OSAC Membership Application may be completed and submitted only via web-based application.

III. Data

OMB Control Number: 0693–0070.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2500.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,250.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2017–23905 Filed 11–1–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Military Family Readiness Council; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of Defense Military Family Readiness Council will take place.

DATES: This meeting is open to the public and will be held on Monday, December 4, 2017 from 1:00 p.m. to 3:00 p.m., Pentagon Library and Conference Center, Room B6.

ADDRESSES: 1155 Defense Pentagon PLC2 Pentagon Library and Conference Center, Room B6, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Dr. Randy Eltringham, (571) 372–5315 (Voice), (571) 372–0884 (Facsimile), or Ms. Melody McDonald (571) 372–0880 (Voice), OSD Pentagon OUSD P–R Mailbox Family Readiness Council, *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* (Email). Mailing address is Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), Office of Family Readiness Policy, 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Web site: *http://www.militaryonesource.mil/military-family-readiness-council.* The most up-to-date changes to the meeting agenda can be found on the Web site.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: This is the first meeting of the Council for Fiscal Year 2018 (FY2018). During this meeting, Council members will receive information about documented needs of military service and family members. They will also review and deliberate about two FY2018 focus areas: (1) Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) as Signature Injuries of Current War and how they impact military family readiness; and (2) Community Partnerships and Collaboratives which relate to disaster and emergency preparedness, plans, partnerships, training and support for military families.

Agenda

Welcome and Administrative Remarks
Review of Written Public Submissions
FY2018 Baseline Needs Assessment Data
Panel of Experts on PTSD, TBI and Community Support Services
Department of Defense Education Activity (DODEA) Hurricane Maria Response
Question and Answer Session
Closing Remarks

Note: Exact order may vary.

Meeting Accessibility: This meeting is open to the public, subject to the availability of space. Members of the public who are entering the Pentagon should arrive at the Pentagon Visitors Center waiting area (Pentagon Metro Entrance) at 12:00 p.m. on the day of the meeting to allow time to pass through security check points and to be escorted to the meeting location. Members of the public are requested to email their RSVP to the Council at *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* no later than 5:00 p.m. on Monday, November 20, 2017 to confirm seating availability and to request an escort or handicapped accessible transportation from the Pentagon Visitors Center to the Pentagon Library and Conference Center.

Written Statements: Interested persons may submit a written statement for review and consideration by the Council. Written statements must not be longer than two type-written pages and should address the following details: the issue, discussion, and a recommended course of action. Additionally, those who make submissions are requested to avoid including personal identifiable information (PII) such as names of adults and children, phone numbers, addresses, social security numbers, etc.). Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information. Written submissions should be sent to the Council mailbox at *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* at least five (5) business days prior to the date of this meeting. If the written statement is not received at least five (5) business days prior to the meeting, the Designated Federal Officer (DFO) for the Council may choose to postpone consideration of the statement until the next open meeting of the Council. The DFO will review all timely submissions and ensure submitted written statements are provided to all members of the Council prior to the meeting that is subject to this notice.

Dated: October 27, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–23848 Filed 11–1–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA, pursuant to the Paperwork Reduction Act of 1995, intends to extend with no changes for three years with the Office of Management and Budget (OMB) Form EIA–851A *Domestic Uranium Production Report (Annual),* Form EIA–851Q *Domestic Uranium Production Report (Quarterly),* and Form EIA–858 *Uranium Marketing Annual Survey.* Form EIA–851A collects annual data from the U.S. uranium industry on uranium milling and processing, uranium feed sources, uranium mining, employment, drilling, expenditures, and uranium reserves. Form EIA–851Q collects monthly data from the U.S. uranium industry on uranium production and sources (mines and other) on a quarterly basis. Form EIA–858 collects annual data from the U.S. uranium market on uranium contracts and deliveries, inventories, enrichment services purchased, uranium in fuel assemblies, feed deliveries to enrichers, and unfilled market requirements for the current year and the following ten years.

DATES: Comments regarding this proposed information collection must be received on or before January 2, 2018. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Tim Shear, U.S. Energy Information Administration, EI–23, 1000 Independence Avenue SW., Washington, DC 20585 or by email to *Uranium2018@eia.gov.* The draft forms and instructions are available at *https://www.eia.gov/survey/.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tim Shear at 202–586–0403 or by email at *Tim.Shear@eia.gov.*

SUPPLEMENTARY INFORMATION: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

This information collection request contains:

(1) OMB No. 1905–0160;

(2) *Information Collection Request Title: Uranium Data Program*;

(3) *Type of Request:* Renewal;

(4) *Purpose: Uranium Data Program* collects data on domestic uranium supply and demand activities, including production, exploration and development, trade, purchases and sales available to the U.S. The audience for these data include Congress, Executive Branch agencies, the nuclear and uranium industry, electric power industry, and the public. Form EIA–851A data appears in EIA's *Domestic Uranium Production Report—Annual,* at *http://www.eia.gov/uranium/production/annual/.* Form EIA–851Q data appear in EIA's *Domestic Uranium Production Report—Quarterly* at *http://www.eia.gov/uranium/production/quarterly/.* Form EIA–858 data appears in EIA's *Uranium Marketing Annual Report* at *http://www.eia.gov/uranium/marketing/* and *Domestic Uranium Production Report—Annual* at *http://www.eia.gov/uranium/production/annual/*;

(5) *Annual Estimated Number of Respondents:* 124;

(6) *Annual Estimated Number of Total Responses:* 169;

(7) *Annual Estimated Number of Burden Hours:* 1200;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained during the normal course of business. The cost of the burden hours is estimated to be $88,392 (1200 burden hours times $73.66 per hour). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining, and providing this information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on October 17, 2017.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2017–23872 Filed 11–1–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–11–000.

Applicants: Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C.

Description: Application Under FPA Section 203 of Cogen Technologies Linden Venture, L.P., *et al.*

Filed Date: 10/27/17.

Accession Number: 20171027–5171.

Comments Due: 5 p.m. ET 11/17/17.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–10–000.

Applicants: CXA La Paloma, LLC.

Description: Self-Certification of EWG Status of CXA La Paloma, LLC.

Filed Date: 10/27/17.

Accession Number: 20171027–5180.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: EG18–11–000.

Applicants: APV Renaissance Opco, LLC.

Description: Notice of Self-Certification of EWG Status for APV Renaissance Opco, LLC.

Filed Date: 10/27/17.

Accession Number: 20171027–5185.

Comments Due: 5 p.m. ET 11/17/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3697–000.

Applicants: Southern California Edison Company.

Description: Informational Filing of Notice of Revision to Formula Transmission Rate Annual Update of Southern California Edison Company.

Filed Date: 10/27/17.

Accession Number: 20171027–5117.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER16–1256–001.

Applicants: Panda Liberty LLC.

Description: Report Filing: Refund Report [EL16–90] to be effective N/A.

Filed Date: 10/27/17.

Accession Number: 20171027–5210.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER16–1766–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2017–10–27_Amendment to RSG Compliance filing to be effective 4/1/2011.

Filed Date: 10/27/17.

Accession Number: 20171027–5113

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER16–1958–000.

Applicants: Panda Patriot LLC.

Description: Report Filing: Refund Report [EL16–103] to be effective N/A.

Filed Date: 10/27/17.

Accession Number: 20171027–5213.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER18–176–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 20171027_Rush Creek Production Filing to be effective 1/1/2018.

Filed Date: 10/27/17.

Accession Number: 20171027–5127.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER18–177–000.

Applicants: Liberty Utilities (CalPeco Electric) LLC.

Description: Compliance filing: Resolution of Billing Error Refile to be effective N/A.

Filed Date: 10/27/17.

Accession Number: 20171027–5201.

Comments Due: 5 p.m. ET 11/17/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23850 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–463–000]

Florida Southeast Connection, LLC; Notice of Intent To Prepare an Environmental Assessment for The Proposed Okeechobee Lateral Pipeline Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Okeechobee Lateral Pipeline Project (Project) involving construction and operation of facilities by Florida Southeast Connection, LLC (FSC) in Okeechobee County, Florida. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 22, 2017.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state.

FSC provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number CP17–463–000 with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

FSC requests authorization to construct and operate approximately 5.2 miles of 20-inch-diameter natural gas transmission pipeline and associated facilities (inspection tool launcher and receiver and a meter station) in Okeechobee County, Florida. This pipeline would connect FSC's mainline system with the Florida Power & Light Company's Okeechobee Clean Energy Center (currently under construction) and would be capable of providing 400 million cubic feet per day of natural gas to this facility. FSC anticipates construction would require four to five months, beginning in mid-2018. The

general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 105 acres of land. Following construction, FSC would maintain about 30 acres of land for permanent operation of the project facilities. The remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on General Search and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP17–463). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] We, us, and our refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 24, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23881 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–9–000.

Applicants: Thunder Ranch Wind Project, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Thunder Ranch Wind Project, LLC.

Filed Date: 10/26/17.

Accession Number: 20171026–5331.

Comments Due: 5 p.m. ET 11/16/17.

Docket Numbers: EC18–10–000.

Applicants: MATEP LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Requests for Waiver of Filing Requirements and for Privileged and Confidential Treatment of MATEP LLC.

Filed Date: 10/26/17.

Accession Number: 20171026–5338.

Comments Due: 5 p.m. ET 11/16/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–2162–001*; ER17–2163–001.*

Applicants: SunE Beacon Site 2 LLC, SunE Beacon Site 5 LLC.

Description: Notice of Non-Material Change in Status of SunE Beacon Site 2 LLC, et al.

Filed Date: 10/26/17.

Accession Number: 20171026–5318.

Comments Due: 5 p.m. ET 11/16/17.

Docket Numbers: ER18–169–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: SCE Transmission Owner Tariff Formula Rate Filing (TO2018) to be effective 1/1/2018.

Filed Date: 10/27/17.

Accession Number: 20171027–5004.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER18–170–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Limited Waiver Request of Midcontinent Independent System Operator, Inc.

Filed Date: 10/26/17.

Accession Number: 20171026–5310.

Comments Due: 5 p.m. ET 11/16/17.

Docket Numbers: ER18–171–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2236R9 Golden Spread Electric Cooperative, Inc. NITSA NOA to be effective 10/1/2017.

Filed Date: 10/27/17.

Accession Number: 20171027–5042.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER18–172–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: RS 39–SD—Concurrence to Big Stone Plant Transmission Facilities Agreement to be effective 9/29/2010.

Filed Date: 10/27/17.

Accession Number: 20171027–5050.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER18–173–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205 re: Accepted Revision to correct data entry in Contract 218 OATT Att L to be effective 12/27/2017.

Filed Date: 10/27/17.

Accession Number: 20171027–5063.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER18–174–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: RS 40–SD—Concurrence to Coyote 1 Station Transmission Facilities Agreement to be effective 9/29/2010.

Filed Date: 10/27/17.

Accession Number: 20171027–5069.

Comments Due: 5 p.m. ET 11/17/17.

Docket Numbers: ER18–175–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Filing to Correct Parameters in Tariff section 204.3A filed in ER16–2518 to be effective 12/26/2017.

Filed Date: 10/27/17.

Accession Number: 20171027–5072.

Comments Due: 5 p.m. ET 11/17/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23849 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR18–1–000]

CVR Logistics, LLC; Notice of Request for Temporary Waiver

Take notice that on October 19, 2017, pursuant to Rule 204 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.204, CVR Logistics, LLC filed a petition for temporary waiver of the tariff filing and reporting requirements applicable to interstate oil pipelines under Sections 6 and 20 of the Interstate Commerce Act and Parts 341 and 357 of the Commission's regulations. This request pertains to certain oil pipeline facilities and its associated appurtenances to be operated by Applicant within the States of Kansas and Oklahoma, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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

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

Comment Date: 5:00 p.m. Eastern time on October 27, 2017.

Dated: October 24, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23882 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2307–078]

Alaska Electric Light & Power Company: Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license for the Salmon Creek and Annex Creek Hydroelectric Project, located on Salmon Creek and Annex Creek in the City and Borough of Juneau, Alaska and has prepared an Environmental Assessment (EA) for the project. The project occupies 648.45 acres of federal lands administered by the United States Department of Agriculture, Forest Service.

The EA contains staff's analysis of the potential environmental effects of the project and concludes that relicensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2307–078.

For further information, contact Suzanne Novak at (202) 502–6665.

Dated: October 24, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23883 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–006]

North American Electric Reliability Corporation; Notice of Filing

Take notice that on October 4, 2017, the North American Electric Reliability Corporation submitted an annual report on Find, Fix, Track and Report and Compliance Exception programs, in accordance with the Federal Energy Regulatory Commission's (Commission) Orders.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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

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

Comment Date: 5:00 p.m. Eastern Time on November 13, 2017.

Dated: October 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23854 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–9–000.

Applicants: Capricorn Bell Interconnection, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Capricorn Bell Interconnection, LLC.

[1] *North American Electric Reliability Corp,* 143 FERC 61,253 (2013), *North American Electric Reliability Corp,* 148 FERC 61,214 (2014), and *North American Electric Reliability Corp,* Docket No. RC11–6–004, (Nov. 13, 2015) (delegated letter order).

Filed Date: 10/20/17.
Accession Number: 20171020–5243.
Comments Due: 5 p.m. ET 11/13/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–2548–000.
Applicants: EGP Stillwater Solar PV II, LLC.
Description: Amendment to September 26, 2017 EGP Stillwater Solar PV II, LLC tariff filing.
Filed Date: 10/20/17.
Accession Number: 20171020–5218.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–125–000.
Applicants: NextEra Energy Transmission New York, Inc.
Description: § 205(d) Rate Filing: NextEra Energy Transmission New York, Inc. Incentives Rate Filing to be effective 12/19/2017.
Filed Date: 10/20/17.
Accession Number: 20171020–5201.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–126–000.
Applicants: AL Solar A, LLC.
Description: Baseline eTariff Filing: Application of AL Solar A, LLC for MBR to be effective 12/1/2017.
Filed Date: 10/23/17.
Accession Number: 20171023–5089.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–127–000.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: VEPCO submits Wholesale Distribution Service Agreement No. 4817 to be effective 10/1/2017.
Filed Date: 10/23/17.
Accession Number: 20171023–5144.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–128–000.
Applicants: 54KR 8ME LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 12/12/2017.
Filed Date: 10/23/17.
Accession Number: 20171023–5245.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–129–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: Florida Power & Light Company Certificate of Concurrence Rate Schedule No. 329 to be effective 8/15/2017.
Filed Date: 10/23/17.
Accession Number: 20171023–5247.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–130–000.
Applicants: J–POWER North American Holdings Co., LTD, Equus Power I, L.P.
Description: Compliance filing: Market Based Rate Triennial Update Compliance Filing Docket Nos. ER10–3059 et al to be effective 12/22/2017.
Filed Date: 10/23/17.
Accession Number: 20171023–5249.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–131–000.
Applicants: J–POWER North American Holdings Co., LTD, Pinelawn Power, LLC.
Description: Compliance filing: Market Based Rate Triennial Update Compliance Filing Docket Nos. ER10–3058 et al to be effective 12/21/2017.
Filed Date: 10/23/17.
Accession Number: 20171023–5248.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–132–000.
Applicants: ISO New England Inc., Eversource Energy Service Company
Description: § 205(d) Rate Filing: Eversource Ministerial, Non-Rate Tariff Revisions to be effective 1/1/2018.
Filed Date: 10/23/17.
Accession Number: 20171023–5294.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–133–000.
Applicants: Cooperative Energy.
Description: Baseline eTariff Filing: Blackstart Service to be effective 1/1/2018.
Filed Date: 10/23/17.
Accession Number: 20171023–5295.
Comments Due: 5 p.m. ET 11/13/17.

Docket Numbers: ER18–134–000.
Applicants: Midcontinent Independent System Operator, Inc. American Electric Power Service Corporation.
Description: § 205(d) Rate Filing: 2017–10–23_SA 1524 I&M–NIPSCO Interconnection Agreement 1st Rev to be effective 7/19/2017.
Filed Date: 10/23/17.
Accession Number: 20171023–5415.
Comments Due: 5 p.m. ET 11/13/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23880 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation
Member Representatives Committee and Board of Trustees Meetings
Board of Trustees Corporate Governance and Human Resources Committee, Finance and Audit Committee, Compliance Committee, and Standards Oversight and Technology Committee Meetings
JW Marriot New Orleans, 614 Canal Street, New Orleans, LA 70130
November 8 (8:00 a.m.–5:00 p.m. central time) and November 9 (8:30 a.m.–12:00 p.m. central time), 2017

Further information regarding these meetings may be found at: *http://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR15–2, North American Electric Reliability Corporation
Docket No. RR17–6, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: October 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23853 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–9–000]

Enable Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on October 18, 2017, Enable Gas Transmission, LLC (Enable

Gas) P.O. Box 1336 Houston, Texas 77251–1336, filed a prior notice application pursuant to sections 157.205, 157.208 and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Enable Gas' blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001. Enable Gas requests authorization to: (i) Construct and operate a new mainline compressor station totaling 10,000 horsepower, with appurtenances (Byars Lake Compressor Station); (ii) install interconnect facilities consisting of a 12-inch hot tap, overpressure protection, and valves; and (iii) add auxiliary equipment at its existing Amber Junction Compressor Station (known as the Cana Stack Expansion Project). The proposed project will be located in Grady and McClain Counties, Oklahoma. The filing may also be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Lisa Yoho, Senior Director, Regulatory and FERC Compliance for Enable Gas Transmission, LLC, P.O. Box 1336, Houston, Texas 77251, by telephone at (346) 701–2539, by fax at (346) 701–2905, or by Email at *lisa.yoho@enablemidstream.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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

Dated: October 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23851 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–8–000]

Great Bay Solar I, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On October 27, 2017, the Commission issued an order in Docket No. EL18–8–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether Great Bay Solar I, LLC's proposed revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Great Bay Solar I, LLC,* 161 FERC 61,111 (2017).

The refund effective date in Docket No. EL18–8–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL18–8–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: October 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–23852 Filed 11–1–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2018–0635; FRL–9970–22–OAR]

Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) announces an upcoming meeting for the Clean Air Act Advisory Committee (CAAAC). The EPA established the CAAAC on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises EPA on economic, environmental, technical, scientific and enforcement policy issues.

DATES: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the CAAAC will hold its next face-to-face meeting on Tuesday, December 12th, 2017 from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The meeting will take place at the Madison Hotel, 1177 15th St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Tamara Saltman, Designated Federal Official, Clean Air Act Advisory Committee (6103A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–2781; email address: *saltman.tamara@epa.gov.* Additional information about this meeting, the CAAAC, and its subcommittees and workgroups can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

SUPPLEMENTARY INFORMATION: The committee agenda and any documents prepared for the meeting will be publicly available on the CAAAC Web site at *http://www.epa.gov/oar/caaac/* prior to the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available on the CAAAC Web site or by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2018–0635. The docket office can be reached by email at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

For information on access or services for individuals with disabilities, please contact Lorraine Reddick at *reddick.lorraine@epa.gov,* preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 20, 2017.

Jim DeMocker,

Director, Office of Air Policy and Program Support.

[FR Doc. 2017–23894 Filed 11–1–17; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting: Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 9, 2017, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 12, 2017

B. New Business

- Request To Redeem Allocated Equities
- Request To Amend the Articles of Incorporation of Farm Credit Financial Partners, Inc.
- Request To Invest in Farm Credit Financial Partners, Inc.

Dated: October 31, 2017.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2017–23954 Filed 10–31–17; 11:15 am]

BILLING CODE 6705–01–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 November 27, 2017.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Malvern Bancorp, Inc., Paoli, Pennsylvania;* to become a bank holding company upon the conversion of Malvern Federal Savings Bank, Paoli, Pennsylvania from a federal stock savings bank to a national bank. The bank will operate as under the name Malvern Bank, NA.

Board of Governors of the Federal Reserve System, October 27, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–23822 Filed 11–1–17; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 2017.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Gregory W. Griffith, Silver Spring, Maryland; Beverly Franklin Hales, Peachtree City, Georgia; Ethel Stephanie Stuckey Benfield, Atlanta, Georgia; Russell D. Franklin, Tallahassee, Florida; Jay Gould Stuckey, Los Angeles, California; Scott M. Stuckey, Los Angeles, California; Marietta Bryson Stuckey, Augusta, Georgia; W. S. Stuckey IV, Augusta, Georgia; James Austin Putnam, Eastman, Georgia; Williamson Elliott Putnam, Eastman, Georgia; Christine, S. Boland, Washington, DC; Michelle S. Stuckey, Atlanta, Georgia; Andrew Stuckey, Brookline, Massachusetts; Todd Giddens as Trustee of the LSF Family Trust, Dublin, Georgia, and Gregory W. Griffith as Trustee of the WSS Family Trust, Silver Spring, Maryland;* to retain voting shares of Citizens Corporation, and thereby retain shares of, Citizens Bank & Trust Company, both of Eastman, Georgia.

Board of Governors of the Federal Reserve System, October 27, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–23823 Filed 11–1–17; 8:45 am]

BILLING CODE 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: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Notifications Related to Community Development and Public Welfare Investments of State Member Banks (FR H–6; OMB No. 7100–0278).

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 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. 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.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Notifications Related to Community Development and Public Welfare Investments of State Member Banks.

Agency form number: FR H–6.

OMB control number: 7100–0278.

Frequency: Event-generated.

Respondents: State member banks.

Estimated number of respondents: Post Notification, 20; Application (Prior Approval), 71; and Extension of divestiture period, 1.

Estimated average hours per response: Post Notification, 2 hours; Application (Prior Approval) 5 hours; and Extension of divestiture period, 5 hours.

Estimated annual burden hours: Post Notification, 40 hours; Application (Prior Approval) 355 hours; and Extension of divestiture period, 5 hours.

General description of report: The Board's Legal Division has determined that the public welfare investment notice, request for approval, and request for extension of the divestiture period are authorized by the Federal Reserve Act, (12 U.S.C. 338a), and by the Board's Regulation H, (12 CFR 208.22). The obligation of state member banks to make public welfare investments under both the Reserve Bank post-notice and the Board's prior approval procedure is mandatory. The request for extension of the divestiture period is required to obtain a benefit. Individual respondent data generally are not regarded as confidential. However, a bank that submits confidential proprietary information may request confidential treatment of that information pursuant to section (b)(4) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). Such a determination would be made on a case-by-case basis in response to a specific request for disclosure. If examination ratings are included in a submission, those will be considered confidential under exemption 8 of the FOIA, (5 U.S.C. 552(b)(8)).

Consultation outside the agency: Given that most community development entities obtain funding from a variety of local and regional financial institutions, Board staff consults with other agencies' staff to discuss applications relating to such investments, as appropriate.

Current actions: On August 11, 2017, the Board published a notice in the **Federal Register** (82 FR 37589) requesting public comment for 60 days on the proposal to extend, without revision, the FR H–6. The comment period for this notice expired on October 10, 2017. The Board did not receive any comments. The information collection will be extended as proposed.

Board of Governors of the Federal Reserve System, October 30, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–23861 Filed 11–1–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records Notices

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of revised Privacy Act system notices.

SUMMARY: The FTC is making technical revisions to several of the notices that it is required to publish under the Privacy Act of 1974 to describe its systems of records. This action is intended to make these notices clearer, more accurate, and up-to-date.

DATES: This notice shall become final and effective on November 2, 2017.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold and Alex Tang, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2424.

SUPPLEMENTARY INFORMATION: To inform the public, the FTC publishes in the **Federal Register** and posts on its Web site a ''system of records notice'' (SORN) for each system of records that the FTC currently maintains within the meaning of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. *See https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems.* Each SORN describes the records maintained in each system, including the categories of individuals that the records in the system are about (*e.g.,* FTC employees or consumers). Each SORN also contains information explaining how individuals can find out from the agency if that system contains any records about them.

On June 12, 2008, the FTC republished and updated all of the FTC's SORNs, describing all of the agency's systems of records covered by the Privacy Act in a single document for ease of use and reference. 73 FR 33592. To ensure the SORNs remain accurate, FTC staff reviews each SORN on a periodic basis. As a result of this systematic review, the FTC made revisions to several of its SORNs on April 17, 2009, 74 FR 17863, August 27, 2010, 75 FR 52749, and February 23, 2015, 80 FR 9460. Based on subsequent review, the FTC is making the following technical revisions to a total of eight SORNs in four FTC SORN categories (I, II, III and V).[1]

I. FTC Law Enforcement Systems of Records

FTC–I–5 (Matter Management System—FTC). This SORN covers the administrative database used by the FTC to track and report the history and status of FTC investigations and other agency matters, including names of employees or others assigned to or involved in such matters. The Commission has updated the ''retention and disposal'' section to include a reference to the retention and disposal schedule approved by the National Archives and Records Administration (NARA). This section previously stated that the Commission's proposed retention and disposition schedule was awaiting NARA's approval.

FTC–I–7 (Office of Inspector General Investigative Files—FTC). This SORN covers investigatory records in the FTC's Office of Inspector General. The Commission is making a technical, non-substantive change to this SORN, replacing outdated references therein to the former ''President's Council on Integrity and Efficiency'' and ''Executive Council on Integrity and Efficiency,'' with references to the ''Council of the Inspectors General on Integrity and Efficiency,'' which assumed the functions of the previous Councils under the Inspector General Reform Act of 2008, Public Law 110–409.

II. Federal Trade Commission Personnel Systems of Records

FTC–II–3 (Workers' Compensation—FTC).

FTC–II–5 (Equal Employment Opportunity Statistical Reporting System–FTC.)

FTC–II–10 (Employee Health Care Records—FTC).

These SORNs relate to FTC employee records. The Human Resources Management Office (HRMO) is now the Human Capital Management Office (HCMO). We have revised references in these SORNs to reflect this change.

III. Federal Trade Commission Financial Systems of Records

FTC–III–2 (Travel Management System–FTC). This SORN covers travel documentation for FTC employees and other authorized individuals on official travel for the FTC. The FTC has revised FTC–III–2 to clarify that the Department of the Interior processes and manages travel-related data for the FTC.

FTC–III–5 (Employee Transportation Program Records—FTC). This SORN covers records relating to FTC employee transportation programs, including programs administered by the Department of Transportation (DOT) that cover certain commuting costs. The corresponding DOT SORN is DOT/ALL 8 (Employee Transportation Facilitation). See 65 FR 19475, 19482 (2000). The FTC is updating this SORN to reflect the recent transition from a paper to an online application process by individual employees through DOT's online electronic system.

V. Federal Trade Commission Access Requests

FTC–V–2 (Privacy Act Requests and Appeals—FTC). The FTC is revising this SORN to update the records disposition schedule.

FTC Systems of Records Notices

In light of the updated SORN template set forth in the newly revised OMB Circular A–108 (2016), the FTC is reprinting the entire text of each amended SORN for the public's benefit, to read as follows:

I. FTC Law Enforcement Systems of Records

* * * * *

SYSTEM NAME AND NUMBER

Matter Management System—FTC (FTC–I–5).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Director, Records and Filings Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, email: *SORNs@ftc.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

PURPOSE(S) OF THE SYSTEM:

This system, currently known within the FTC as Matter Management System 2 (MMS2), is used to record and track the status or occurrence of planned or actual actions and events that may arise in investigations, rulemakings, or other Commission matters, and to generate status or history reports on these actions, events, and matters for use by Commission management and staff, in combination, as needed, with matter-related data from other systems (*e.g.,* FTC–II–13, Staff Time and Attendance Reporting (STAR) System—FTC). Specific purposes of this system (FTC–I–5) include: To maintain records of employee work and Commission law enforcement activities; to make workload and budget determinations and personnel-related evaluations; to assist in investigative and adjudicative proceedings, enforcement actions, civil penalty proceedings, consideration of compliance reports, issuance of cease and desist orders, advisory opinions, and other Commission matters and proceedings; to refer information

[1] Along with the distinct changes set out in the text, each of the updated notices clarifies that the text of Appendices I–III cited within a particular SORN is publicly available on the FTC's Web site and has been previously published in the **Federal Register**. The FTC is not making any system changes that would require prior public comment or notice to the Office of Management & Budget (OMB) and Congress. *See* U.S.C. 552a(e)(11) and 552a(r); OMB Circular A–108 (2016).

compiled in system records to experts and consultants when considered appropriate by Commission staff; and to use those records to properly manage Commission resources.

This system includes a subsystem of records (formerly known as the Office of the Secretary Control and Reporting System or OSCAR) to record and keep track of the status of matters pending for a vote or other review or action before the full Commission (*i.e.,* the five Federal Trade Commissioners). The specific purposes of those records include: to process and control assignments made to individual Commissioners; to coordinate the consideration of and votes on appropriate issues; to assist Commissioners and staff in investigative, adjudicative and rulemaking proceedings, enforcement actions, civil penalty proceedings, consideration of compliance reports, issuance of complaints, negotiation of consent orders, issuance of cease and desist orders, advisory opinions, and other matters before the Commission; and to retain records of the matters before the Commission, the Commission's deliberations and decisions concerning those matters, and related documents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present Commission employees, and other participants or parties in Commission investigations, rulemaking, advisory, and law enforcement matters or proceedings. (Businesses, sole proprietorships, or corporations are not covered by this system.)

CATEGORIES OF RECORDS IN THE SYSTEM:

For records about past or present Commission employees: Name; employee identification number; organization name and code; employee work activities; and specific responsibilities and assignments on individual matters. For others: Records related to investigatory, rulemaking, advisory opinion and other matters or proceedings, including name and associated matter number; matter status; alleged or potential law violation; and goods or services associated with the proceeding. The records also include brief descriptions or summaries of planned or actual actions or events during an FTC investigation, rulemaking, court case, or other FTC matter or proceeding. The system also includes records of assignments, votes, circulations, or other activities or actions of the FTC's Commissioners on agency proceedings and matters.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and Commission staff associated with the matter.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system:

(1) May be made available or referred to federal, state, local or international government authorities for investigation, possible criminal prosecution, civil action, regulatory order or other law enforcement purpose; and

(2) May be disclosed on the FTC's public record under the FTC's Rules of Practice. See FTC–I–6, Public Records–FTC.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

System records are primarily maintained and accessed electronically. The system can generate electronic or printed status or history reports.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by Commissioner, staff, or other individual name, employee identification number, matter number, respondent's or correspondent's name, company name, industry investigation title, and FTC matter number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with Schedule 2 of FTC Records Retention Schedule N1–122–09–1, which was approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

For records other than those made public, access is restricted to agency personnel or contractors whose responsibilities require access. Access to nonpublic electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Copies of records contained in this system that have been placed on the FTC public record are available upon request or from the FTC's Web site, where applicable. See FTC–I–6, Public Records—FTC. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

HISTORY:

73 FR 33591–33634 (June 12, 2008).

* * * * *

SYSTEM NAME AND NUMBER

Office of Inspector General Investigative Files–FTC (FTC–I–7).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General (OIG), Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Inspector General, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pubic Law 100–504, amending the Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. app.

PURPOSE(S) OF THE SYSTEM:

To document the conduct and outcome of investigations; to report results of investigations to other components of the FTC or other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for an action deemed appropriate and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the activities of the Office of the Inspector General.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the Federal Trade Commission. Subject individuals include, but are not limited to, current and former employees; current and former agents or employees of contractors or subcontractors, as well as current and former contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the FTC, its programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents, records or copies obtained during the investigation; interview notes, documents and records relating to the investigation; opening reports, information or data relating to alleged or suspected criminal, civil or administrative violations or similar wrongdoing by subject individuals and final reports of investigation.

RECORD SOURCE CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, FTC and non-FTC records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be:

(1) Disclosed to agencies, offices, or establishments of the executive, legislative, or judicial branches of the federal or state government—

(a) Where such agency, office, or establishment has an interest in the individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, and loyalty to the United States Government, or

(b) Where such agency, office, or establishment conducts an investigation of the individual for the purposes of granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas, or

(c) Where the records or information in those records are relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning an employee, or

(d) Where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter, including, but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment actions where such record would be germane to a determination of the propriety or necessity of such action, or disclosure to the United States General Accountability Office, the General Services Administration Board of Contract Appeals, or any other federal contract board of appeals in cases relating to an agency procurement;

(2) Disclosed to the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, of records or portions thereof relevant and necessary to carrying out their authorized functions, such as, but not limited to, rendering advice requested by the OIG, investigations of alleged or prohibited personnel practices (including unfair labor or discriminatory practices), appeals before official agencies, offices, panels or boards, and authorized studies or review of civil service or merit systems or affirmative action programs;

(3) Disclosed to independent auditors or other private firms with which the Office of the Inspector General has contracted to carry out an independent audit or investigation, or to analyze, collate, aggregate or otherwise refine data collected in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records;

(4) Disclosed to a direct recipient of federal funds such as a contractor, where such record reflects serious inadequacies with a recipient's personnel and disclosure of the record is for purposes of permitting a recipient to take corrective action beneficial to the Government;

(5) Disclosed to any official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the Council of the Inspectors General on Integrity and Efficiency and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation;

(6) Disclosed to members of the Council of the Inspectors General on Integrity and Efficiency for the preparation of reports to the President and Congress on the activities of the Inspectors General; and

(7) Disclosed to complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or which they were a victim.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The FTC maintains system records in various electronic and non-electronic formats and media. The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes and CD–ROMs containing

audio recordings of investigative interviews, and data maintained on computer diskettes and hard drives. The folders, cassette tapes, CD–ROMs and diskettes are stored in file cabinets in the OIG. The hard drives are retained in the OIG safe.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained indefinitely, pending approval of an applicable retention and disposal schedule by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets, which are kept locked during non-duty hours. Records in file folders are retained as long as needed and then destroyed by shredding or burning. Computer disks and CD–ROMs are cleared, retired or destroyed when no longer useful. Entries on electronic media are deleted or erased when no longer needed. To the extent records or portions thereof are incorporated into emails or other electronic communications, access to such electronic records is controlled by ''user ID'' and password combination and/or other electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552(a), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11) and (i) and corresponding provisions of 16 CFR 4.13, to the extent that a record in the system of records was compiled for criminal law enforcement purposes.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f) and the corresponding provisions of 16 CFR 4.13, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). See 16 CFR 4.13(m).

HISTORY:

74 FR 17863–17866 (April 17, 2009)
73 FR 33591–33634 (June 12, 2008).

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II. Federal Trade Commission Personnel Systems of Records

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SYSTEM NAME AND NUMBER

Workers' Compensation—FTC (FTC–II–3).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Director, Human Capital Management Office (HCMO), Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. See DOL/GOVT–1 for information about the system manager and address for that system, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Employees Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* 20 CFR 1.1 *et seq.*

PURPOSE(S) OF THE SYSTEM:

To consider claims filed by employees and/or their survivors for compensation under FECA based on work-related injuries, and to maintain records concerning such claims. The FECA establishes the system for processing and adjudicating claims that the Commission employee and/or the Commission and other covered individuals file with DOL's Office of Workers' Compensation Programs, seeking monetary, medical and similar benefits for injuries or deaths sustained by the individual while in the performance of duty. The records maintained in this system are created as a result of and are necessary to this process. The records provide information and verification about the individual's employment-related injury and the resulting disabilities and/or impairments, if any, on which decisions awarding or denying benefits provided under the FECA must be based.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (*i.e.,* FTC employees) and/or their survivors who file claims seeking benefits under the Federal Employees' Compensation Act (FECA) for injuries sustained by the individual while in the performance of duty. The FECA applies to all civilian Federal employees, including various classes of persons whom provide or have provided personal service to the government of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain the following kinds of records: Names; Social Security numbers; reports of injury by the employee and/or the Commission; claim forms filed by or on behalf of injured employees or their survivors seeking benefits under the FECA; forms authorizing medical care and treatment; other medical records and reports; bills and other payment records; compensation payment records; copies of formal orders for or against the payment of benefits; copies of transcripts of hearings conducted; and any other medical, employment, or personal information submitted or gathered in connection with the claim. The system may also contain information relating to dates of birth, marriage, divorce, and death; notes of telephone conversations conducted in connection with the claim; information relating to vocational and/or medical

rehabilitation plans and progress reports; records relating to court proceedings, insurance, banking and employment; articles from newspapers and other publications; information relating to other benefits (financial and otherwise) the claimant may be entitled to; and information received from various investigative agencies concerning possible violations of Federal civil or criminal law. The system may also contain consumer credit reports on individuals indebted to the United States, information relating to the debtor's assets, liabilities, income and expenses, personal financial statements, correspondence to and from the debtor, information relating to the location of the debtor, and other records and reports relating to the implementation of the Federal Claims Collection Act (as amended), including investigative reports or administrative review matters. Individual records listed here are included in a claim file only insofar as they may be pertinent or applicable to the employee or beneficiary.

This system includes only claims-related records maintained by the FTC. Claims are transmitted the United States Department of Labor (DOL) for processing and adjudication. Data maintained by DOL by the Government-wide system of records notice published by DOL for its system of records, see DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File) or any successor DOL system notice that may be published for this system.

RECORD SOURCE CATEGORIES:

Employee claiming work-related injury; beneficiaries; witnesses; FTC supervisors, managers, and responsible FTC HCMO staff; DOL; suppliers of health care products and services and their agents and representatives, including physicians, hospitals, and clinics; consumer credit reports, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be:

(1) Disclosed in response to queries from Department of Labor, Office of Workers Compensation Programs, supervisors and employees about compensation claims; and

(2) Used or disclosed for any purpose or routine use set forth in the system of records notice published by DOL for this system of records, DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File), or any successor DOL system notice that may be published for this system.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Maintained in file folders or temporary electronic files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of under schedules and procedures approved or issued by the National Archives and Records Administration.

See DOL/GOVT–1 for the retention and disposal schedules that apply to claims files maintained by that agency. In general, all case files and automated data in that system pertaining to a claim are destroyed 15 years after the case file has become inactive. Case files that have been scanned to create electronic copies are destroyed after the copies are verified. Automated data are retained in their most current form only, however, and as information is updated, outdated information is deleted.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008). Current FTC employees may also request access to their records directly through their HCMO contact or managers as applicable and may be required to complete a written form and show identification to obtain access to their records. See DOL/GOVT–1 for information about the notification, record access and contesting procedures for claims records maintained by DOL.

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008). See DOL/GOVT–1 for information about the notification, record access and contesting procedures for claims records maintained by DOL.

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008). See DOL/GOVT–1 for information about the notification, record access and contesting procedures for claims records maintained by DOL.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

As explained in DOL/GOVT–1, in accordance with 5 U.S.C. 552a(k)(2), investigative materials, if any, in this system of records compiled for law enforcement purposes are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence.

HISTORY:

80 FR 9460–9465 (February 23, 2015)

73 FR 33591–33634 (June 12, 2008).

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SYSTEM NAME AND NUMBER

Equal Employment Opportunity Statistical Reporting System—FTC (FTC–II–5).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Director, Equal Employment Opportunity Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1301, 3301, 7201, 7204; Executive Order 10577; 42 U.S.C. 2000e–16; Public Law 93–112.

PURPOSE(S) OF THE SYSTEM:

To maintain EEO-related data about the FTC workforce; to protect and limit access to such workforce data by collecting and maintaining such data separately from certain other human resources records about employees; to provide the FTC's EEO Office with data necessary to create general statistical analyses and reports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Coded minority group designations and other data relevant to equal employment opportunity (EEO) at the FTC; other employee identification data (*e.g.,* position, grade, office or duty station).

RECORD SOURCE CATEGORIES:

Self-identification by employee (*e.g.,* on information collection forms completed by the employee); visual identification of employees or other personal information or knowledge used by FTC Human Resources or other staff for coding EEO-related data into the system; employee identification data from other human resources record systems (*e.g.,* FTC–II–I, General Personnel Records—FTC).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data from system records are disclosed only in aggregate, non-individually identifiable form in analyses and reports generated for use within the FTC and for reporting to Congress, the Office of Management and Budget, the Equal Employment Opportunity Commission, and the Office of Personnel Management, as required by law. For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data from information collection forms completed by FTC employees are entered into and stored in a structured electronic database maintained on agency servers, with restricted access (see ''Safeguards'' below). Paper forms are compiled and kept in the FTC's EEO Office.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by name of individual, name of group, or by cross-reference to title and grade or other human resources data fields or codes.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and destroyed in accordance with schedules and guidance issued or approved by the National Archives and Records Administration. See, *e.g.,* General Records Schedule 1.25.f (EEO-related employment statistics), which authorizes disposal after five years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to FTC personnel or contractors whose job duties require such access. Initial receipt and handling of information collection forms, as well as entry of data into computerized databases, is limited to authorized FTC individuals. Information collection forms are forwarded to and stored in lockable cabinets and offices within the FTC's EEO Office. Completed forms and system data are stored and maintained separately from other human resources records to prevent access or use by unauthorized individuals. Access to electronic records is controlled by ''user ID'' and password combination, and may be obtained only by written authorization of the FTC's EEO Director. System database is further protected by other network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

73 FR 33591–33634 (June 12, 2008).

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SYSTEM NAME AND NUMBER

Employee Health Care Records—FTC (FTC–II–10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Director, Human Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, email: *SORNs@ftc.gov.*

Director, DCP/HRS/PSC, Room 4A–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapters 11, 63, 81, 83, and 84; 42 U.S.C. 216.

PURPOSE(S) OF THE SYSTEM:

To maintain records concerning medical treatment administered to employees while on the job; to maintain continuity of care and evaluation; to furnish documentary evidence of the course of the patient's medical evaluation and treatment; to document communications between the responsible practitioner and any other health professionals contributing to the individual's health care and treatment; to verify the individual's eligibility for certain services; for quality assurance (*e.g.,* to help monitor and evaluate a contractor's performance in delivering services).

See OPM/GOVT–10 for a description of the purposes for which the agency may compile and maintain other employee medical records, if any, that are described in and covered by that OPM system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FTC employees or others who receive services through on-site health units at FTC facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, medical reports, opinions, evaluations, diagnoses and treatment information; and other records of the type described in the Privacy Act system of records notice published by the Health and Human Services' Program Support Center (HHS/PSC) for System No. 09–40–0005 (Public Health Service (PHS) Beneficiary-Contract Medical/Health Care Records), or any successor system notice for that system. The FTC currently has an interagency contract with HHS/PSC, which, in turn, uses private contractors to provide nursing, vaccination, and other miscellaneous on-site health care services to FTC employees.

This system (FTC–II–10) excludes other medical records, if any, that may be compiled or maintained by the FTC or a contractor on the FTC's behalf about FTC employees resulting from: (1) A request for reasonable accommodation under sections 501 and 505 of the Rehabilitation Act of 1973, as amended (Pub. L. 93–112); (2) a condition of the individual's employment (*e.g.,* fitness-for-duty examination, drug testing); or (3) an on-the-job occurrence (*e.g.,* medical injury report). Those records, if any, are described in and covered by the Office of Personnel Management (OPM) Privacy Act system of records notice for such records, OPM/GOVT–10 (Employee Medical File System Records), or any successor system notice for that system.

RECORD SOURCE CATEGORIES:

Individual about whom the records are maintained, treating nurses or other medical staff, witness statements, supervisors/managers and other agency officials, and others.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be:

(1) Used to disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, state, or local Social Security-type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program;

(2) Used to disclose information to a Federal, state, or local agency to the extent necessary to comply with laws governing reporting of communicable diseases;

(3) Used to disclose information to the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties;

(4) Used to disclose information to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits, and to disclose information to the Office of Federal Employees Group Life Insurance or Federal Retirement Thrift Investment Board that is relevant and necessary to adjudicate claims;

(5) Used to disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary, and to disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under agency-filed disability retirement procedures;

(6) Used to disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force; and

(7) May be disclosed, to the extent they reflect information regarding the commission of crimes or the reporting of occurrences of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc., as required by health providers and facilities by State law or regulation of the department of health or other agency of the State or its subdivision in which the facility is located. Disclosures will be made to organizations as specified by the State law or regulation, such as births and deaths to the vital statistics agency and crimes to law enforcement agencies.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Stored in file folders. Some information may be stored temporarily in electronic format (*e.g.,* emails, electronic files).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained according to schedules and procedures issued or approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by

security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 9460–9465 (February 23, 2015).
74 FR 17863–17866 (April 17, 2009).
73 FR 33591–33634 (June 12, 2008).

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III. Federal Trade Commission Financial Systems of Records

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SYSTEM NAME AND NUMBER

Travel Management System—FTC (FTC–III–2).

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Financial Management Office, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580. This system of records is principally operated and maintained off-site for the FTC by the Department of the Interior, although this system is also intended to include any miscellaneous official FTC travel data that may be maintained on-site by individual FTC offices and retrieved by name or other personally assigned identifier about individuals on official FTC travel. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Chief Financial Officer, Financial Management Office, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511, 3512 and 3523; 5 U.S.C. Chapter 57; and implementing Federal Travel Regulations (41 CFR parts 301–304).

PURPOSE(S) OF THE SYSTEM:

To plan, authorize, arrange, process and manage official FTC travel; to maintain records on individuals who are current FTC employees on travel and individuals being provided travel by the Government; to obtain travel authorizations; to prepare and submit local travel vouchers; to generate travel expense reports; and to enable travel agents who are under contract to the Federal government to issue and account for travel provided to individuals.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FTC employees or other individuals (*e.g.,* witnesses) who travel on official business; FTC administrative staff who perform administrative tasks in the system on behalf of traveling employees or other individuals; and FTC supervisors who approve travel plans for employees or others.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, Social Security numbers, home and/or business phone numbers, home and/or business addresses, vendor ID numbers, email addresses, emergency contact information (names, addresses, and phone numbers), and credit card information (personal and/or government-issued). For traveling FTC employees or other individuals (*e.g.,* witnesses) only, additional data may be maintained, such as passport numbers (for international travelers), frequent flyer or other rewards membership numbers, and trip-specific information (travel dates, flight numbers, destinations, accommodations, vehicle rental, miscellaneous expenses claimed).

Other types of records covered by this system are set out in the General Services Administration (GSA) Privacy Act system of records notice applicable to this system, GSA/GOVT–4, or any successor system notice for this system.

RECORD SOURCE CATEGORIES:

Traveling employees or other individuals (*e.g.,* witnesses), FTC administrative staff, FTC supervisors, credit card companies and travel service providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) For any routine use noted in the GSA Privacy Act system of records notice applicable to this system, GSA/GOVT–4, or any successor system notice for this system.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Data are entered into system database by traveling individuals and/or administrative staff through system Web site and stored electronically; temporary paper printouts. Miscellaneous travel data maintained by individual FTC offices are stored in electronic files on secured agency servers.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by individual name and travel order number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

See National Archives and Records Administration (NARA) General Records Schedule (GRS) 9 for Travel and Transportation Records, and GRS 20 for Electronic Records. Electronic data are available online as detailed records for at least 36 months, and are available as retrievable archived records for at least 6 years and 3 months, pursuant to NARA guidelines regarding record disposition, as provided in 36 CFR 1228 and 1234. Records that meet the criteria for disposition may be purged from the system database. Other materials, including inputs and hard copy printouts derived from electronic records created on an ad hoc basis for reference purposes or to meet day-to-day business needs, are destroyed when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes according to the GRS.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. Access to electronic records is controlled by ''user ID'' and password combination and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. See GSA/GOVT–4 for additional safeguards applicable to electronic records in this system that are maintained by the FTC's contractor.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

75 FR 52749–52751 (August 27, 2010); 73 FR 33591–33634 (June 12, 2008).

* * * * *

SYSTEM NAME AND NUMBER

Employee Transportation Program Records—FTC (FTC–III–5).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Director, Administrative Services Office, Office of the Executive Director, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7905 note; Public Law 103–172; Executive Order 13150.

PURPOSE(S) OF THE SYSTEM:

Transit subsidy records are collected and maintained to implement Federal law encouraging Federal employees to use public transportation for commuting to and from work. Such records are used to authorize subsidies for qualified FTC employees to help cover such commuting costs; to ensure the accurate and timely disbursement of subsidies to such employees; and to audit and otherwise detect or prevent fraud or abuse, if any, of such subsidies. Other employee transportation program records may be collected and maintained to administer those programs, including for building security purposes (*e.g.,* drivers' license numbers maintained for individuals who have been issued garage parking permits).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present FTC employees who have applied for public transportation subsidies to commute for work, or who may apply to participate in other employee transportation-related programs (*e.g.,* parking garage permits) that the DOT or FTC may administer from time to time, if any.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data that the FTC may compile, generate, and maintain in connection with reviewing and approving transit subsidy applications filed by eligible FTC employees with the online system operated by Department of Transportation (DOT), which administers and distributes Federal transit subsidies.

This FTC system notice applies to application data about FTC employees that the FTC may access from DOT's system, or that the FTC may itself generate, in reviewing and approving transit subsidies requested by its employees, or to audit and verify transit disbursements made to such employees, to the extent the FTC maintains and retrieves this data from its own system of records by employee name or other identifier assigned to such individuals. This system notice does not cover the transit application data compiled and maintained by DOT, which is covered by DOT's system notice. See DOT/ALL 8 (Employee Transportation Facilitation), or any successor system notice for that system, for the categories of records maintained in DOT's system.

RECORD SOURCE CATEGORIES:

Past and current FTC employees who have applied to participate in the subsidy program; FTC offices; Department of Transportation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system:

(1) May be disclosed to the U.S. Department of Transportation (DOT) for purposes of processing and distributing subsidies to FTC employees and verifying employee compliance with program rules, and may be used and disclosed by DOT under the routine uses set forth in the applicable DOT system notice, DOT/ALL 8 (Employee Transportation Facilitation), or any successor system notice for that system; and

(2) May be disclosed to other investigatory or law enforcement authorities, where necessary, to investigate, prosecute, discipline, or pursue other appropriate action against suspected program fraud or abuse, if any.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic or paper format.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are maintained and retrieved alphabetically by employee's last name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retained for three years and then destroyed, in accordance with the National Archives and Records Administration's General Record Schedule 9, Item 7.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to FTC personnel or contractors whose responsibilities require access. Records are maintained in passphrase protected computer systems or locked file cabinets, accessible only to the program manager or other FTC staff whose job duties require access. FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Obsolete records are destroyed by disposal in burn bags, by shredding, or by similarly secure means.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

73 FR 33591–33634 (June 12, 2008).

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V. FTC Access Requests

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SYSTEM NAME AND NUMBER

Privacy Act Requests and Appeals—FTC (FTC–V–2).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Freedom of Information Act/Privacy Act Supervisor, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, email: *SORNs@ftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*; Privacy Act, 5 U.S.C. 552a.

PURPOSE(S) OF THE SYSTEM:

To process and review requests and appeals for access to, correction of, or an accounting of disclosure of records under the Privacy Act; to determine the status of requested records or the request for correction or disclosure; to respond to such requests and appeals; and to maintain records documenting the consideration and disposition of these requests for reporting, analysis, and recordkeeping purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing requests for access to, correction of, or an accounting of disclosures of personal information contained in system of records maintained by the Commission, pursuant to the Privacy Act; FTC staff assigned to help process, consider, and respond to such requests, including any appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests and other communications and documents generated or compiled by the FTC to process, review, and respond to the Privacy Act request, including any appeals.

RECORD SOURCE CATEGORIES:

Individual about whom record is maintained and agency staff assigned to help process, review or respond to the request, including any appeal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 36333–36334 (June 12, 2008).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

System records are stored and maintained electronically using a commercial software run on the agency's internal network servers. Temporary paper files are destroyed once the request is complete.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by name of requesting party. Records can also be searched by address, phone number, fax number, and email of the requesting party, subject matter of the request, requestor organization, FOIA number, and staff member assigned to request.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with General Records Schedule 4.2, issued by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to nonpublic system records is restricted to FTC personnel or contractors whose responsibilities require access. Nonpublic paper records are temporary, maintained in lockable file cabinets or offices, and destroyed once the request is complete. Access to electronic records is controlled by ''user ID'' and passphrase combination and other electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008).

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's Web site at *https://www.ftc.gov/about-ftc/foia/foia-reading-*

rooms/privacy-act-systems and at 73 FR 33592, 33634 (June 12, 2008).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

HISTORY:

73 FR 33591–33634 (June 12, 2008).

* * * * *

David C. Shonka,

Acting General Counsel.

[FR Doc. 2017–23833 Filed 11–1–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3224]

Advisory Committee; Patient Engagement Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Patient Engagement Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Patient Engagement Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until October 6, 2019.

DATES: Authority for the Patient Engagement Advisory Committee will expire on October 6, 2017, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Letise Williams, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5441, Silver Spring, MD 20993–0002, 301–796–8398, *Letise.Williams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Patient Engagement Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Patient Engagement Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective devices for human use and, as required, any other product for which FDA has regulatory responsibility. The Committee provides advice to the Commissioner on complex issues relating to medical devices, the regulation of devices, and their use by patients. Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient reported outcomes, and device-related quality of life or health status issues are among the topics that may be considered by the Committee. The Committee provides relevant skills and perspectives in order to improve communication of benefits, risks and clinical outcomes, and increase integration of patient perspectives into the regulatory process for medical devices. It performs its duties by identifying new approaches, promoting innovation, recognizing unforeseen risks or barriers, and identifying unintended consequences that could result from FDA policy.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities who are knowledgeable in areas such as clinical research, primary care patient experience, health care needs of patient groups in the United States, or are experienced in the work of patient and health professional organizations, methodologies for eliciting patient preferences, and strategies for communicating benefits, risks, and clinical outcomes to patients and research subjects. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. The Commissioner or designee shall also have the authority to select from a group of individuals nominated by industry to serve temporarily as nonvoting members who are identified with industry interests. The number of temporary members selected for a particular meeting will depend on the meeting topic.

The Commissioner or designee shall also have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) Expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members) or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/PatientEngagementAdvisoryCommittee/default.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: October 30, 2017.

Anna K. Abram,

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

[FR Doc. 2017–23884 Filed 11–1–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6266]

Request for Nominations on the Pediatric Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Pediatric Advisory Committee for the Office of the Commissioner notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative(s) to serve on the Pediatric Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by December 4, 2017 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by December 4, 2017. Nominations received on or before December 4, 2017 will be given first consideration for membership on the Pediatric Advisory Committee. Nominations received after December 4, 2017 will be considered for nomination to the committee as later vacancies occur.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nomination should be sent to Marieann Brill (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be sent electronically by logging into the FDA Advisory Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for nonvoting industry representative the primary contact is: Marieann Brill, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5154, Silver Spring, MD 20993, 240–402–3838, email: *marieann.brill@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nonvoting industry representative(s) on the Pediatric Advisory Committee:

I. General Description of the Committee Duties

The Committee reviews and evaluates and makes recommendations to the Commissioner of Food and Drugs (the Commissioner) regarding (1) pediatric research conducted under sections 351, 409I, and 499 of the Public Health Service Act (42 U.S.C. 262, 284m, and 290b) and sections 501, 502, 505, 505A, 505B, 510(k), 515, and 520(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 355, 355a, 355c, 360(k), 360e, and 360j(m)); (2) identification of research priorities related to pediatric therapeutics (including drugs and biological products) and medical devices for pediatric populations and the need for additional diagnostics and treatments of specific pediatric diseases or conditions; (3) the ethics, design, and analysis of clinical trials related to pediatric therapeutics (including drugs and biological products) and medical devices; (4) pediatric labeling disputes as specified in Public Law 107–109, Public Law 110–85, and Public Law 112–144; (5) pediatric labeling changes as specified in Public Law 107–109, Public Law 110–85, and Public Law 112–144; (6) adverse event reports for drugs studied under Public Law 107–109, Public Law 110–85, and Public Law 112–144; (7) any safety issues that may occur as specified Public Law 107–109, Public Law 110–85, and Public Law 112–144; (8) any other pediatric issue or pediatric labeling dispute involving FDA-regulated products; (9) pediatric ethical issues including research involving children as subjects as specified in 21 CFR 50.54; and (10) any other matter involving pediatrics for which FDA has regulatory responsibility.

The Committee also advises and makes recommendations to the Secretary of Health and Human Services (Secretary) (HHS) directly or to the Secretary through the Commissioner on research involving children as subjects that is conducted or supported by HHS as specified in 45 CFR 46.407.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current résumés. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 30, 2017.

Anna K. Abram,

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

[FR Doc. 2017–23903 Filed 11–1–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6129]

Assessment of Food and Drug Administration Hiring and Retention; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Assessment of FDA Hiring and Retention''. The purpose of the public meeting is to share high-level findings from a recently completed diagnostic assessment of FDA's hiring process conducted by a qualified, independent contractor with expertise in assessing human resources operations and transformation. The purpose also is to outline a set of near-term actions FDA will or can take to improve the hiring process, provide an update on FDA's progress toward Prescription Drug User Fee Act (PDUFA) and Biosimilar User Fee Act (BsUFA) user fee hiring and retention commitments, and solicit input on actions FDA is taking and any further recommendations or priorities FDA should pursue with regard to the hiring process.

DATES: The public meeting will be held on November 30, 2017, from 9 a.m. to 12 noon. Submit either electronic or written comments on this public workshop by January 15, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Section A, Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

A summary report of evaluation findings related to the hiring process, conducted by an independent third party contractor, will be published in the docket by November 15, 2017, and will be titled ''Initial Assessment of FDA Hiring and Retention.''

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 15, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of January 15, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2017–N–6129 for ''Assessment of FDA Hiring and Retention; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Daniel Brounstein, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 1312, Silver Spring,

MD 20993, 301–796–0674, *OMPTfeedback@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is responsible for protecting and promoting the public health by helping to ensure the safety, efficacy, and security of human and veterinary drugs, biological products, and medical devices; and by helping to ensure the safety of the nation's food supply, cosmetics, and products that emit radiation. FDA also has responsibility for regulating the manufacturing, marketing, and distribution of tobacco products to protect the public health and to reduce tobacco use by minors.

Included in this is a mandate to advance the public health mission by helping to speed innovations that make medical products more effective, safer, and more affordable, and helping the public access accurate science-based information for FDA-regulated products. Just as the science and technology underlying new medical products is advancing, the science of development and evaluation of medical products and clinical care is also dramatically improving. To enable FDA to continue to effectively evaluate these innovative developments, a specialized workforce is required to support the Agency's regulatory science and operations initiatives.

Over the past 5 years, the Agency has struggled with challenges related to its hiring processes, including challenges in managing the hiring process and bringing the right skills to the Agency. FDA has demonstrated that diagnosing the current state and drastically reimagining the hiring process is a top priority and is committed to implementing new, bold, consistent, and high quality hiring processes to tackle these challenges. The criticality of these priorities is consistent with the PDUFA VI and BsUFA II user-fee commitments. These commitments include the use of a qualified, independent contractor with expertise in assessing human resources operations and transformation to perform an initial baseline assessment no later than December 31, 2017, and a public meeting no later than December 31, 2017, to present and discuss report findings.[1] [2]

[1] PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2018 Through 2022, *https://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf.*

[2] Biosimilar Biological Product Reauthorization Performance Goals and Procedures Fiscal Years 2018 Through 2022, *https://www.fda.gov/downloads/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/UCM521121.pdf.*

II. Topics for Discussion at the Assessment of FDA Hiring and Retention Public Meeting

The agenda will be posted prior to the meeting at: *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm577055.htm,* and will involve a plenary presentation related to the assessment findings summarized in the ''Initial Assessment of FDA's Hiring and Retention'' report and an open public comment period.

Registration: The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance will be free and on a first-come, first-served basis. If you wish to attend (either in person or by webcast) (see *Streaming Webcast of the Public Meeting),* please register online by 12 noon on Friday, November 24, Eastern Time at the following Web site: *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm577055.htm.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. You will receive confirmation of your registration.

If you need special accommodations due to a disability, please contact *OMPTfeedback@fda.hhs.gov* no later than Friday, November 24, at 12 noon Eastern Time.

Streaming Webcast of the Public Meeting: This public meeting will also be live webcast. To join the meeting via the webcast, please go to *https://collaboration.fda.gov/fdahiringretention.* If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm577055.htm.*

Dated: October 30, 2017.

Anna K. Abram,

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

[FR Doc. 2017–23899 Filed 11–1–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0998]

Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (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 information collection in the regulations for in vivo radiopharmaceuticals used for diagnosis and monitoring.

DATES: Submit either electronic or written comments on the collection of information by January 2, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 2, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of January 2, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://*

www.regulations.gov will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0988 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *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.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

OMB Control Number 0910–0409—Extension

This information collection supports FDA regulations found in 21 CFR part 315. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical. The regulations also describe the kinds of indications for diagnostic radiopharmaceuticals and some of the criteria that the Agency uses to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (the FD&C Act) and section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The regulations clarify existing FDA requirements for approval and evaluation of drug and biological products already in place under the authorities of the FD&C Act and the PHS Act. The information, which is usually submitted as part of a new drug application or biologics license application or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug

are set forth in 21 CFR 314.50, and approved under OMB control number 0910–0001. This information collection supports part 315, currently approved under OMB control number 0910–0409.

Based on past submissions (human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals), we estimate two submissions will be received annually. We estimate the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulations do not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved under OMB control number 0910–0001). In fact, clarification in these regulations of FDA's criteria for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Diagnostic Radiopharmaceuticals—315.4, 315.5, and 315.6	2	1	2	2,000	4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by the applicable regulations. This estimate does not include time needed to conduct studies and clinical trials or other research from which the reported information is obtained.

Dated: October 27, 2017.

Anna K. Abram,

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

[FR Doc. 2017–23836 Filed 11–1–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; NINR Clinical Trial Planning Grant.

Date: November 17, 2017.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Nursing Research, One Democracy Plaza, 6701 Democracy Boulevard, Room 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Room 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: October 30, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–23865 Filed 11–1–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the patent applications listed below may be obtained by emailing the indicated licensing contact Michael Shmilovich, *shmilovm@nih.gov* at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: This notice is in accordance with 35 U.S.C. 209 and 37 CFR 404 to achieve commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing. A description of the technology follows.

Endo-Cameral Closure Device

Description of Technology: Devices and methods for closing a hole in the wall of a cardiovascular structure from the inside using a self-assembling closure device. The closure device can be delivered to the subject hole from the inside of the cardiovascular chamber using a transcatheter approach. The methods are techniques involve deploying the closure device from the delivery device such that an endo-cameral portion of the closure device self-expands first to cover the hole from the inside, and then extra-cameral arms of the device are released to self-deploy against the outside of the wall by

withdrawal of a retaining element, such as a guidewire, to secure the closure device to the wall.

Potential Commercial Applications: Endovascular interventions.

Inventors: Toby Rogers, Merdim Sonmez, Robert Lederman, Ozgur Kocaturk, (NHLBI).

Intellectual Property: HHS Reference No. E–273–2015/0, U.S. Provisional Patent Application 62/236,734 filed October 2, 2015, International Patent Application PCT/US2016/054961 filed September 30, 2016.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@nih.gov.*

Dated: October 23, 2017.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2017–23863 Filed 11–1–17; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the NHLBI Special Emphasis Panel meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; T32: Institutional Training to Promote Diversity.

Date: November 30, 2017.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; National Heart, Lung, and Blood Institute—Factor VIII Immune Response (U54).

Date: November 30–December 1, 2017.

Time: 12:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–827–7938, *johnsonwj@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: October 27, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–23819 Filed 11–1–17; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Ancillary Studies Review Meeting.

Date: November 15, 2017.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health/NIAMS, 6701 Democracy Blvd., Suite 824, Bethesda, MD 20892 (Teleconference).

Contact Person: Yin Liu, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, National Institute of Health/NIAMS, 6701 Democracy Blvd., Suite 824, Bethesda, MD 20892, 301–594–4952, *liuy@exchange.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 30, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–23864 Filed 11–1–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6044–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2018

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes operating cost adjustment factors (OCAFs) for project-based rental assistance contracts issued under Section 8 of the United States Housing Act of 1937 and renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) with an anniversary date on or after February 11, 2018. OCAFs are annual factors used primarily to adjust the rents for contracts renewed under section 515 or section 524 of MAHRA. OCAFs are distinct from, and do not apply to the same properties as Annual Adjustment Factors (AAFs). AAFs are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (*i.e.,* pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program.

DATES: *Applicable:* February 11, 2018.

FOR FURTHER INFORMATION CONTACT: Carisa L. Janis, Program Analyst, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–402–2487 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. OCAFs

Section 514(e)(2) and section 524(c)(1) of MAHRA (42 U.S.C. 1437f note) require HUD to establish guidelines for the development of OCAFs for rent

adjustments. Sections 524(a)(4)(C)(i), 524(b)(1)(A), and 524(b)(3)(A) of MAHRA, all of which prescribe the use of the OCAF in the calculation of renewal rents, contain similar language. HUD has therefore used a single methodology for establishing OCAFs, which varies from State to State.

MAHRA gives HUD broad discretion in setting OCAFs, referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to ''an operating cost adjustment factor established by the Secretary.'' The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF ''shall not result in a negative adjustment.'' Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses exclusive of debt service.

The OCAFs provided in this notice are applicable to eligible projects having a contract anniversary date of February 11, 2018 or after and were calculated using the same method as those published in HUD's 2017 OCAF notice originally published on October 5, 2016 (81 FR 69073) and amended and republished on December 27, 2016 (81 FR 95162). Specifically, OCAFs are calculated as the sum of weighted average cost changes for wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water/sewer/trash using publicly available indices. The weights used in the OCAF calculations for each of the nine cost component groupings are set using current percentages attributable to each of the nine expense categories. These weights are calculated in the same manner as in the December 27, 2016, notice. Average expense proportions were calculated using three years of audited Annual Financial Statements from projects covered by OCAFs. The expenditure percentages for these nine categories have been found to be very stable over time, but using three years of data increases their stability. The nine cost component weights were calculated at the state level, which is the lowest level of geographical aggregation with enough projects to permit statistical analysis. These data were not available for the Western Pacific Islands, so data for Hawaii were used as the best available indicator of OCAFs for these areas.

The best current price data sources for the nine cost categories were used in calculating annual change factors. State-level data for fuel oil, electricity, and natural gas from Department of Energy surveys are relatively current and continue to be used. Data on changes in employee benefits, insurance, property taxes, and water/sewer/trash costs are only available at the national level. The data sources for the nine cost indicators selected used were as follows:

- *Labor Costs:* First quarter, 2017 Bureau of Labor Statistics (BLS) ECI, Private Industry Wages and Salaries, All Workers (Series ID CIU2020000000000I) at the national level and Private Industry Benefits, All Workers (Series ID CIU2030000000000I) at the national level.
- *Property Taxes:* Census Quarterly Summary of State and Local Government Tax Revenue—Table 1 *http://www2.census.gov/govs/qtax/20162017/q1t1.xls http://www2.census.gov/govs/qtax/2017/q1t1.xls.* 12-month property taxes are computed as the total of four quarters of tax receipts for the period from April through March. Total 12-month taxes are then divided by the number of occupied housing units to arrive at average 12-month tax per housing unit. The number of occupied housing units is taken from the estimates program at the Bureau of the Census. *http://www.census.gov/housing/hvs/data/histtab8.xls.*
- *Goods, Supplies, Equipment:* May 2016 to May 2017 Bureau of Labor Statistics (BLS) Consumer Price Index, All Items Less Food, Energy and Shelter (Series ID CUUR0000SA0L12E) at the national level.
- *Insurance:* May 2016 to May 2017 Bureau of Labor Statistic (BLS) Consumer Price Index, Tenants and Household Insurance Index (Series ID CUUR0000SEHD) at the national level.
- *Fuel Oil:* October 2016–March 2017 U.S. Weekly Heating Oil and Propane Prices report. Average weekly residential heating oil prices in cents per gallon excluding taxes for the period from October 5, 2016 through March 28, 2017 are compared to the average from October 13, 2015 through March 30, 2016. For the States with insufficient fuel oil consumption to have separate estimates, the relevant regional Petroleum Administration for Defense Districts (PADD) change between these two periods is used; if there is no regional PADD estimate, the U.S. change between these two periods is used. *http://www.eia.gov/dnav/pet/pet_pri_wfr_a_EPD2F_prs_dpgal_w.htm.*
- *Electricity:* Energy Information Agency, February 2017 ''Electric Power Monthly'' report, Table 5.6.B. *http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_06_b.*
- *Natural Gas:* Energy Information Agency, Natural Gas, Residential Energy Price, 2016–2017 annual prices in dollars per 1,000 cubic feet at the state level. Due to EIA data quality standards several states were missing data for one or two months in 2016; in these cases, data for these missing months were estimated using data from the surrounding months in 2016 and the relationship between that same month and the surrounding months in 2015. *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_a.htm.*
- *Water and Sewer:* May 2016 to May 2017 Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services (Series ID CUUR0000SEHG) at the national level.

The sum of the nine cost component percentage weights equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, state-level cost component weights developed from AFS data are multiplied by the selected inflation factors. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and increased by 4 percent from 2017 to 2018 the wage increase component of the Virginia OCAF for 2018 would be 2.0 percent (50% * 4%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2018 OCAF for Virginia. For states where the OCAF is less than 0 percent, the OCAF is floored at 0 percent. The OCAFs for 2018 are included as an Appendix to this Notice.

II. MAHRA OCAF Procedures

Sections 514 and 515 of MAHRA, as amended, created the Mark-to-Market program to reduce the cost of federal housing assistance, to enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

III. Findings and Certifications

Environmental Impact

This notice sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Paperwork Reduction Act

This notice does not impact the information collection requirements already submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.195.

Dated: October 27, 2017.

Dana T. Wade,

General Deputy, Assistant Secretary for Housing.

APPENDIX

Operating Cost Adjustment Factors for 2018

State	OCAF (%)
Alabama	2.3
Alaska	2.9
Arizona	2.0
Arkansas	2.2
California	2.4
Colorado	1.9
Connecticut	2.2
Delaware	2.1
District of Columbia	2.0
Florida	2.1
Georgia	2.2
Hawaii	0.9
Idaho	2.4
Illinois	2.2
Indiana	2.1
Iowa	2.5
Kansas	2.4
Kentucky	2.1
Louisiana	2.1
Maine	1.6
Maryland	2.3
Massachusetts	1.9
Michigan	2.2
Minnesota	2.2
Mississippi	2.0
Missouri	1.8
Montana	1.9
Nebraska	2.2
Nevada	1.8
New Hampshire	2.0
New Jersey	2.4
New Mexico	1.7
New York	2.0
North Carolina	2.1
North Dakota	2.5
Ohio	1.9
Oklahoma	2.1
Oregon	2.3
Pacific Islands	0.9
Pennsylvania	2.1
Puerto Rico	2.0
Rhode Island	1.9
South Carolina	2.3
South Dakota	2.4
Tennessee	2.2
Texas	2.2
Utah	2.2
Vermont	2.2
Virgin Islands	2.0
Virginia	2.1
Washington	2.3
West Virginia	2.8
Wisconsin	2.3
Wyoming	2.1
U.S.	2.2

[FR Doc. 2017–23901 Filed 11–1–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0131]

Agency Information Collection Activities; Indian Child Welfare Quarterly and Annual Report

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 2, 2018.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to Ms. Evangeline Campbell, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; facsimile: (202) 208–5113; email: *Evangeline.Campbell@bia.gov.* Please reference OMB Control Number 1076–0131 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Evangeline Campbell, (202) 513–7621.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIA is seeking to renew the information collection conducted under 25 CFR 23, related to the Indian Child Welfare Act (ICWA). BIA collects information using a consolidated caseload form, which tribal ICWA program directors fill out. BIA uses the information to determine the extent of service needs in local Indian communities, assess ICWA program effectiveness, and provide date for the annual program budget justification. The aggregated report is not considered confidential.

This form must completed by tribes that operate child protection programs.

Submission of this information by Indian tribes allows BIA to consolidate and review selected data on Indian child welfare cases. The data is useful on a local level, to the tribes and tribal entities that collect it, for case management purposes. The data are useful on a nationwide basis for planning and budget purposes.

Title of Collection: Indian Child Welfare Quarterly and Annual Report.

OMB Control Number: 1076–0131.

Form Number: N/A.

Type of Review: Extension without change of currently approved collection.

Respondents/Affected Public: Indian tribes or tribal entities that are operating programs for Indian tribes.

Total Estimated Number of Annual Respondents: Approximately 536 per year, on average, for part A—ICWA Data; approximately 200 per year, on average, for part B—Tribal Child Abuse Neglect Data.

Total Estimated Number of Annual Responses: Approximately 2,144 per year, on average, for part A—ICWA Data; approximately 800 per year, on average, for part B—Tribal Child Abuse Neglect Data.

Estimated Completion Time per Response: Approximately 15 minutes for part A—ICWA Data; approximately 15 minutes for part B—Tribal Child Abuse and Neglect Data.

Total Estimated Number of Annual Burden Hours: 736 hours, on average.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: Four times per year for the part A—ICWA Data; if applicable, four times per year for part B—Tribal Child Abuse Neglect Data.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action, Indian Affairs.

[FR Doc. 2017–23834 Filed 11–1–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0168]

Agency Information Collection Activities; Tribal Probate Codes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 2, 2018.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to Ms. Charlene Toledo, Bureau of Indian Affairs, Office of Trust Services, Division of Probate Services, 2600 N Central Ave., STE MS 102, Phoenix, AZ 85004; or email to *Charlene.Toledo@bia.gov.* Please reference OMB Control Number 1076–0168 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Charlene Toledo by telephone at (505) 563–3371.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: As sovereignties, federally recognized tribes have the right to establish their own probate codes. When those probate codes govern the descent and distribution of trust or restricted property, they must be approved by the Secretary of the Department of the Interior. The American Indian Probate Reform Act of 2004 (AIPRA) amendments to the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.,* provides that any tribal probate code, any amendment to a tribal probate code, and any free-standing single heir rule are subject to the approval of the Secretary if they contain provisions governing trust lands. This statute also establishes the basic review and approval of tribal probate codes. This information collection covers tribes' submission of tribal probate codes, amendments, and free-standing single heir rules containing provisions regarding trust lands to the Secretary for approval. Submission of information is required to comply with ILCA, as amended by AIPRA, 25 U.S.C. 2201 *et seq.,* which provides that Indian tribes must obtain Secretarial approval for all tribal probate codes, amendments, and free-standing single heir rules that govern the descent and distribution of trust or restricted lands.

Title of Collection: Tribal Probate Codes.

OMB Control Number: 1076–0168.

Form Number: N/A.

Type of Review: Extension without change of currently approved collection.

Respondents/Affected Public: Indian tribes.

Total Estimated Number of Annual Respondents: 10 on average.

Total Estimated Number of Annual Responses: 10 on average.

Estimated Completion Time per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 20 hours.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: One per respondent, on occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2017–23838 Filed 11–1–17; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1026]

Certain Audio Processing Hardware, Software, and Products Containing the Same Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has issued a Final Initial Determination on Violation of Section 337 which includes a recommended determination on remedy and bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation. The ALJ recommended, should the Commission find a violation of section 337, that the Commission issue a limited exclusion order prohibiting the entry of certain audio processing hardware, software, and products containing the same manufactured abroad by or on behalf of Respondent Apple Inc. of Cupertino, California, that infringe certain claims of U.S. Patent No. 6,363,345. The ALJ also recommend that a cease and desist order be issued. The ALJ recommend that any remedy be delayed for a period of three months to one year and that any limited exclusion order include exceptions for warranty, refurbishment, and government use, as well as a certification provision. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Amanda Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. 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 *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1).

The Commission is interested in further development of the record on the public interest in its investigations. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's recommended determination on remedy and bonding issued in this investigation on October 26, 2017. Comments should address whether issuance of remedial orders in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the recommended orders;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on November 30, 2017.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 CFR part 210.4(f). Submissions should refer to the investigation number (''Inv. No. 1026'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR part 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act

of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 30, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–23874 Filed 11–1–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

On October 26, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Central District of California, Western Division, in the lawsuit entitled *United States of America* v. *Cooper Living Trust and Cooper Properties, LP.* Civil Action No. 2:17–cv–7836.

The United States filed this lawsuit under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606(a) and 9607, against the Cooper Living Trust and Cooper Properties, LP (Settling Defendants), for recovery of response costs incurred by the United States and to address environmental contamination at the Cooper Drum Company Superfund Site located in Los Angeles County, California (''the Site'').

The Settling Defendants both owned a portion of the Site at the time of disposal of hazardous substances by the Cooper Drum Company, which operated a drum reconditioning business at the Site. The reconditioning process resulted in contamination of the soil and groundwater beneath the Site.

Under the Consent Decree the Settling Defendants agree to complete the sale of property adjacent to the Site (the Property) and pay the United States the greater of 90 percent of the net sales proceeds or $2.5 million. In return, the United States agrees not to sue the Defendants 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 of America* v. *Cooper Living Trust and Cooper Properties, LP,* D.J. Ref. No. 90–11–2–09084/1. 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 $9.50 (25 cents per page reproduction cost × 38 pages) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–23835 Filed 11–1–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of Strategies Used in the TechHire and Strengthening Working Families Initiative Grant Programs

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of the Assistant Secretary for Policy (OASP) sponsored information collection request (ICR) proposal titled, ''Evaluation of Strategies Used in the TechHire and Strengthening Working Families Initiative Grant Programs,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 4, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201706-1290-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ASP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Evaluation of Strategies Used in the TechHire and Strengthening Working Families Initiative Grant Programs information collection that will support an evaluation of both the implementation and impact of the programs. The purpose of the evaluation is to identify whether the grants help low-wage workers obtain employment in and advance in H–1B industries and occupations and, if so, which strategies are most helpful. Consolidated Appropriations Act of 2016 section 107 authorizes this information collection. *See* Public Law 114–113.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on November 17, 2016 (81 FR 81172).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201706–1290–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OASP.

Title of Collection: Evaluation of Strategies Used in the TechHire and Strengthening Working Families Initiative Grant Programs.

OMB ICR Reference Number: 201706–1290–001.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 3,156.

Total Estimated Number of Responses: 3,156.

Total Estimated Annual Time Burden: 1,116 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–23889 Filed 11–1–17; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ionizing Radiation Standard

ACTION: Notice of availability; request for comments.

SUMMARY: On October 31, 2017, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Ionizing Radiation Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 4, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201709-1218-001* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Ionizing Radiation Standard information collection requirements codified in regulations 29 CFR 1910.1096. Several provisions of the Standard specify information collection requirements; these include monitoring worker exposure to ionizing radiation, instructing workers on the hazards associated with ionizing radiation exposure and precautions to minimize exposure, posting caution signs at radiation areas, reporting worker overexposures to the OSHA, maintaining exposure records, and providing exposure records to current and former workers. The purpose of the Standard and its information collection requirements is to document that employers are providing their workers with protection from hazardous ionizing radiation exposure. Occupational Safety and Health Act sections 6 and 8 authorize this information collection. *See* 29 U.S.C. 655, 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0103.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 8, 2017 (82 FR 37117.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0103. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Ionizing Radiation Standard.

OMB Control Number: 1218–0103.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 13,849.

Total Estimated Number of Responses: 293,984.

Total Estimated Annual Time Burden: 52,016 hours.

Total Estimated Annual Other Costs Burden: $7,388,465.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–23858 Filed 11–1–17; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Fire Protection in Shipyard Employment Standard

ACTION: Notice of availability; request for comments.

SUMMARY: On October 31, 2017, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Fire Protection in Shipyard Employment Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 4, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201707-1218-004* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Fire Protection in Shipyard Employment Standard information collection requirements codified in regulations 29 CFR part 1915, subpart P. The Standard makes it mandatory for an Occupational Safety and Health Act (OSH Act) covered employer engaged in shipyard employment to develop a written fire safety plan and written statement or policy that contains information about fire watches and fire response duties and responsibilities. The Standard also requires the employer to obtain medical examinations for certain workers and to develop training programs and to train employees exposed to fire hazards. Additionally, the Standard requires an employer to create and maintain records to certify that employees have been made aware of the details of the fire safety plan and that employees have been trained as required by the Standard. OSH Act sections 2(b)(9), 6(b)(7), and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655(b)(7), 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0248.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 16, 2017 (82 FR 22563).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0248. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Fire Protection in Shipyard Employment Standard.

OMB Control Number: 1218–0248.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 296.

Total Estimated Number of Responses: 55,572.

Total Estimated Annual Time Burden: 6,603 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–23856 Filed 11–1–17; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Fire Brigades Standard

ACTION: Notice of availability; request for comments.

SUMMARY: On October 31, 2017, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Fire Brigades Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 4, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201710-1218-004* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Fire Brigades Standard information collection requirements codified in regulations 29 CFR 1910.156, which requires each covered employer establishing a fire brigade to write an organizational statement, to ascertain the fitness of workers with specific medical conditions to participate in fire related operations, and to provide appropriate training and information to fire brigade members. Occupational Safety and Health Act sections 2 and 8 authorize this information collection. *See* 29 U.S.C. 651, 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0075.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 8, 2017 (82 FR 37118).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0075. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Fire Brigades Standard.

OMB Control Number: 1218–0075.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 24,856.

Total Estimated Number of Responses: 3,729.

Total Estimated Annual Time Burden: 2,693 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: October 27, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–23857 Filed 11–1–17; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–003]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by December 4, 2017. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Justice, Agency-wide (DAA–0060–2016–0003, 1 item, 1 temporary item). Email records of non-senior agency employees not covered by NARA-approved records control schedules for permanent agency email records.

2. Department of Justice, Agency-wide (DAA–0060–2017–0005, 1 item, 1 temporary item). Records documenting Native American tribal access to the Department of Justice's Criminal Justice Information Network.

3. Department of Justice, Agency-wide (DAA–0060–2017–0014, 1 item, 1 temporary item). Case files regarding benefit claims provided under the Energy Employee Occupational Illness Compensation Program Act of 2000.

4. Department of Transportation, National Highway Traffic Safety Administration (DAA–0416–2016–0002, 1 item, 1 temporary item). Master files of an electronic information system providing access to motor vehicle crash data analyses and tracking information for data requests.

5. National Archives and Records Administration, Government-wide (DAA–GRS–2018–0001, 1 item, 1 temporary item). Addition to the General Records Schedules for records documenting overtime work by phased-retirement employee

6. Peace Corps, Office of Global Health and HIV (DAA–0490–2017–0007, 2 items, 1 temporary item). Records of the Global Health Services Partnerships office including general administrative records such as recruitment and marketing files. Proposed for permanent retention are high level program records, such as policy files, memorandums, and reports.

7. Securities and Exchange Commission, Office of the Secretary (DAA–0266–2016–0002, 9 items, 6 temporary items). Informational documents, briefing materials, administrative proceeding files and periodic reports, certified mail receipts, studies and investigations, and notifications from Self-Regulatory Organizations (SROs). Proposed for permanent retention are official Commission orders and the official minutes and audio recordings of Commission meetings.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–23855 Filed 11–1–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on Oversight (CO), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Friday, November 3, 2017 at 9:00 a.m. EDT.

STATUS: Open.

MATTERS TO BE CONSIDERED: Committee Chair's remarks, and discussion of the functions of the Merit Review report and consideration of possible research topics.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Ann Bushmiller (*abushmil@nsf.gov*), 2415 Eisenhower Avenue, Alexandria, VA 22314. This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

Please refer to the National Science Board Web site *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine* for meeting information and updates. You may find general information at *https://www.nsf.gov/nsb/*.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2017–23962 Filed 10–31–17; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Recommendations for Membership on Stem Education Advisory Panel

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF), the Department of Education, the National Aeronautics and Space Administration, and the National Oceanic and Atmospheric Administration are currently requesting recommendations for membership on the Science, Technology, Engineering, and Mathematics (STEM) Education Advisory Panel (Committee). Recommendations should consist of the name of the submitting individual, the organization or the affiliation providing the member nomination, the name of the recommended individual, the recommended individual's curriculum vita, an expression of the individual's interest in serving, and the following recommended individual's contact information: Address, telephone number, FAX number, and email address. Self-recommendations are accepted. If you would like to make a membership recommendation, please send your recommendation to Nafeesa Owens at *stemedadvisory@nsf.gov*.

ADDRESSES: The mailing address for the National Science Foundation is 2415 Eisenhower Avenue, Alexandria, Virginia 22314. The web link to committee information may be found on the NSF Web site: NSF Advisory Committees.

SUPPLEMENTARY INFORMATION: The STEM Education Advisory Panel (Committee) was established on October 18, 2017, under the authority of the American Innovation and Competitiveness Act (Pub. L. 114–329; Section 303(b)) and the Federal Advisory Committee Act (''FACA'') of 1972 (5 U.S.C, Appendix 2, as amended).

The role of the Science, Technology, Engineering, and Mathematics (STEM) Education Advisory Panel (Committee) is to provide advice and recommendations to the Committee on Science, Technology, Engineering, and Mathematics Education (CoSTEM), assess CoSTEM's progress in carrying out responsibilities related to the America COMPETES Reauthorization Act, and help identify need or opportunity to update the Federal STEM Education 5-Year Strategic Plan.

NSF encourages individuals to submit their recommendations by November 30, 2017, in order to be considered for initial selection. Thereafter, NSF intends to publish a notice requesting recommendations on an annual basis. NSF will keep recommendations active for 12 months from the date of receipt. Although NSF welcomes all recommendations, the Agency will not be able to acknowledge or respond positively to each person who contacts NSF or has been recommended.

A primary consideration when formulating committee membership is recognized knowledge, expertise, or demonstrated ability. Other factors that may be considered are balance among diverse institutions, regions, and groups underrepresented in science, technology, engineering, and mathematics.

Membership will consist of no less than 11 individuals. Members shall primarily be individuals from academic institutions, nonprofit organizations, and industry, including in-school, out-of-school, and informal education practitioners; and shall be individuals who are qualified to provide advice and information on STEM education research, development, training, implementation, interventions, professional development or workforce needs or concerns. Members may serve on the panel (Committee) for up to a three-year term. Advisory meetings will be held twice a year.

Dated: October 30, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–23859 Filed 11–1–17; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81968; File No. SR–NYSEAMER–2017–30]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 7.10E To Exclude Trading Halt Auctions From Being Reviewed as Clearly Erroneous, Rule 7.11E To Conform to the Limit Up-Limit Down NMS Plan, Rule 7.31E To Add a New Imbalance Only Order, and Rule 7.35E To Enhance the Information Available Before an Auction and Revise Procedures for Trading Halt Auctions

October 27, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 20, 2017, NYSE American LLC (''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.35E to enhance the information available before an auction and revise its procedures for Trading Halt

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Auctions, Rule 7.10E to exclude Trading Halt Auctions from being reviewed as clearly erroneous, Rule 7.31E to add a new Imbalance Only Order, and Rule 7.11E. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.35E (Auctions) to enhance the information available before an auction and revise its procedures for Trading Halt Auctions, Rule 7.10E to exclude Trading Halt Auctions from being reviewed as a clearly erroneous execution, Rule 7.31E (Orders and Modifiers) to add a new Imbalance Only Order, and Rule 7.11E (Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) to conform the rule to approved changes to the Regulation NMS Plan to Address Extraordinary Market Volatility (''Plan'').[4]

Overview

The Operating Committee for the Plan with input from the Advisory Committee to the Plan and staff of the Securities and Exchange Commission (''SEC'' or ''Commission''), identified a number of enhancements to the reopening process following a Trading Pause that have been addressed in a combination of an amendment to the Plan and amendments to the rules of the Primary Listing Exchanges.[5] The Exchange is a Participant of the Plan and a member of the Operating Committee.

With respect to the Plan, the Participants amended the Plan to provide that a Trading Pause will continue until the Primary Listing Exchange reopens trading using its established reopening procedures and reports a Reopening Price.[6] With LULD Amendment 12, the Participants eliminated the current allowance for a trading center to resume trading in an NMS Stock following a Trading Pause if the Primary Listing Exchange has not reported a Reopening Price within ten minutes after the declaration of a Trading Pause and has not declared a Regulatory Halt. In addition, to close any gaps of potential scenarios when trading may resume without Price Bands, LULD Amendment 12 provides that a trading center may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock. To address potential scenarios of when there may not be a Reopening Price from the Primary Listing Exchange from which to calculate Price Bands, LULD Amendment 12 further addresses when trading may resume if the Primary Listing Exchange is unable to reopen due to a systems or technology issue and how the Reference Price would be determined either under such circumstances or if the Primary Listing Exchange reopens trading on a zero bid or zero quote, or both.

In connection with LULD Amendment 12, the Participants agreed on a standardized approach for how the Primary Listing Exchanges should conduct certain aspects of an automated reopening following a Trading Pause. Specifically, because trading centers will not be permitted to resume trading in an NMS Stock until there is a Reopening Price, the Participants believe it is appropriate for the Primary Listing Exchanges to adopt uniform standards for determining whether and when to conduct such automated reopenings, including what price collar thresholds would be applicable to such automated reopenings and how to provide for extensions of when a reopening auction would be conducted. The goal of such changes is to ensure that all Market Order interest could be satisfied in an automated reopening auction.

More specifically, the Participants have agreed that if there is an imbalance of market orders, or if the Reopening Price would be outside of specified price collar thresholds, the Trading Pause would be extended an additional five minutes in order to provide additional time to attract offsetting liquidity. If at the end of such extension, Market Orders still cannot be satisfied within price collar thresholds or if the reopening auction would be priced outside of the applicable price collar thresholds, the Primary Listing Exchange would extend the Trading Pause an additional five minutes. With each such extension, the Participants have agreed that it would be appropriate to widen the price collar threshold on the side of the market on which there is buying or selling pressure.

With respect to price collar thresholds, the Participants have agreed that the reference price for calculating price collar thresholds would be the price of the limit state that preceded the Trading Pause, *i.e.,* either the Lower or Upper Price Band price. For NMS Stocks priced more than $3.00,

- if there is selling pressure, the lower collar for the auction would be the Lower Price Band minus five percent and the upper collar would be the Upper Price Band;
- if there is buying pressure, the upper collar for the auction would be the Upper Price Band plus five percent and the lower collar would be the Lower Price Band.

For each extension, the collars would be widened an additional five percent, but only on the side of the imbalance.[7] The Participants believe that widening collars only in the direction of the imbalance would address issues relating to the concept of mean reversion.

Finally, the Participants have agreed that the proposed new procedures for reopening trading following a Trading Pause reduces the potential that an order or orders entered by one or more ETP Holders caused such execution to be clearly erroneous. Specifically, the Participants believe that the proposed standardized procedures for reopening trading following a Trading Pause incorporates a methodology that allows for widened collars, which may result in a reopening price away from prior trading prices, but which reopening price would be a result of a measured and transparent process that eliminates the potential that such trade would be considered erroneous.

As a Primary Listing Exchange, the Exchange proposes to amend Rule 7.35E to implement the proposed uniform trading practices with respect to

[4] *See* Securities Exchange Act Release No. 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017) (File No. 4–631) (Order approving 13th Amendment to the Plan).

[5] Unless otherwise specified, capitalized terms used herein have the same meaning as set forth in the Plan or in Exchange rules.

[6] *See* Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017) (File No. 4–631) (Order approving the twelfth amendment to the Plan (''LULD Amendment 12'')).

[7] For NMS Stocks that are priced $3.00 and under, the price collar threshold would be $0.15.

reopening a security following a Trading Pause, as described above. In addition, the Exchange proposes to implement changes for automated reopenings following a market-wide circuit breaker under Rule 7.12E and any regulatory halts triggered in an Exchange-listed security. The Exchange further proposes to amend Rule 7.10E to preclude ETP Holders from requesting a review of a Trading Halt Auction as a clearly erroneous execution. Finally, in connection with these proposed changes, the Exchange proposes additional enhancements to its auction processes, including adding a new Imbalance Only Order, an Auction Freeze period before a Trading Halt Auction, and enhanced information to be disseminated before an auction.

The proposed rule changes are based on the rules of its affiliated exchange, NYSE Arca, Inc. (''NYSE Arca''), without any substantive differences.[8]

Uniform Primary Listing Exchange Proposed Rule Changes.

To effect the proposed enhancements that will be implemented by all Primary Listing Exchanges, the Exchange proposes to add new sub-paragraphs (5)–(10) to Rule 7.35E(e), which governs Trading Halt Auctions, re-number current Rule 7.35E(e)(5) as new Rule 7.35E(e)(11), and amend Rule 7.35E(e)(2). The Exchange proposes to implement these changes for all Trading Halt Auctions. The proposed standardized trading practices agreed upon by the Operating Committee are intended for Trading Halt Auctions following a trading pause under Rule 7.11E. However, the Exchange believes that these proposed procedures would be beneficial following all halts, including regulatory halts and halts due to extraordinary market volatility. The proposed rule changes are based on NYSE Arca Rule 7.35–E(e) without any substantive differences.

Rule 7.35E(e)(2) currently provides that after trading in a security has been halted or paused, the Exchange will disseminate the estimated time at which trading in that security will re-open (''Re-Opening Time''). The Exchange proposes to add to this rule that the initial Re-Opening Time for a Trading Halt Auction following a trading pause under Rule 7.11E (''Trading Pause'') or trading halt due to extraordinary market volatility under Rule 7.12E (''MWCB Halt'') will be at the scheduled end of the Trading Pause or MWCB Halt. This proposed rule text clarifies that for Trading Pauses and MWCB Halts, the length of the initial pause or halt period is as specified in those rules. As specified in the Plan, the scheduled end of the Trading Pause is five minutes after a Trading Pause has been declared. As specified in Rule 7.12E(b), the scheduled end of a Level 1 or Level 2 Market Decline is 15 minutes. If there is a Level 3 Market Decline, the Exchange will not re-open.

Proposed Rule 7.35E(e)(5) would provide that a Trading Halt Auction would not be conducted if the Indicative Match Price, before being adjusted based on Auction Collars, is below (above) the Lower (Upper) Auction Collar or if there is a sell (buy) Market Imbalance, either of which would be defined as an ''Impermissible Price.'' [9] This proposed rule text would implement the proposed standardized enhancement that the Exchange would not conduct a Trading Halt Auction if there are either unsatisfied Market Orders, or if the Indicative Match Price would be outside the applicable Auction Collars.

Extensions: Proposed Rule 7.35E(e)(6) would specify the circumstances when the Exchange would extend the Re-Opening Time for a Trading Halt Auction, as follows:

- Proposed Rule 7.35E(e)(6)(A) would provide that, if there is an Impermissible Price at the initial Re-Opening Time, the pause or halt would be extended an additional five minutes and a new Re-Opening Time would be disseminated, which would be referred to as the ''First Extension.'' The proposed rule would further provide that the Exchange would not conduct a Trading Halt Auction before the Re-Opening Time for the First Extension. As such, if the Exchange disseminates a First Extension, consistent with the Plan in effect before LULD Amendment 12, which provides that if the Primary Listing Exchange does not reopen, trading centers may not resume trading until ten minutes after the beginning of the Trading Pause, the Trading Pause would continue for ten minutes and trading would not resume before that ten-minute marker.
- Proposed Rule 7.35E(e)(6)(B) would provide that if there is an Impermissible Price at the end of the First Extension, the pause or halt would be extended an additional five minutes and a new Re-Opening Time would be disseminated (''Subsequent Extension''). As further proposed, the Exchange would conduct a Trading Halt Auction before the Re-Opening Time for a Subsequent Extension if the Indicative Match Price, before being adjusted based on Auction Collars, would be within the applicable Auction Collars and there is no Market Imbalance. This proposed change would implement the Participant's proposal that for Subsequent Extensions, if equilibrium of prices is reached, the Exchange would conduct the Trading Halt Auction immediately and would not extend the Trading Pause any further.
- Proposed Rule 7.35E(e)(6)(C) would provide that the trading pause or halt would continue to be extended if there is an Impermissible Price at the Re-Opening Time for a Subsequent Extension. This proposed rule text makes clear that a halt or pause would continue to be extended until a Trading Halt Auction can be conducted, as provided for in proposed Rule 7.35E(e)(5).

Auction Collars: Proposed Rule 7.35E(e)(7) would describe how Auction Collars would function for Trading Halt Auctions. As provided for in Rule 7.35E(a)(10), Auction Collars mean the price collar thresholds for the Indicative Match Price for the Core Open Auction, Trading Halt Auction, or Closing Auction. Currently, the price collar thresholds for the Trading Halt Auction are the greater of $0.50 or 10% away from the Auction Reference Price. These price collar thresholds are in effect until a proposed rule change based on the NYSE Arca Trading Halt Auction Filing is effective and operative.

The Exchange proposes that the price collar threshold for Auction Collars for securities with an Auction Reference Price above $3.00 would be the Auction Reference Price multiplied by five percent. The price collar threshold for securities with an Auction Reference Price $3.00 and below would be $0.15. This value would be defined as the ''Price Collar Threshold.'' For securities priced above $3.00, once calculated, the Price Collar Threshold would be applicable for each Subsequent Extension, described below. For securities with an Auction Reference

[8] *See* Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (SR–NYSEArca–2016–130) (Approval Order) (''NYSE Arca Trading Halt Auction Filing'') and 81603 (September 13, 2017), 82 FR 43609 (September 18, 2017) (SR–NYSEArca–2017–102) (Notice of filing and immediate effectiveness of proposed rule change).

[9] The term ''Indicative Match Price'' is defined in Rule 7.35E(a)(8) to mean the best price at which the maximum volume of shares, including the non-displayed quantity of Reserve Orders, is tradable in the applicable auction, subject to Auction Collars. For purposes of proposed Rule 7.35E(e)(5), the Indicative Match Price would not be calculated subject to Auction Collars. The term ''Auction Collars'' is defined in Rule 7.35E(a)(10) to mean the price collar thresholds for the Indicative Match Price for the Core Open Auction, Trading Halt Auction, or Closing Auction. The term ''Market Imbalance'' is defined in Rule 7.35E(a)(7)(B) means the imbalance of any buy (sell) Market Orders that are not matched for trading in the applicable auction.

Price of $3.00 and under, the Price Collar Threshold would be a static $0.15 for each Subsequent Extension. The Exchange believes that using a 5 percent multiplier for stocks priced $3.00 or less would result in too narrow of an Auction Collar. Similar to the Plan, which provides for wider percentage parameters for stocks priced $3.00 or less, the Exchange proposes a wider Price Collar Threshold for stocks with an Auction Reference Price of $3.00 or less.

The Exchange believes that the proposed Price Collar Thresholds are designed to align the Auction Collars with the existing percentage parameters as specified in the Plan. The Exchange proposes to use the single 5% threshold for all securities priced above $3.00 and $0.15 for all securities priced $3.00 or less, and not apply a separate percentage parameter based on the tiers specified in the Plan, because the Exchange believes it would be simpler and more transparent. Moreover, the Exchange believes that because the proposed rule changes would provide for the widening of collars, and would prevent trades at an Impermissible Price, the specific size of the Price Collar Threshold becomes less meaningful. For example, if the Market Imbalance is so large that the proposed five percent price collar threshold is too narrow to permit a Trading Halt Auction, the proposed extensions and widening of Auction Collars, as described below, would provide for a measured manner by which the collars would be widened either to permit a trade at a permissible price or to attract additional offsetting interest. If, at a later date, the Plan is amended and the applicable tiers and percentage parameters are adjusted, the Exchange will reevaluate the Price Collar Thresholds for Trading Halt Auctions and if they should be changed, will file a separate proposed rule change.

Because the Price Collar Thresholds for Auction Collars applicable to a Trading Halt Auction would be specified in proposed Rule 7.35E(e)(7), the Exchange proposes to amend Rule 7.35E(a)(10)(A) to specify that the Auction Collar price thresholds specified in that rule would be applicable to the Core Trading and Closing Auctions only. The Exchange further proposes to delete the following text: ''*The price collar thresholds specified in this paragraph applicable to Trading Halt Auctions are in effect until proposed rule change based on SR–NYSEArca–2016–130 for the Exchange is effective and operative.'' The Exchange believes that proposed Rule 7.35E(e)(7) obviates the current price collar thresholds specified for Trading Halt Auctions, which were adopted on an interim basis pending the outcome of the review that resulted in LULD Amendment 12 and standardized trading practices among the Primary Listing Exchanges for how to resume trading following a Trading Pause.

Trading Halt Auction Reference Price: Proposed Rule 7.35E(e)(7)(A) would specify the Auction Reference Price that would be used for a Trading Halt Auction following a Trading Pause. As provided for in Rule 7.35E(a)(8)(A), the Auction Reference Price for the Trading Halt Auction is the last consolidated round-lot price of that trade day, and if none, the prior day's Official Closing Price. As proposed, the Auction Reference Price for a Trading Halt Auction following a Trading Pause would be determined as follows: If the Limit State that preceded the Trading Pause was at the Lower (Upper) Price Band, the Auction Reference Price would be the Lower (Upper) Price Band. This proposed change implements the standardized enhancement to use the Limit State price as the Auction Reference Price for a Trading Halt Auction following a Trading Pause.

The Exchange proposes to make a related change to Rule 7.35E(a)(8)(A) to amend the chart that specifies Auction Reference Prices for the Trading Halt Auction. As proposed, the Exchange would add the clause ''except as provided for in Rule 7.35E(e)(7)(A)'' to specify that the Auction Reference Price would be determined under that subparagraph of the rule instead of the Auction Reference Price specified in Rule 7.35E(a)(8)(A). For a Trading Halt Auction following a MWCB Halt or regulatory halt, the Auction Reference Price would continue to be as specified in Rule 7.35E(a)(8)(A).

Initial Auction Collars: Proposed Rule 7.35E(e)(7)(B) would specify the Auction Collars if a Trading Halt Auction is conducted at the initial Re-Opening Time. Currently, as provided for in Rule 7.35E(a)(10)(A), the upper (lower) boundary of Auction Collars is the Auction Reference Price increased (decreased) by the specified percentage. As such, the price collar thresholds are applied on both sides of the Auction Reference Price. The Exchange proposes to modify how Auction Collars are calculated as proposed:

• Proposed Rule 7.35E(e)(7)(B)(i) would specify how Auction Collars would be determined for a Trading Halt Auction following a Trading Pause. As proposed, if the Auction Reference Price is the Lower (Upper) Price Band, the lower (upper) Auction Collar would be the Auction Reference Price decreased (increased) by the Price Collar Threshold, rounded down to the nearest MPV,[10] and the upper (lower) Auction Collar would be the Upper (Lower) Price Band. This proposed rule implements the proposed standardized trading practice that, for Trading Halt Auctions following a Trading Pause, the Auction Collars should be widened only in the direction of the trading that invoked the Trading Pause. For example, if a Trading Pause is triggered following a Limit State at the Lower Price Band, this would indicate selling pressure in that NMS Stock. Accordingly, the proposed lower boundary Auction Collar would be widened by subtracting the Price Collar Threshold from the Auction Reference Price, *i.e.,* the Lower Price Band. To address the concept of mean reversion, *i.e.,* that prices may revert back to the mean or average price of the NMS Stock, and to avoid a security from trading outside of where it would have been permitted to trade before the Trading Pause, the Exchange proposes that the Auction Collar on the opposite side of the trading pressure should be the Price Band in place before the Trading Pause was triggered. Taking the above example, the Upper Auction Collar would therefore be the Upper Price Band. This way, if during the trading pause, the selling pressure reverses and becomes buying pressure, the Auction Collars would not permit a trade higher than would have been permitted under the Price Bands before the Trading Pause.

• Proposed Rule 7.35E(e)(7)(B)(ii) would specify how Auction Collars would be determined for a Trading Halt Auction following a MWCB Halt or regulatory halt. In this case, because there would not be a security-specific pricing direction reason for the halt, the Exchange proposes that the Price Collar Threshold would be applied on both sides of the Auction Reference Price. Accordingly, for stocks priced above $3.00, the upper (lower) boundary of the Auction Collar would be the Auction Reference Price (as defined in Rule 7.35E(a)(8)(A)), plus (minus) the Auction Reference Price multiplied by 5%. For stocks priced $3.00 and under, the upper (lower) boundary of the Auction Collar would be the Auction Reference Price (as defined in Rule 7.35E(a)(8)(A)), plus (minus) $0.15. For Trading Halt Auctions following a MWCB Halt or regulatory halt, if the Price Collar Threshold calculation results in a price that is not in the applicable MPV for the security, the

[10] *See* Rules 7.6E and 7.46E (specifying the minimum price variation (''MPV'') for quoting and entry of orders).

Exchange proposes to round down to the nearest price in the applicable MPV.

Auction Collar for Extensions: Proposed Rule 7.35E(e)(7)(C) would specify how the Exchange would adjust Auction Collars for each Extension. As proposed, the Auction Collar on the side of the Impermissible Price would be widened for each Extension. In other words, if the Indicative Match Price is at or below the lower Auction Collar for the initial Re-Opening Time or there is a sell Market Imbalance, the Exchange would widen only the lower Auction Collar. As further proposed, the Auction Collar on the opposite side of the Impermissible Price would remain the same as the last-calculated Auction Collar on that side. Thus, in the case of selling pressure that would result in an Auction Extension, the upper Auction Collar would remain as the last Upper Price Band.

- Proposed Rule 7.35E(e)(7)(C)(i) would further provide that if the Impermissible Price is on the side of the Lower (Upper) Auction Collar, the last-calculated Lower (Upper) Auction Collar would be decreased (increased) by a Price Collar Threshold and the Upper (Lower) Auction Collar would stay the same.
- To address the concept of mean reversion, proposed Rule 7.35E(e)(7)(C)(ii) would provide that if the side of the Impermissible Price changes from the Lower (Upper) Auction Collar to the Upper (Lower) Auction Collar, the last-calculated Upper (Lower) Auction Collar would be widened for that Extension and the last-calculated Lower (Upper) Auction Collar will remain the same. Therefore, if, during an Extension, the directional trading pressure switches from sell to buy, the upper Auction Collar would be widened, and the last-Lower Auction Collar would remain the same.

Proposed Rules 7.35E(e)(8) and (9) would specify the Exchange's proposed handling of orders for a Trading Halt Auction, which are discussed in greater detail below.

Proposed Rule 7.35E(e)(10) would specify what the Exchange would do if a Re-Opening Time for a Trading Pause would be in the last ten minutes of trading before the end of Core Trading Hours. The Participants have amended the Plan to provide that if an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange would not reopen trading and would attempt to execute a closing transaction using its established closing procedures.[11] To implement LULD Amendment 12, proposed Rule 7.35E(e)(10) would provide that, if the Re-Opening Time for a Trading Halt Auction is in the last ten minutes of trading before the end of Core Trading Hours, the Exchange would not conduct a Trading Halt Auction in that security and would not transition to continuous trading. Instead, the Exchange would remain paused and would conduct a Closing Auction in such security as provided for in Rule 7.35E(d).

In such circumstances, as specified in proposed Rule 7.35E(e)(10)(A), MOO Orders, LOO Orders, and IO Orders (described below) entered during the pause would not participate in the Closing Auction and would be cancelled. The Exchange proposes to add this rule text to provide transparency to ETP Holders of how orders that are designated to participate in a Trading Halt Auction only would be processed if the Exchange transitions to a Closing Auction without conducting that Trading Halt Auction. The Exchange believes this proposed rule text would provide notice for ETP Holders to enter closing-only interest, *i.e.,* MOC or LOC Orders, to participate in the Closing Auction.

In addition, as specified in proposed Rule 7.35E(e)(10)(B), the Auction Collars for the Closing Auction for such security would be the most recently widened Auction Collars for the Trading Halt Auction that did not occur. Currently, the Auction Collars for Closing Auctions are the greater of $0.50 or 10% away from the Auction Reference Price. The Exchange believes that if the Exchange goes directly from an unresolved Trading Pause, MWCB Halt, or regulatory halt in an NMS Stock to a Closing Auction, the price collar thresholds applicable to the Closing Auction would result in Auction Collars that do not correlate to the trading condition for that NMS Stock.

The Exchange proposes to make a related amendment to Rule 7.35E(a)(10)(A) to add the clause ''except as provided for in Rule 7.35E(e)(10)(B)''. This proposed rule text makes clear that the price collar thresholds for a Closing Auction are defined in Rule 7.35E(a)(10)(A), except as provided for in proposed Rule 7.35E(e)(10)(B).

The Exchange proposes to amend Rule 7.10E(a) to provide that ETP Holders may not request a review of a Trading Halt Auction under Rule 7.10E(b), which specifies the procedures for an ETP Holder to request a review of an execution, as clearly erroneous. The Exchange believes that this proposed rule text would implement the proposed standardized trading practice that reopening auctions would not be eligible for review by ETP Holders as a clearly erroneous execution.[12]

Finally, the Exchange proposes to amend Rule 7.11E to delete obsolete rule text and conform the remaining rule text to LULD Amendment 12, as described above. First, the Exchange proposes to amend Rule 7.11E(b) to delete the second and third sentences of this paragraph as inconsistent with LULD Amendment 12, described above.[13] Second, the Exchange proposes to renumber current Rule 7.11E(b)(1) as proposed Rule 7.11E(b)(2) and amend the text to provide that if a primary listing market issues a Trading Pause, the Exchange would resume trading as provided for in Rule 7.18E(a).[14] This proposed amendment is consistent with LULD Amendment 12, described above. Finally, the Exchange proposes to add new Rule 7.11E(b)(1) to provide that if a Trading Pause is triggered under this Rule or if the Exchange is unable to reopen trading at the end of the Trading Pause due to a systems or technology issue, the Exchange would immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. This proposed rule text is based on NYSE Arca Rule 7.11–E(b)(1) and is consistent with LULD Amendment 12.[15]

Other Proposed Rule Changes

IO Order: The Exchange proposes to add a new order type, an Imbalance

[11] *See supra* note 5.

[12] The Participants will be engaging in a more comprehensive review of Rule 7.10E in connection with amendments to the Plan relating to tiering of securities and applicable percentage parameters. The Exchange proposes to make this limited amendment to Rule 7.10E as an initial step to eliminating its clearly erroneous executions rules in their current form.

[13] The text that the Exchange would delete provides that ''[i]n the event of a significant imbalance at the end of a Trading Pause, the Corporation may delay the re-opening of a security. The Exchange will issue a notification if it cannot resume trading for a reason other than a significant imbalance.''

[14] Rule 7.18E(a) provides that if the UTP Listing Market declares a UTP Regulatory Halt, which includes a Trading Pause, the Exchange will halt trading until it receives the first Price Band in that security. Accordingly, following a Trading Pause declared by another Primary Listing Market, the Exchange already waits to receive Price Bands before it resumes trading in that UTP Security. The Exchange proposes to delete the current rule text in Rule 7.11E(b)(1) that provides that the Exchange will ''pause trading in that security until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen the security within 10 minutes of notification of a Trading Pause, the Exchange may resume trading the security.''

[15] *See* NYSE Arca Trading Halt Auction Filing, *supra* note 8.

Only (''IO'') Order, that would be eligible to participate in Trading Halt Auctions only. The Exchange proposes to amend Rule 7.31E(c), which specifies the Exchange's Auction-Only Order types, to add new subsection (5) to describe an IO Order. As proposed, an IO Order would be a Limit Order to buy (sell) that is to be traded only in a Trading Halt Auction.

Proposed Rule 7.31E(c)(5)(A) would provide that an IO Order would be accepted only during a halt or pause, including any extensions. This proposed rule text is consistent with the Exchange's current rules that MOO or LOO Orders designated to participate in a Trading Halt Auction will be accepted only during the trading halt that precedes such Trading Halt Auction.[16]

Proposed Rule 7.31E(c)(5)(B) would provide that an IO Order would participate in a Trading Halt Auction only if: (i) There is an imbalance in the security on the opposite side of the market from the IO Order after taking into account all other orders eligible to trade at the Indicative Match Price; and (ii) the limit price of the IO Order to buy (sell) would be at or above (below) the Indicative Match Price. Proposed Rule 7.31E(c)(5)(C) would provide that the working price of an IO Order to buy (sell) would be adjusted to be equal to the Indicative Match Price, provided that the working price of the IO Order would not be higher (lower) than its limit price. Finally, proposed Rule 7.31E(c)(5)(D) would provide that an IO Order that participates in a Trading Halt Auction would be ranked in time priority among IO Orders after all other orders eligible to participate in the auction have been allocated. The proposed IO Order is based on the IO Order offered by NYSE Arca.[17]

For example, assume for a Trading Halt Auction that the lower boundary of an Auction Collar is $10.00. Assume further that after allocating all other orders eligible to participate in the Trading Halt Auction, there is a sell Total Imbalance of 10,000 shares and absent Auction Collars, the Indicative Match Price would be below $10.00. As provided for in Rule 7.35E(a)(10)(B), once the Auction Collars are applied, the Indicative Match Price for that Trading Halt Auction would be $10.01 (*i.e.,* one MPV above the lower Auction Collar). Assume now there are seven IO Orders to buy, each for 2,000 shares, with limit prices of $10.00, $10.01, $10.02, $10.03, $10.04, $10.05 and $10.06, and they are entered in that order. In this scenario, the IO Order to buy with a limit price of $10.00 would not be eligible to participate, because the $10.01 Indicative Match Price is higher than the limit price of the order. The remaining six IO Orders to buy would be assigned a working price of $10.01. However, because the IO Order with a limit price of $10.06 was entered last in time, it would not participate in the Trading Halt Auction.

Auction Imbalance Freeze: The Exchange proposes to add an Auction Imbalance Freeze before a Trading Halt Auction. As defined in Rule 7.35E(a)(3), the Auction Imbalance Freeze means the period that begins before the scheduled time for the Early Open Auction, Core Open Auction, or Closing Auction, as specified in paragraphs (b), (c), and (d) of Rule 7.35E, and that ends once the Auction Processing Period begins. To effect the proposed rule change, the Exchange proposes to add a reference to Trading Halt Auction and Rule 7.35E(e) to Rule 7.35E(a)(3).

Proposed Rule 7.35E(e)(8) would describe how the Trading Halt Auction Imbalance Freeze would function. As proposed, the Trading Halt Auction Imbalance Freeze would begin five seconds before the Re-Opening Time, including Re-Opening Times for each Extension. The Exchange proposes to use the same period of time for the Trading Halt Auction Imbalance Freeze, five seconds, as provided for in Rule 7.35E(c)(3) for the Core Open Auction. Specifically, the Exchange believes that the proposed five-second time period strikes the appropriate balance for providing sufficient time for market participants to enter and cancel orders before the Trading Halt Auction while at the same time having a short period for any imbalance to stabilize before the auction is conducted. The rule would further provide that if a pause or halt is extended, the Trading Halt Auction Imbalance Freeze for the prior period would end, new orders and order instructions received during the prior period's Trading Halt Auction Imbalance Freeze would be processed, and the Exchange would accept new order entry and cancellation as provided for in Rule 7.18E(c) until the next Trading Halt Auction Imbalance Freeze. In other words, if at the Re-Opening Time, the Exchange extends the Trading Pause for five minutes, the restrictions on order entry and cancellation from the prior freeze would no longer be in effect, and any order instructions that were not processed will be processed.

The proposed rule would further provide how order entry and cancellation during the Trading Halt Auction Imbalance Freeze would be processed:

- As proposed in Rule 7.35E(e)(8)(A), MOO Orders and LOO Orders that are on the same side as the Imbalance, would flip the Imbalance, or would create a new Imbalance would be rejected. This proposed rule text is based on how MOC Orders and LOC Orders are processed during the Closing Auction Imbalance Freeze, as described in Rule 7.35E(d)(2)(A).
- As proposed in Rule 7.35E(e)(8)(B), Market Orders (other than MOO Orders) and Limit Orders would be accepted but would not be included in the calculation of the Indicative Match Price or the Trading Halt Auction Imbalance Information.[18] Such orders would participate in the Trading Halt Auction only to offset the Imbalance that would be remaining after all orders entered before the Trading Halt Auction Imbalance Freeze, including the non-display quantity of Reserve Orders, are allocated in the Trading Halt Auction, and would be allocated in price-time priority under Rule 7.36E(c)–(g) consistent with the priority ranking associated with each order and ahead of any IO Orders. This proposed rule text is based on how Market Orders (other than MOO Orders) and Limit Orders that are entered during the Core Open Auction Imbalance Freeze, as described in Rule 7.35E(c)(3)(B). As such, these orders would participate in the Trading Halt Auction only to offset the final Imbalance for the auction. Such orders would be ranked in price-time priority after all other orders, except for IO Orders, have been allocated. Because the Exchange would be accepting IO Orders for the Trading Halt Auction and because IO Orders do not participate until all other eligible interest has been allocated, the Exchange proposes a substantive difference from the rule governing the Core Open Auction to address how IO Orders would be processed relative to Market Orders (other than MOO Orders) or Limit Orders entered during the Trading Halt Auction Imbalance Freeze. As proposed, IO Orders would not be allocated until Market Orders (other than MOO Orders) and Limit Orders entered during the Trading Halt Auction Imbalance Freeze have been allocated.
- Proposed Rule 7.35E(e)(8)(C) would provide that requests to cancel and requests to cancel and replace Market

[16] *See* Rule 7.31E(c)(1) and (2).

[17] *See* NYSE Arca Rule 7.31–E(c)(5).

[18] Rule 7.35E(a) provides that unless otherwise specified, references to the term ''Market Orders'' in Rule 7.35E also includes MOO Orders. Proposed Rule 7.35E(e)(8)(B) is an example of when the Exchange proposes that the term Market Orders would not include MOO Orders. By contrast, in Rule 7.35E, Limit Orders are distinct from LOO Orders and therefore the reference to Limit Orders in proposed Rule 7.35E(e)(8)(B) would not include LOO Orders.

Orders, LOO Orders, Limit Orders, and IO Orders would be accepted but not processed until either after the Trading Halt Auction concludes, as provided for in Rule 7.35E(h), or if a pause or halt is extended, when the Trading Halt Auction Imbalance Freeze for the prior period ends.[19] This proposed rule text is based on Rule 7.35E(c)(3)(C) governing which order instructions will be accepted but not processed during the Core Open Auction Imbalance Freeze. The Exchange proposes a substantive difference to reference how requests to cancel IO Orders would be processed if received during the freeze period.

• Finally, proposed Rule 7.35E(e)(8)(D) would provide that all other order instructions would be accepted. This proposed rule text is based on Rules 7.35E(c)(3)(D) and (d)(2)(C), without any differences.

Unexecuted Limit Orders: The Exchange proposes to specify how it would process Limit Orders that do not participate in the Trading Halt Auction. As discussed above, an Impermissible Price would occur if there is a Market Imbalance or if the Indicative Match Price were at or outside the specified Price Collar Thresholds. However, if the Indicative Match Price were within the specified Price Collar Thresholds and there is no Market Imbalance, it is still possible to have an imbalance of Limit Orders within the Auction Collars. In such case, the Exchange proposes to transition such unexecuted Limit Orders to continuous trading. The Exchange believes that because such Limit Orders would have a limit price within the Auction Collars, having such Limit Orders transition to continuous trading would not have significant pricing impact on post-Trading Halt Auction trading. Accordingly, proposed Rule 7.35E(e)(9) would provide that any Limit Orders that were eligible to participate in the Trading Halt Auction, but did not participate, would transition to continuous trading as provided for in paragraph (h) of this Rule.

Auction Imbalance Information: The Exchange proposes to enhance the Auction Imbalance Information. Rule 7.35E(a)(4) defines Auction Imbalance Information as the information that is disseminated by the Exchange for an auction and includes, if applicable, the Total Imbalance, Market Imbalance, Indicative Match Price, and Matched Volume.[20] The Exchange proposes to enhance the Auction Imbalance Information to include the following additional information: Auction Reference Price, Auction Collar, Book Clearing Price, Far Clearing Price, Imbalance Freeze Indicator, and Auction Indicator. The Auction Reference Price is defined in Rule 7.35E(a)(8)(A) and proposed Rule 7.35E(e)(7)(A), described above. The Auction Collar is defined in Rule 7.35E(a)(10) and proposed Rules 7.35E(e)(7) and (e)(10)(B), described above. The Exchange proposes to define the additional terms as follows:

• Proposed Rule 7.35E(a)(11) would define the term ''Book Clearing Price'' to mean the price at which all interest eligible to participate in an auction could be traded if not subject to an Auction Collar. The rule would further provide that the Book Clearing Price would be zero if a sell (buy) imbalance cannot be filled by any buy (sell) orders. For example, if there are only sell orders and no buy orders, the Book Clearing Price would be zero.

• Proposed Rule 7.35E(a)(12) would define the term ''Far Clearing Price'' to mean the price at which Auction-Only Orders could be traded within the Auction Collar. Auction-Only Orders are defined in Rule 7.31E(c).

• Proposed Rule 7.35E(a)(13) would define the term ''Auction Indicator'' to mean an indicator of whether an auction could be conducted, based on the applicable Auction Collar and Imbalance. This information would be relevant for the Trading Halt Auction and provide transparency regarding whether a Trading Pause, MWCB Halt, or regulatory halt would be eligible to be conducted. If an Auction Indicator is ''no,'' market participants would be on notice that submitting offsetting interest may reduce the possibility of the Exchange extending a Trading Halt Auction.

• Proposed Rule 7.35E(a)(14) would define the term ''Imbalance Freeze Indicator'' to mean an indicator of whether a security is currently in an Auction Imbalance Freeze. This indicator would put market participants on notice of whether there are order entry and cancellation restrictions in place at any given time before an auction.

Finally, the Exchange proposes to replace the word ''truncated'' with the words ''rounded down'' [21] in Rule 7.35E(a)(10)(A). The Exchange believes that conforming the terminology used in Rules 7.31E [22] and 7.35E promotes clarity and transparency.

* * * * *

The Exchange proposes to implement the proposed rule change at the same time that LULD Amendment 12 is implemented, which, subject to technology changes and the effectiveness of the extension for the implementation date for the LULD Amendment 12 changes, is anticipated to be in the fourth quarter of 2017.[23] The Exchange will announce the implementation date via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[24] in general, and furthers the objectives of Section 6(b)(5),[25] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes would 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, because they are designed, together with LULD Amendment 12, to address the issues experienced on August 24, 2015 by reducing the number of repeat Trading Pauses in a single NMS Stock. LULD Amendment 12 is an essential component to Participants' goal of more standardized processes across Primary Listing Exchanges in reopening trading following a Trading Pause, and facilitates the production of an equilibrium Reopening Price by centralizing the reopening process through the Primary Listing Exchange, which would also improve the accuracy of the reopening Price Bands. LULD

[19] Because they are not specifically excluded, the reference to Market Orders in proposed Rule 7.35E(e)(8)(C) would include MOO Orders.

[20] *See* Rule 7.35E(a)(7) (defining the terms Total Imbalance and Market Imbalance); 7.35E(a)(8) (defining the term Indicative Match Price); and 7.35E(a)(9) (defining the term Matched Volume).

[21] *See* Rule 7.46E(f)(2)(A), which provides that references to truncating to the MPV in Exchange rules instead mean rounding down to the applicable quoting MPV.

[22] *See* Rules 7.31E(a)(1)(B)(i) (providing that when calculating the Trading Collar, the specified percentage will be rounded down) and 7.31E(a)(2)(B) (providing that ''Limit Order Price Protection . . . will be *rounded down* to the nearest price at the applicable MPV'').

[23] *See* Securities Exchange Act Release No. 81720 (September 26, 2017), 82 FR 45922 (October 2, 2017) (File No. 4–631) (Notice of filing and immediate effectiveness of fifteenth amendment to the Plan, extending the implementation date of LULD Amendment 12 to no later than November 30, 2017).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

Amendment 12 supports this initiative by requiring trading centers to wait to resume trading following Trading Pause until there is a Reopening Price.

This proposed rule change further supports this initiative by proposing uniform trading practices for reopening trading following a Trading Pause. The Exchange believes that the proposed standardized approach for how the Primary Listing Exchanges would conduct certain aspects of an automated reopening following a Trading Pause would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide certainty for market participants regarding how a security would reopen following a Trading Pause, regardless of the listing exchange. The Exchange further believes that the proposed changes would remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest because the goal of the proposed changes is to ensure that all Market Order interest could be satisfied in an automated reopening auction while at the same time reducing the potential for multiple Trading Pauses in a single security due to a large order imbalance.

The Exchange further believes that the standardized proposal to extend a Trading Pause an additional five minutes would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide additional time to attract offsetting liquidity. If at the end of such extension, Market Orders still cannot be satisfied within price collar thresholds or if the reopening auction would be priced outside of the applicable price collar thresholds, the Primary Listing Exchange would extend the Trading Pause an additional five minutes, which the Exchange believes would further protect investors and the public interest by reducing the potential for significant price disparity in post-auction trading, which could otherwise trigger another Trading Pause. With each such extension, the Exchange believes that widening the price collar threshold on the side of the market on which there is buying or selling pressure would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide additional time to attract offsetting interest while at the same time addressing that an imbalance may not be resolved within the prior Auction Collars.

With respect to price collar thresholds, the Exchange believes that using the price of the limit state that preceded the Trading Pause, *i.e.,* either the Lower or Upper Price Band price, would better reflect the most recent price of the security and therefore should be used as the reference price for determining the Auction Collars for such Trading Halt Auction. The Exchange believes that widening Auction Collars only in the direction of the imbalance would address issues relating to the concept of mean reversion, which would protect investors and the public interest by reducing the potential for wide price swings following a Trading Halt Auction.

The Exchange believes that applying the proposed changes to its Trading Halt Auctions not only following a Trading Pause, but also following a MWCB Halt or regulatory halt, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote consistency in how the Exchange conducts its Trading Halt Auctions, thus reducing complexity in the marketplace.

The Exchange believes that precluding ETP Holders from requesting a review of a Trading Halt Auction as a clearly erroneous execution would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed new procedures for reopening trading following a Trading Pause would reduce the possibility that an order(s) from an ETP Holder(s) caused a Trading Halt Auction to be clearly erroneous. Specifically, the Exchange believes that the proposed standardized procedures for reopening trading following a Trading Pause incorporates a methodology that allows for widened collars, which may result in a reopening price away from prior trading prices, but which reopening price would be a result of a measured and transparent process that eliminates the potential that such trade would be considered erroneous.

The Exchange believes that the proposed amendments to Rule 7.11E would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes would remove obsolete rule text and amend the remaining rule text to conform to LULD Amendment 12, as described above.

The Exchange believes that the proposed rule change to add an IO Order for Trading Halt Auctions would further remove impediments to and perfect the mechanism of a free and open market and a national market system because such order type is designed to attract offsetting interest that would participate in the Trading Halt Auction. The Exchange believes that offering such order type would provide an option for market participants that are willing to participate in an auction to offset an imbalance, but do not want such orders to participate in continuous trading. The proposed order type is based on the CO Order offered by NYSE Arca and are designed with the same purpose—to reduce the imbalance to assist in achieving pricing equilibrium.

The Exchange further believes that the proposed rule change to add a Trading Halt Auction Imbalance Freeze would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide market participants with a brief period to assess the imbalance going into a Trading Halt Auction. During such time, order entry and cancellation would be revised in a manner designed to reduce the last-published imbalance. The proposed mechanism for the Trading Halt Auction Imbalance Freeze is not novel, as it is based in part on the existing Core Open Auction Imbalance Freeze, *i.e.,* the length of the Auction Imbalance Freeze, and the Closing Auction Imbalance Freeze, *i.e.,* how new orders and order instructions would be processed, with a proposed substantive difference to address how the proposed new IO Order type would be processed during the Auction Imbalance Freeze.

The Exchange believes that the proposed manner of how it would process Limit Orders that do not participate in a Trading Halt Auction, but have a limit price within the applicable Auction Collars, in that such orders would roll into continuous trading, would remove impediments to and perfect the mechanism of a free and open market and a national market system. Such Limit Orders likely would not impact the pricing of post-auction trading and trigger another Trading Pause because the limit price of such orders would be within the same price range that trading would otherwise be permitted.

The Exchange believes that the proposed amendments to enhance the Auction Imbalance Information to add the Auction Reference Price, the Auction Collar, the Book Clearing Price, the Far Clearing Price, the Imbalance Freeze Indicator, and the Auction Indicator would remove impediments to and perfect the mechanism of a free and open market and a national market

system because they are designed to promote additional transparency regarding the Exchange's auctions by providing additional detail regarding what Auction Reference Price would be used in an auction, the Auction Collars applicable to such auction, additional information about potential pricing for such auction, and the status of the applicable auction.

The Exchange believes that the proposed amendments to Rule 7.31E(a)(10)(A) to replace ''truncated'' with ''rounded down'' would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change is designed to promote clarity, consistency, and transparency in Exchange rules.

Finally, the Exchange believes that the proposed changes are consistent with the Act because they are based on the rules of NYSE Arca without any substantive differences.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is not designed to address any competitive issues, but rather, to achieve the Participants' goal of more standardized processes across Primary Listing Exchanges in reopening trading following a Trading Pause, and facilitates the production of an equilibrium Reopening Price by centralizing the reopening process through the Primary Listing Exchange, which would also improve the accuracy of the reopening Price Bands. The Exchange believes that the proposed rule change reduces the burden on competition for market participants because it promotes a transparent and consistent process for reopening trading following a Trading Pause regardless of where a security may be listed. The Exchange further believes that the proposed rule change would not impose any burden on competition because they are designed to increase transparency regarding the Exchange's Trading Halt Auction process while at the same time increasing the ability for offsetting interest to participate in an auction, which would assist in achieving pricing equilibrium for such an auction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[26] and Rule 19b–4(f)(6) thereunder.[27] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[28] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2017–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2017–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2017–30 and should be submitted on or before November 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23826 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A)(iii).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81971; File No. SR–ISE–2017–94]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Optional Kill Switch Protection

October 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2017, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to memorialize an optional Kill Switch protection.[3] The Kill Switch allows Members to cancel open orders and prevent new order submission.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Today, this feature is offered to Members. ISE transitioned from its legacy trading system to INET, the current technology, in 2017. While ISE offered this feature on its legacy system, the feature was not codified in the ISE Rulebook. At this time, the Exchange is codifying the Kill Switch feature to reflect the functionality.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to memorialize its Kill Switch risk protection which is applicable to all Members at ISE Rule 711(d). The Kill Switch allows Members to cancel open orders and prevent new order submission. This feature provides Members with a powerful risk management tool for immediate control of their order activity.

The Kill Switch is an optional tool that enables Members to initiate a message(s)[4] [sic] to the trading system (''System'') to promptly cancel orders and restrict entry of new orders until re-entry has been enabled. Members may submit a request to the System to cancel orders for that Member. Members may not remove orders by symbol using the Kill Switch. The System will send an automated message to the Member when a Kill Switch request has been processed by the Exchange's System.[5]

The Member must send a message to the Exchange to request the cancellation of all orders for the Member. The Member is unable to enter additional orders until re-entry has been enabled pursuant to subsection (d)(2) of Rule 711.

Proposed subsection (d)(2) stipulates that after orders are cancelled by the Member utilizing the Kill Switch, the Member is unable to enter additional orders until the Member has made a request to the Exchange and Exchange staff has set a re-entry indicator to enable re-entry.[6] Once enabled for re-entry, the System will send a Re-entry Notification Message to the Member. The applicable Clearing Member for that Member also is notified of the re-entry into the System after orders are cancelled as a result of the Kill Switch, provided the Clearing Member has requested to receive such notification.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by memorializing a risk protection available to Exchange Members. This risk feature promotes policy goals of the Commission which has encouraged execution venues, exchange and non-exchange alike, to offer risk protection tools and other mechanisms to decrease risk and increase stability. The Exchange believes that memorializing this feature will provide Members with specific information on cancelling orders.

The individual firm benefits of enhanced risk protections flow downstream to counter-parties both at the Exchange and at other options exchanges, thereby increasing systemic protections as well. This risk feature allows Members to enter orders without fear of inadvertent exposure to excessive risk, which in turn benefits investors through increased liquidity for the execution of their orders, thereby protecting investors and the public interest. By memorializing the features in this rule change, Members are aware of the impact of utilizing this risk tool.

This optional risk tool as noted above is offered to all Members. The Exchange further represents that its proposal operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and that the functionality is not mandatory. Specifically, any interest that is executable against a Member's orders that are received[9] by the Exchange, prior to the time the Kill Switch is processed by the System, will automatically execute at the price up to the Member's size prior to the removal of orders from the System as a result of the Kill Switch. The Kill Switch message is accepted by the System in the order of receipt in the queue and is processed in that order so that interest that is already accepted into the System is processed prior to the Kill Switch message.

With respect to providing information regarding the cancellation of orders as a result of the Kill Switch to the Clearing Member, each Member that transacts through a Clearing Member on the Exchange accepts financial responsibility for all Exchange transactions made by the Member on

[4] Members are able to send a message to the Exchange to initiate the Kill Switch or they may contact the Exchange directly. A message to remove orders may be sent through FIX, OTTO or Precise.

[5] Opening Sweep Orders will also be cancelled. Consistent with current auction functionality, PIM auction orders and responses will not be cancelled. *See* ISE Rule 723. Other auctions orders and responses would cancel. Quotes are unaffected.

[6] The Member must directly and verbally contact the Exchange to request the re-set.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The time of receipt for an order is the time such message is processed by the Exchange Order Book.

whose behalf the Clearing Member agrees to clear.[10] The Exchange believes that because Clearing Members guarantee all transactions on behalf of a Member, and therefore bear the risk associated with those transactions, it is appropriate for Clearing Members to have knowledge of the utilization by the member [sic] of the Kill Switch, should the Clearing Member request such notification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal does not impose an undue burden on intra-market competition because all Members may avail themselves of the Kill Switch. The Kill Switch functionality is optional. The proposed rule change protects Members in the event the Member is suffering from a systems issue or from the occurrence of unusual or unexpected market activity that would require them to withdraw from the market in order to protect investors. Utilizing this Kill Switch will permit the Member to protect itself from inadvertent exposure to excessive risk. Reducing such risk will enable Members to enter orders without fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market. For these reasons, the Exchange does not believe this proposal imposes an undue burden on inter-market competition because other exchanges offer the same functionality, which is being memorialized herein.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is similar to the rules of other options exchanges and the Exchange's proposal does not raise any new or novel issues. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2017–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–94. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–94, and should be submitted on or before November 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23828 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* ISE Rule 808(b).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32886]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 27, 2017.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2017. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Brad Gude, Senior Counsel, at (202) 551–5590 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Archstone Alternative Solutions Fund

[File No. 811–23042]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 3, 2017, July 31, 2017, and September 19, 2017, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of $8,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on September 28, 2017.

Applicant's Address: 100 Park Avenue, Suite 1635, New York, New York 10017.

New Century Portfolios

[File No. 811–05646]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 29, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $60,886 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 29, 2017 and amended on October 11, 2017.

Applicant's Address: 100 William Street, Suite 200, Wellesley, MA 02481.

Northeast Investors Growth Fund Inc.

[File No. 811–03074]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 29, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $74,109 incurred in connection with the liquidation were paid by applicant and applicant's investment adviser.

Filing Dates: The application was filed on September 29, 2017 and amended on October 13, 2017.

Applicant's Address: 100 High Street, Boston, MA 02110.

Hays Series Trust

[File No. 811–23049]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 28, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $15,500 incurred in connection with the liquidation were paid by applicant and reimbursed by applicant's investment adviser.

Filing Dates: The application was filed on October 3, 2017 and amended on October 16, 2017.

Applicant's Address: 105 Continental Place, Suite 150, Brentwood, TN 37027.

Dreyfus Institutional Cash Advantage Funds

[File No. 811–21075]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Dreyfus Institutional Preferred Money Market Funds and, on October 4, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $209,497 incurred in connection with the reorganization were paid by applicant's investment adviser.

Filing Dates: The application was filed on August 29, 2017 and amended on September 28, 2017.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

Pointbreak ETF Trust

[File No. 811–23068]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 21, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $2,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 22, 2017 and amended on September 29, 2017.

Applicant's Address: 915 Creed Road, Oakland, CA 94610.

Horizons ETF Trust

[File No. 811–22918]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 7, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $13,577 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on August 22, 2017 and amended on October 2, 2017.

Applicant's Address: 625 Madison Avenue, 3d Floor, New York, NY 10022.

E.I.I. Realty Securities Trust

[File No. 811–08649]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 7, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Dates: The application was filed on September 12, 2017 and amended on October 2, 2017 and October 12, 2017.

Applicant's Address: 640 Fifth Avenue, New York, NY 10019.

Legg Mason Tax Free Income Fund

[File No. 811–06223]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to 1919 Maryland Tax-Free Income Fund, a series of Trust for Advised Portfolios and, on November 7, 2014, made a final distribution to its shareholders based on net asset value. Expenses of $114,628 incurred in connection with the reorganization were paid by applicant's investment adviser, the acquiring fund's investment adviser, or their respective affiliates.

Filing Date: The application was filed on October 6, 2017.

Applicant's Address: 100 International Drive, 7th Floor, Baltimore, MD 21202.

BlackRock Defined Opportunity Credit Trust

[File No. 811–22126]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 18, 2017, applicant made a final distribution to its shareholders, based on net asset value. Applicant's remaining assets were transferred to a liquidating trust in which shareholders have a pro rata beneficial interests. Expenses of $61,860 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on August 22, 2017.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

The Motley Fool Funds Trust

[File No. 811–22264]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to corresponding series of RBB Fund, Inc. and, on December 21, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $427,902 incurred in connection with the reorganization were paid by applicant's investment adviser.

Filing Dates: The application was filed on August 24, 2017 and amended on October 10, 2017.

Applicant's Address: 2000 Duke Street, Suite 175, Alexandria, VA 22314.

UBS Managed Municipal Trust

[File No. 811–03946]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 24, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $38,791 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on October 13, 2017.

Applicant's Address: c/o UBS Asset Management (Americas) Inc., Attn: Keith A. Weller, 1285 Avenue of the Americas, 12th Floor, New York, NY 10019–6028.

UBS RMA Money Fund Inc.

[File No. 811–03503]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 24, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $108,867 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on October 13, 2017.

Applicant's Address: c/o UBS Asset Management (Americas) Inc., Attn: Keith A. Weller, 1285 Avenue of the Americas, 12th Floor, New York, NY 10019–6028.

UBS RMA Tax Free Fund Inc.

[File No. 811–03504]

Summary: Applicant, an open-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 24, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $51,286 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on October 13, 2017.

Applicant's Address: c/o UBS Asset Management (Americas) Inc., Attn: Keith A. Weller, 1285 Avenue of the Americas, 12th Floor, New York, NY 10019–6028.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23837 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81970; File No. SR–GEMX–2017–50]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Optional Kill Switch Protection

October 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2017, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to memorialize an optional Kill Switch protection.[3] The Kill Switch allows Members to cancel open orders and prevent new order submission.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Today, this feature is offered to Members. GEMX transitioned from its legacy trading system to INET, the current technology, in 2017. While GEMX offered this feature on its legacy system, the feature was not codified in the GEMX Rulebook. At this time, the Exchange is codifying the Kill Switch feature to reflect the functionality.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to memorialize its Kill Switch risk protection which is applicable to all Members at GEMX Rule 711(d). The Kill Switch allows Members to cancel open orders and prevent new order submission. This feature provides Members with a powerful risk management tool for immediate control of their order activity.

The Kill Switch is an optional tool that enables Members to initiate a message(s)[4] [sic] to the trading system (''System'') to promptly cancel orders and restrict entry of new orders until re-entry has been enabled. Members may submit a request to the System to cancel orders for that Member. Members may not remove orders by symbol using the Kill Switch. The System will send an automated message to the Member when a Kill Switch request has been processed by the Exchange's System.[5]

The Member must send a message to the Exchange to request the cancellation of all orders for the Member. The Member is unable to enter additional orders until re-entry has been enabled pursuant to subsection (d)(2) of Rule 711.

Proposed subsection (d)(2) stipulates that after orders are cancelled by the Member utilizing the Kill Switch, the Member is unable to enter additional orders until the Member has made a request to the Exchange and Exchange staff has set a re-entry indicator to enable re-entry.[6] Once enabled for re-entry, the System will send a Re-entry Notification Message to the Member. The applicable Clearing Member for that Member also is notified of the re-entry into the System after orders are cancelled as a result of the Kill Switch, provided the Clearing Member has requested to receive such notification.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by memorializing a risk protection available to Exchange Members. This risk feature promotes policy goals of the Commission which has encouraged execution venues, exchange and non-exchange alike, to offer risk protection tools and other mechanisms to decrease risk and increase stability. The Exchange believes that memorializing this feature will provide Members with specific information on cancelling orders.

The individual firm benefits of enhanced risk protections flow downstream to counter-parties both at the Exchange and at other options exchanges, thereby increasing systemic protections as well. This risk feature allows Members to enter orders without fear of inadvertent exposure to excessive risk, which in turn benefits investors through increased liquidity for the execution of their orders, thereby protecting investors and the public interest. By memorializing the features in this rule change, Members are aware of the impact of utilizing this risk tool.

This optional risk tool as noted above is offered to all Members. The Exchange further represents that its proposal operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and that the functionality is not mandatory. Specifically, any interest that is executable against a Member's orders that are received[9] by the Exchange, prior to the time the Kill Switch is processed by the System, will automatically execute at the price up to the Member's size prior to the removal of orders from the System as a result of the Kill Switch. The Kill Switch message is accepted by the System in the order of receipt in the queue and is processed in that order so that interest that is already accepted into the System is processed prior to the Kill Switch message.

With respect to providing information regarding the cancellation of orders as a result of the Kill Switch to the Clearing Member, each Member that transacts through a Clearing Member on the Exchange accepts financial responsibility for all Exchange transactions made by the Member on whose behalf the Clearing Member agrees to clear.[10] The Exchange believes that because Clearing Members guarantee all transactions on behalf of a Member, and therefore bear the risk associated with those transactions, it is appropriate for Clearing Members to have knowledge of the utilization by the Member of the Kill Switch, should the Clearing Member request such notification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal does not impose an undue burden on intra-market competition because all Members may avail themselves of the Kill Switch. The Kill Switch functionality is optional. The proposed rule change protects Members in the event the Member is suffering from a systems issue or from the occurrence of unusual or unexpected market activity that would require them to withdraw from the market in order to protect investors. Utilizing this Kill Switch will permit the Member to protect itself from inadvertent exposure to excessive risk. Reducing such risk will enable Members to enter orders without fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market. For these reasons, the Exchange does not believe this proposal imposes an undue burden on inter-market competition because other exchanges offer the same functionality, which is being memorialized herein.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

[4] Members are able to send a message to the Exchange to initiate the Kill Switch or they may contact the Exchange directly. A message to remove orders may be sent through FIX, OTTO or Precise.

[5] Opening Sweep Orders will also be cancelled. Consistent with current auction functionality, PIM auction orders and responses will not be cancelled. *See* GEMX Rule 723. Other auctions orders and responses would cancel. Quotes are unaffected.

[6] The Member must directly and verbally contact the Exchange to request the re-set.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The time of receipt for an order is the time such message is processed by the Exchange Order Book.

[10] *See* GEMX Rule 808(b).

become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is similar to the rules of other options exchanges and the Exchange's proposal does not raise any new or novel issues. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2017–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2017–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2017–50, and should be submitted on or before November 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23832 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81973; File No. SR–NASDAQ–2017–090]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Eaton Vance Oaktree Diversified Credit NextShares™ Under Nasdaq Rule 5745

October 27, 2017.

I. Introduction

On August 30, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade common shares (''Shares'') of the Eaton Vance Oaktree Diversified Credit NextShares™ (''Fund'') under Nasdaq Rule 5745. The proposed rule change was published for comment in the **Federal Register** on September 15, 2017.[3] On September 27, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81574 (September 11, 2017), 82 FR 43423 (''Notice'').

[4] Amendment No. 1 to the proposed rule change replaces and supersedes the original filing in its entirety. In Amendment No. 1, the Exchange, among other things: (i) Clarified that each of the Adviser (as defined below) and the Sub-Adviser (as defined below) is affiliated with a broker-dealer and each has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio and that personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio; (ii) stated that the credit-related investments that the Fund will invest in will include mortgage-backed securities and mortgage-related securities; (iii) clarified that the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed with, and may obtain information from, other markets and entities that are members of the Intermarket Surveillance Group (''ISG'') regarding trading in the Shares and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File (as referenced herein) and periodic public disclosures of the Fund's portfolio holdings), and the Exchange may obtain such trading information from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement; (iv) clarified that the Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily (on each day the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual

received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5745, which governs the listing and trading of Exchange-Traded Managed Fund Shares, as defined in Nasdaq Rule 5745(c)(1). The Fund is a series of the Eaton Vance NextShares Trust II (''Trust''). The Exchange represents that the Trust is registered with the Commission as an open-end investment company and that it has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission with respect to the Fund.[5] Eaton Vance Management (''Adviser'') will be the Adviser to the Fund.[6] Oaktree Capital Management, L.P. (''Sub-Adviser'') will be the Sub-Adviser to the Fund.

Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company will act as the accounting agent, custodian, and transfer agent to the Fund. ICE Data Services will be the intraday indicative value calculator to the Fund.

The Exchange has made the following representations and statements in describing the Fund.[7] According to the Exchange, the Fund will be actively managed and will pursue the principal investment strategies described below.[8]

A. Principal Investment Strategies

The investment objective of the Fund is total return. The Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in credit-related investments (the ''80% Policy''). For purposes of the 80% Policy, ''credit-related investments'' are fixed-income, variable rate, and floating-rate securities, as well as derivatives that provide exposure to such investments. Credit-related investments are corporate debt, senior loans, structured credit investments, emerging market debt, real estate debt,[9] and convertible securities.

B. Portfolio Disclosure and Composition File

Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of the Fund's current portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. The Fund may provide more frequent disclosures of portfolio positions at its discretion.

As defined in Nasdaq Rule 5745(c)(3), the ''Composition File'' is the specified portfolio of securities and/or cash that the Fund will accept as a deposit in issuing a creation unit of Shares, and the specified portfolio of securities and/or cash that the Fund will deliver in a redemption of a creation unit of Shares. The Composition File will be disseminated through the National Securities Clearing Corporation once each business day before the open of trading in Shares on that day and also will be made available to the public each day on a free Web site.[10] Because the Fund seeks to preserve the confidentiality of its current portfolio trading program, the Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of the Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for the Fund generally will not be represented in the Fund's Composition File until the purchase has been completed. Similarly, securities that are held in the Fund's portfolio but are in the process of being sold may not be removed from its Composition File until the sale is substantially completed. When creating and redeeming Shares in-kind, the Fund will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that creation units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in the Fund's portfolio.[11]

C. Intraday Indicative Value

An estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the ''Intraday Indicative Value'' (''IIV''), will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session [12] when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service. The IIV will be based on current information regarding the value of the securities and other assets held by the Fund.[13] The purpose of the IIV is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount.[14]

Fund Quotation Service (''MFQS'') by the Fund accounting agent and that as soon as the NAV is entered into the MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via the Mutual Fund Dissemination Service (''MFDS'') so all firms will receive the NAV per Share at the same time; and (v) corrected typos and removed redundant information. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nasdaq-2017-090/nasdaq2017090-2605293-161141.pdf*. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] *See* Post-Effective Amendment No. 3 to the Registration Statement on Form N–1A for the Trust dated August 8, 2017 (File Nos. 333–197734 and 811–22983).

[6] According to the Exchange, the Commission has issued an order granting the Adviser, Eaton Vance NextShares Trust, and the Trust and certain affiliates exemptive relief under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 31361 (December 2, 2014) (File No. 812–14139) (''Order''). In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the application for the Order states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended.

[7] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of NAV, fees, distributions, and taxes, among other things, can be found in Amendment No. 1 and the Registration Statement, as applicable. *See supra* notes 4 and 5, respectively, and accompanying text.

[8] According to the Exchange, additional information regarding the Fund will be available on a free public Web site for the Fund (*www.eatonvance.com* and/or *www.nextshares.com*) and in the Registration Statement for the Fund.

[9] Real estate debt includes mortgage-backed securities and mortgage-related securities.

[10] The Exchange represents that the free public Web site containing the Composition File will be at *www.eatonvance.com* and/or *www.nextshares.com*.

[11] In determining whether the Fund will issue or redeem creation units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors.

[12] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m. Eastern Time (''E.T.''); (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m. E.T.).

[13] The IIV disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. The Fund will reflect purchases and sales of portfolio positions in its NAV the next business day after trades are executed.

[14] In NAV-Based Trading (as referenced herin), prices of executed trades are not determined until the reference NAV is calculated, so buyers and sellers of Shares during the trading day will not

Continued

D. NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to the Fund's next-determined NAV using a trading protocol called ''NAV-Based Trading.'' All bids, offers, and execution prices of Shares will be expressed as a premium/discount (which may be zero) to the Fund's next-determined NAV (*e.g.,* NAV − $0.01, NAV+$0.01).[15] The Fund's NAV will be determined each business day, normally as of 4:00 p.m. E.T. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV. Nasdaq represents that all Shares listed on the Exchange will have a unique identifier associated with their ticker symbol, which will indicate that the Shares are traded using NAV-Based Trading.

According to the Exchange, member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.[16] In the systems used to transmit and process transactions in Shares, the Fund's next-determined NAV will be represented by a proxy price (*e.g.,* 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (*e.g.,* NAV − $0.01 would be represented as 99.99; NAV+$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq represents that it will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers, and execution prices of Shares that are made available to the investing public follow the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. Member firms may use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the ''NAV − $0.01/NAV+$0.01'' (or similar) display format.

Alternatively, member firms may source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds *(e.g.,* Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the ''NAV − $0.01/NAV+$0.01'' (or similar) display format. Prior to the commencement of trading in the Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Shares will be subject to Nasdaq Rule 5745, which sets forth the initial and continued listing criteria applicable to Exchange-Traded Managed Fund Shares. A minimum of 50,000 Shares and no less than two creation units of the Fund will be outstanding at the commencement of trading on the Exchange.

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Every order to trade Shares of the Fund is subject to the proxy price protection threshold of plus/minus $1.00, which determines the lower and upper thresholds for the life of the order and provides that the order will be cancelled at any point if it exceeds $101.00 or falls below $99.00.[19] With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.[20]

Nasdaq also represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[21] The Exchange represents that these surveillance procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed with, and may obtain information from, other markets and entities that are members of the ISG regarding trading in the Shares, and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of the Fund's portfolio holdings). In addition, the Exchange may obtain information regarding trading in the Shares, and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of the Fund's portfolio holdings), from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able

know the final value of their purchases and sales until the end of the trading day. The Exchange represents that the Registration Statement, Web site, and any advertising or marketing materials will include prominent disclosure of this fact. The Exchange states that although the IIV may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

[15] According to the Exchange, the premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees, and other costs in connection with creating and redeeming creation units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading.

[16] According to the Exchange, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on that day. Prior to the commencement of trading in the Fund, the Exchange will inform its members in an information circular (''Information Circular'') of the effect of this characteristic on existing order types.

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Nasdaq Rule 5745(h).

[20] *See* Nasdaq Rule 5745(b)(6).

[21] The Exchange states that FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

Prior to the commencement of trading in the Fund, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the IIV and Composition File is disseminated; (d) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (e) information regarding NAV-Based Trading protocols.

The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained. As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on that day, and the Information Circular will discuss the effect of this characteristic on existing order types. In addition, Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

Nasdaq states that each of the Adviser and the Sub-Adviser is not a registered broker-dealer; however, each is affiliated with a broker-dealer. Nasdaq further states that each of the Adviser and the Sub-Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and/or changes to, the Fund's portfolio.[22] In addition, personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Reporting Authority[23] will implement and maintain, or ensure that the Composition File will be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio positions and changes in the positions. In the event that (a) the Adviser or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as the case may be, regarding access to information concerning the composition of, and/or changes to, the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Information regarding NAV-Based Trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape[25] and separately disseminated to member firms and market data services through the Exchange data feeds.

The Commission notes that once a Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via a File Transfer Protocol (''FTP'') file[26] that will be created for exchange-traded managed funds and will be confirmed to the member firms participating in the trade to supplement the previously provided information with final pricing.

The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the MFQS by the Fund accounting agent. As soon as the NAV is entered into the MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via the MFDS so that all firms will receive the NAV per share at the same time.

The Exchange further represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, the Exchange may cease trading the Shares if other unusual conditions or circumstances exist that, in the opinion of the Exchange, make further dealings on the Exchange detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading. Prior to the commencement of market trading in the Shares, the Fund will be required to establish and maintain a

[22] *See* Amendment No. 1, *supra* note 4. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, each of the Adviser and the Sub-Adviser, and its related personnel, are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[23] *See* Nasdaq Rule 5745(c)(4).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. Nasdaq has represented that it will separately report real-time execution prices and quotes to member firms and providers of market data services in the ''NAV-$0.01/NAV+$0.01'' (or similar) display format, and will otherwise seek to ensure that representations of intraday bids, offers and execution prices for Shares that are made available to the investing public follow the same display format.

[26] According to Nasdaq, FTP is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

public Web site through which its current prospectus may be downloaded.[27] The Web site will include additional information concerning the Fund updated on a daily basis, including the prior business day's NAV, and the following trading information for that business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average, and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (''Closing Bid/Ask Midpoint''); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (''Closing Bid/Ask Spread.''). The Web site will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time.

The Exchange represents that all statements and representations made in the filing regarding: (a) The description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or IIV, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[28] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures for the Fund under the Nasdaq 5800 Series.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 1.[29] In particular, the Commission notes that, although the Shares will be available for purchase and sale on an intraday basis, the Shares will be purchased and sold at prices directly linked to the Fund's next-determined NAV. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5745 and the conditions set forth in this proposed rule change to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5)[30] and Section 11A(a)(1)(C)(iii) of the Act,[31] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NASDAQ–2017–090), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23830 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81967; File No. SR–MIAX–2017–44]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX Options Rule 518 Relating to Derived Orders

October 27, 2017.

Pursuant to the provisions of section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2017, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518(a)(9) to: (i) Update the definition of a derived order on the Exchange, (ii) clarify the circumstances under which a derived order is generated by the Exchange's System, and the price at which a derived order may be generated, and (iii) expand the situations under which a derived order is removed from the Exchange's Simple Order Book.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 518(a)(9) to: (i) Update the definition of a derived order on the Exchange, (ii) clarify the circumstances under which a derived order is generated by the Exchange's System,[3] and the price at which a derived order may be generated, and (iii) expand the situations under which a derived order is removed from the Exchange's Simple Order Book.[4]

A ''derived order'' is an Exchange-generated limit order on the Simple Order Book that represents either the bid or offer of one component of a complex order resting on the Strategy

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[27] The Exchange represents that the Web site containing this information will be at *www.eatonvance.com* and/or *www.nextshares.com.*

[28] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR–BATS–2015–100). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[29] *See supra* note 4.

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

Book [5] that is comprised of orders to buy or sell an equal quantity (currently with a one-to-one ratio) of two option components.[6] Derived orders will not be routed outside of the Exchange regardless of the price(s) disseminated by away markets. The Exchange will determine on a class-by-class basis to make available derived orders and communicate such determination to Members [7] via a Regulatory Circular. Derived orders are firm orders (*i.e.,* if executed, firm for the disseminated price and size) that are included in the MBBO.[8]

The Exchange is proposing to amend the definition of a ''derived order'' in two ways. First, the Exchange is proposing to revise the current requirement in Rule 518(a)(9) that a derived order can only be generated from one component of a complex order resting on the Strategy Book that is comprised of orders to buy or sell an equal quantity (currently with a one-to-one ratio) of two option components. Under the proposal, a derived order may now be comprised of orders to buy or sell two option components, where the size of one component has a base ratio of ''one'' relative to the other component (1:1, 1:2, or 1:3). Thus, the basis for the generation of derived orders on the Exchange will not be restricted to complex orders of equal size with a one-to-one ratio; instead, a derived order may be generated by using a complex order resting on the Strategy Book with two components, provided that one component of the complex order has a base ratio of one relative to the other component. For example, a complex order whose components have a size ratio of 1:3 could be used to generate a derived order, whereas a complex order whose components have a size ratio of 2:3 could not.[9] The Exchange notes that another options exchange permits a derived, or ''leg'' order, to be generated using a complex order with a ratio greater than 1:1.[10] The Exchange believes that the revision of the one-to-one ratio limitation should increase the potential number of derived orders that may be generated by the System, which should result in greater liquidity and more opportunities for participants to trade complex orders on the Exchange.[11]

The Exchange is also proposing to amend Rule 518(a)(9) by adding a final sentence stating that derived orders are subject to the managed interest process described in Rule 515(c)(1)(ii).[12] The purpose of this provision is to ensure that a derived order (which is firm for its price and size) is handled in accordance with that Rule so that it does not lock or cross an away market price at the NBBO.[13] An example of a derived order subject to the managed interest process is provided below.

Example 1

Option A ($.05 MPV) [14]
MBBO: $2.00 × $2.20
ABBO: $2.00 × $2.10
NBBO: $2.00 × $2.10
Option B ($.05 MPV)
MBBO: $1.00 × $1.05
ABBO: $1.00 × $1.05
NBBO: $1.00 × $1.05
Strategy: Buy 1 Option A, Sell 1 Option B
icMBBO: [15] $.95 × $1.20
cNBBO: [16] $.95 × $1.10
Strategy Order
Buy 1 (+1A −1B) $1.10 net debit

The System will create a derived order to buy Option A at a price of $2.10. The new MBBO would be $2.10 × $2.20. However, the $2.10 bid price would lock the ABBO [17] offer for Option A, which is being quoted on an away exchange at $2.00 × $2.10. Therefore, the derived order will be managed in accordance with the Exchange's managed interest process. Under the Exchange's managed interest process for non-routable orders defined in Rule 515(c)(1)(ii)(A), if the limit price of an order ($2.10 bid) locks or crosses the current opposite side NBBO ($2.10 offer), the System will display the order one MPV ($.05) away from the current opposite side NBBO ($2.05 bid), and book the order at a price that will lock the current side NBBO. Therefore, the derived order in Option A will have a Book [18] price of $2.10 and will be displayed at $2.05, the MBBO will therefore be $2.05 × $2.20.

Option A
MBBO: $2.05 × $2.20
ABBO: $2.00 × $2.10
NBBO: $2.05 × $2.10

Should interest arrive on MIAX Options to sell at $2.10 or lower, it will trade at $2.10 against the derived order, as Rule 515(c)(1)(ii)(A) provides that if the Exchange receives a new order or quote on the opposite side of the market from the managed order that can be executed, the System will immediately execute the remaining contracts from the initiating order to the extent possible at the order's current Book price ($2.10), provided that the execution price does not violate the current NBBO. The other side of the complex order will execute against the $1.00 bid price for Option B, effectively legging the complex order for a net price of $1.10.

The Exchange believes that generating and managing a derived order (rather

[5] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[6] *See* Exchange Rule 518(a)(9).

[7] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[8] The term ''MBBO'' means the best bid or offer on the Simple Order Book (as defined below) on the Exchange. *See* Exchange Rule 518(a)(13).

[9] A leg order may only be generated for the legs of complex orders with a ratio of 1:1, 1:2, or 1:3. (A leg order will not be generated for the legs of a complex order with a 1:4 ratio). For example, if a complex order to buy 10 of series A and sell 20 of series B is resting on the Strategy Book, a leg order will be generated for the leg to buy 10 of series A (ratio of 1:2), but not for the leg to sell 20 of series B (ratio of 2:1). If a complex order to buy 20 of series A and sell 30 of series B is resting on the Strategy Book, no leg orders will be generated for either leg (ratio is 2:3 for leg 1 and 3:2 for leg 2).

[10] *See* Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.53(x).

[11] The Exchange notes that other exchanges require a complex order used to generate a derived or ''legging'' order to be for an equal quantity of two options. *See, e.g.,* NASDAQ PHLX LLC (''Phlx'') Rule 1098(f)(iii)(C)(1). *See also,* Nasdaq ISE, LLC (''ISE'') Rule 715(k). The Exchange's proposal is distinguished in that it seeks to expand its current one-to-one ratio requirement to include any complex order with a component that has a base of one with respect to the other component.

[12] Under the managed interest process, non-routable orders whose limit price locks or crosses the current opposite side National Best Bid or Offer (''NBBO'') are displayed one Minimum Price Variation (''MPV'') away from the current opposite side NBBO, and placed on the Simple Order Book at a price that will lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the order's price on the Simple Order Book will continuously re-price to lock the new NBBO and the managed order's displayed price will continuously re-price one MPV away from the new NBBO. *See* Exchange Rule 515(c)(1)(ii).

[13] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received from OPRA. *See* Exchange Rule 100.

[14] The default Minimum Price Variation (''MPV'') of an option contract trading at less than $3.00 per option is $.05. *See* Exchange Rule 510.

[15] The ''icMBBO'' is the Implied Complex MIAX Best Bid or Offer. The icMBBO is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. *See* Exchange Rule 518(a)(11).

[16] The ''cNBBO'' is the Complex National Best Bid or Offer. The cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. *See* Exchange Rule 518(a)(2).

[17] The term ''ABBO'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[18] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

than simply preventing its generation) [19] creates and preserves additional opportunities for complex orders to be executed as individual components against orders resting on the Simple Order Book as market conditions change.

The Exchange is also proposing to amend Rule 518(a)(9)(i) to provide more detail regarding the circumstances under which a derived order is generated by the Exchange's System, and the price at which a derived order must be generated. Currently, a derived order may be automatically generated for one or more legs of a complex order at a price: (A) That matches or improves upon the best displayed bid or offer in the affected series on the Simple Order Book; and (B) at which the net price of the complex order on the Strategy Book can be achieved when the other component of the complex order is executed against the best displayed bid or offer on the Simple Order Book. Additionally, a derived order will not be displayed at a price that locks or crosses the best bid or offer of another exchange. In such a circumstance, the System will display the derived order on the Simple Order Book at a price that is one MPV away from the current opposite side best bid or offer of such other exchange, and rank the derived order on the Simple Order Book according to its actual price.[20]

The Exchange is proposing to amend Rule 518(a)(9)(i) to add more detail to the rule stating that a derived order may be automatically generated if the complex order is eligible for ''Legging'' pursuant to Rule 518(c)(2)(iii), and meets the requirements set forth therein.[21] The purpose of this proposed amendment is to establish clearly in the Exchange's Rules that the System will only generate derived orders for complex orders that are eligible for legging—that is, complex orders whose components can be executed as individual legs against orders resting on the Simple Order Book. Conversely, if a complex order is not eligible for legging, then the System will not generate derived orders with respect to that complex order.[22]

The Exchange is proposing to amend Rule 518(a)(9)(i)(B) to make a technical modification to the current rule text. Currently, the rule provides that a derived order may automatically be generated for one or more legs of a complex order at a price, ''at which the net price of the complex order on the Strategy Book can be achieved when the other component(s) of the complex order is (are) executed against the best displayed bid or offer on the Simple Order Book.'' The Exchange proposes to make the word ''components'' singular by removing the ''(s)'' and removing the word ''(are)'' following the phrase ''complex order'' so that the new sentence has the proper subject-verb agreement. The Exchange believes this change describes System functionality with more accuracy and precision.

The Exchange is proposing to amend Rule 518(a)(9)(i)(B) to state that a derived order may be automatically generated for one or more legs of a complex order at a price at which the net price of the complex order ''at the best price'' on the Strategy Book can be achieved when the other component of the complex order is executed against the best displayed bid or offer on the Simple Order Book. This requirement is intended to ensure that a complex order executed by way of generating and Legging a derived order for execution against an order on the Simple Order Book is not executed at a net price that is inferior to the best net price displayed on the Strategy Book. A derived order could not, therefore, result in a trade-through of a complex order resting on the Strategy Book at the Exchange's best displayed net price.

The Exchange is also proposing to amend Rule 518(a)(9)(vi), which describes the various circumstances under which a derived order that has been generated is removed from the Simple Order Book. Specifically, the Exchange is proposing to amend Rule 518(a)(9)(vi)(B), which currently provides that a derived order is automatically removed from the Simple Order Book if the execution of the derived order would no longer achieve the net price of the complex order on the Strategy Book when the other component of the complex order is executed against the best bid or offer on the Simple Order Book. The Exchange is proposing to replace the word ''would'' with the word ''may'' in this sub-paragraph in order to broaden the rule to reflect that the System will remove a derived order from the Simple Order Book any time the price of the best bid or offer on the Simple Order Book changes such that the net price of the complex order to be executed may not be achieved. A price change of the best bid or offer could be either: (i) Improving (raising the bid or lowering the offer) or, (ii) worsening (lowering the bid or raising the offer). In scenario (i), the derived order could remain on the Simple Order Book as it could still achieve the net price of the complex order. However, in scenario (ii), the derived order may not achieve the net price of the complex order depending upon how much the price had moved. For the sake of processing efficiency and speed, rather than perform the calculation to determine if the derived order could still achieve the net price for the complex order in scenario (ii), the System simply cancels any derived order in scenario (i) or (ii). The Exchange believes that removal of the derived order from the Simple Order Book when there is a possibility that the complex order may not be executed at its net price is prudent and is an appropriate safeguard against such an execution.[23] The Exchange's System re-evaluates each strategy on the Strategy Book on a periodic basis to ascertain if the creation of a derived order is warranted. If, upon re-evaluation, the new price allows a new derived order for the strategy, such new derived order will then be created.[24] As re-evaluation is a continual process, the Exchange believes it is more expedient to cancel a derived order where a change in price may no longer allow the derived order to achieve the net price for the complex order and rely upon the re-evaluation process to create a new derived order when warranted. The Exchange believes that changing the language in the rule from ''would'' to ''may'' more accurately describes the operation of Exchange functionality.

[19] Other exchanges have determined not to generate derived or ''leg'' orders that would lock or cross the NBBO. *See, e.g.,* CBOE Rule 6.53C(c)(iv)(1)(A). *See also,* ISE Rule 715(k)(1). Despite this distinction, the Exchange's inclusion of derived orders in the managed interest process is intended to achieve the same result, *i.e.,* to prevent a derived order from locking or crossing an away market.

[20] *See* Exchange Rule 518(a)(9)(ii).

[21] Complex orders up to a maximum number of legs (determined by the Exchange on a class-by-class basis as either two or three legs and communicated to Members via Regulatory Circular) may be automatically executed against bids and offers on the Simple Order Book for the individual legs of the complex order (''Legging''), provided the complex order can be executed in full or in a permissible ratio by such bids and offers, and provided that the execution price of each component is not executed at a price that is outside of the NBBO. *See* Exchange Rule 518(c)(2)(iii).

[22] The Exchange notes that while derived order functionality was approved with the Exchange's filing to adopt new rules to govern the trading of Complex orders, the functionality has not yet been implemented in the System. *See* Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26).

[23] The System continually evaluates complex orders and quotes on the Strategy Book to determine, among other things, whether a derived order should be generated or cancelled. *See* Exchange Rule 518(c)(5)(ii). Thus, when the System cancels and removes a derived order from the Simple Order Book, the System could thereafter generate another derived order using the same complex order based upon the evaluation process if the appropriate conditions are present.

[24] *Id.*

The Exchange is also proposing to amend Rules 518(a)(9)(vi)(C) and (D), which currently describe the automatic removal of a derived order from the Simple Order Book when the complex order is executed in full, or is cancelled. The Exchange is proposing to consolidate sub-paragraphs (C) and (D) into one sub-paragraph (C), to delete the phrase ''in full,'' and to broaden the rule by stating that a derived order is automatically removed from the Simple Order Book if the complex order is executed, cancelled, or modified in any way.[25] The Exchange believes that any change to a complex order used to generate a derived order obviates the need for the derived order at its limit price and size on the Simple Order Book. The phrase ''modified in any way'' is intended to capture, without limitation, any modification to the price or size of the complex order. Such a modification could require a different limit price for the derived order to achieve the best execution price of the complex order, or result in a size ratio that does not comply with the ''base of one'' ratio in proposed Rule 518(a)(9) discussed above, in which case the complex order could not be executed. The Exchange is proposing to remove the derived order from the Simple Order Book when the complex order is modified in any way in order to prevent these circumstances.

The Exchange is also proposing to amend Rule 518(a)(9)(vi)(D) by deleting the current text (see above) and adopting new Rule 518(a)(9)(vi)(D) to state that a derived order is automatically removed from the Simple Order Book if the strategy[26] enters a cPRIME Auction (as described in Rule 515A, Interpretations and Policies .12)[27] or a Complex Auction (pursuant to Rule 518(d)).[28] This would include any strategy that has, as a component, an option that is of the same type as a derived order.[29] To illustrate, using the example set forth above,[30] the System would automatically remove from the Simple Order Book the derived order in Option A if strategy AB (or any other strategy having Option A as a component) enters a cPRIME Auction or a Complex Auction. The System would wait until a cPRIME Auction or Complex Auction is concluded before creating a derived order for an option that is subject to such an auction.[31] A complex order that enters and is processed in a cPRIME Auction or a Complex Auction is subject to execution at improved prices against complex orders submitted in response to the Exchange's notification, and thus could cause the derived order to be priced such that it may no longer achieve the best net price of the complex order. In this situation, therefore, the System will automatically remove the derived order from the Simple Order Book. Finally, the Exchange proposes to amend Rule 518(a)(9)(vi)(E) by adding a sentence stating that, if a derived order is removed from the Simple Order Book, the System will continually evaluate any remaining complex order(s) on the Strategy Book to determine whether a new derived order should be generated, as described in Rule 518(c)(5).[32] The purpose of this provision is to ensure that a new derived order can and will be generated by the System under the proper conditions even after a previously generated derived order has been removed from the Simple Order Book. The Exchange believes that this provides additional opportunities to execute complex orders through Legging using derived orders as market conditions change.

The Exchange believes that the proposed rule change relating to derived orders will facilitate more interaction between the Strategy Book and the Simple Order Book, resulting in increased execution opportunities and better execution prices for complex orders and for orders resting on the Simple Order Book.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act[33] in general, and furthers the objectives of section 6(b)(5) of the Act[34] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange's proposal to amend Rule 518(a)(9) to remove the limitation on the generation of derived orders to use only complex orders of equal size with a one-to-one ratio, and instead to permit a derived order to be generated by using a complex order resting on the Strategy Book with a ratio of greater than one-to-one, provided that one component of the complex order that is used to generate the derived order has a base ratio of one relative to the other component, is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the Exchange believes that this proposal will increase the number of derived orders that may be generated on the Exchange, thus enhancing liquidity and increasing the number of opportunities for the execution of complex orders on the Exchange.

The Exchange's proposal to state in Rule 518(a)(9) that derived orders are subject to the managed interest process described in Rule 515(c)(1)(ii) is designed protect investors and the public interest by ensuring that a derived order (which is firm for its price and size) does not lock or cross an away market price at the NBBO. If a derived order were to lock or cross an away market price at the NBBO, the Exchange would not be able to route the derived

[25] This is substantially similar to rules that are currently operative on other exchanges. *See* ISE Rule 715(k)(3)(iii) and (iv). *See also,* CBOE Rule 6.53C(c)(iv)(3)(B)(II) and (III), and Phlx Rule 1098(f)(iii)(C)(4)(iii) and (iv).

[26] The term ''complex strategy'' means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. *See* Exchange Rule 518(a)(6).

[27] The Exchange recently adopted rules that permit the submission of complex orders for price improvement and execution in the MIAX Price Improvement Mechanism (''PRIME''). Complex orders submitted into PRIME are known as ''cPRIME Orders'' and are processed in a ''cPRIME Auction.'' *See* Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017) (SR–MIAX–2017–19).

[28] Currently, the Exchange may determine to automatically submit a Complex Auction-eligible order into a Complex Auction and begin the Complex Auction process by sending a message to participants requesting responses to the Complex Auction. *See* Exchange Rule 518(d). For a complete description of the Complex Auction, *see* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26).

[29] An option of the same type would be either the put or call option in the same series as a component in the strategy. (E.g., if the complex strategy was a long straddle to Buy 1 JNJ Oct 141 Call and to Buy 1 JNJ Oct 141 Put, a derived order in either of those options would be considered an option of the same type, and would be removed if the strategy entered a cPRIME Auction or a Complex Auction).

[30] *See* Example 1 on page 6 [sic].

[31] *See supra* note 23.

[32] *Id.*

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

order to such a market because derived orders are not routable. The inclusion of derived orders in the managed interest process thus protects investors and the public interest by removing the possibility that this situation could occur, while maintaining the derived order on the Simple Order Book.

The proposed amendment to Exchange Rule 518(a)(9)(i), adding the requirement that a derived order may be automatically generated if the complex order is eligible for Legging pursuant to Rule 518(c)(2)(iii), is designed to remove impediments to and perfect the mechanisms of a free and open market by establishing clearly in the Exchange's Rules that the System will generate derived orders only for complex orders whose components (including the component represented by a derived order) can be executed as individual legs against orders on the Simple Order Book. In order for a component to be executed against an order on the Simple Order Book, the complex order must be executed by way of its individual legs; there is thus no need for, or purpose in, generating a derived order for a complex order that is not eligible for Legging.

The Exchange's proposal to amend Rule 518(a)(9)(i)(B) to clarify the conditions required for the creation of derived orders would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater transparency concerning the operation of Exchange functionality.

The Exchange's proposal to amend Rule 518(a)(9)(i)(B), to require that a derived order be generated at a price at which the net price of the complex order at the best price on the Strategy Book can be achieved, is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that a complex order executed by way of Legging against orders on the Simple Order Book could not result in a trade-through of a complex order at the Exchange's best displayed net price.

The proposed amendment to Exchange Rule 518(a)(9)(vi)(B) is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that a derived order is removed from the Simple Order Book any time the price of the best bid or offer on the Simple Order Book changes such that the net price of a complex order at the top of the Strategy Book may not be achieved by executing the derived order and another order at the changed price, thus protecting investors by ensuring a safeguard against such an execution.

The proposed amendments to Rules 518(a)(9)(vi)(C) and (D), describing the automatic removal of derived orders from the Simple Order Book, are designed to protect investors and the public interest by ensuring that derived orders do not result in executions that trade through the top of the Exchange's Simple Order Book and Strategy Book, and that executions on the Simple Order Book and on the Strategy Book do not result in prices that trade through away markets.

Amended Rule 518(a)(9)(vi)(E), stating that the System will continually evaluate any remaining complex order(s) on the Strategy Book to determine whether a new derived order should be generated, ensures that a new derived order can and will be generated by the System under the proper conditions even after a previously generated derived order has been removed from the Simple Order Book. This provision is designed to promote just and equitable principles of trade and also to remove impediments to and perfect the mechanisms of a free and open market and a national market system by providing more opportunities to execute complex orders through Legging using derived orders as market conditions change.

The Exchange also believes that the proposed rule change removes impediments to and perfects the mechanisms of a free and open market and a national market system by attracting more order flow and by increasing the frequency with which MIAX Options participants are able to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change enhances intermarket competition by providing market participants with additional opportunities to execute complex orders through the generation of a greater number of derived orders using an expanded permissible size ratio. The Exchange believes that the additional opportunities to trade complex orders will result in the submission of more complex orders for execution on the Exchange, thus enhancing the Exchange's competitive position by increasing liquidity and order flow on the Exchange. Moreover, the proposed rule change is consistent with the rules of other exchanges, as cited above.[35]

The Exchange also believes that its proposal enhances intra-market competition, as all Exchange participants in the same category are able to participate on an equal basis with respect to the trading of complex orders.

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will in fact enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [36] and Rule 19b–4(f)(6) thereunder.[37]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[35] *See supra* notes 10, 11, 19 and 25.

[36] 15 U.S.C. 78s(b)(3)(A).

[37] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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–MIAX–2017–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2017–44. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2017–44 and should be submitted on or before November 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23825 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81975; File No. SR–Phlx–2017–79]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Establish a Nonstandard Expirations Pilot Program on a Pilot Basis, for an Initial Period of Twelve Months From the Date of Approval of This Proposed Rule Change

October 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2017 Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On October 26, 2017, the Exchange filed Amendment No.1 to the proposal to amend and replace the original filing of SR–Phlx–2017–79 in its entirety. The Commission is publishing this notice, as modified by Amendment No. 1, 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 [sic] a [sic] proposal [sic] to establish a Nonstandard Expirations Pilot Program on a pilot basis, for an initial period of twelve months from the date of approval of this proposed rule change.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to permit the listing and trading, on a pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expiration dates for an initial period of twelve months (the ''Nonstandard Expirations Pilot Program'' or ''Pilot Program'') from the date of approval of this proposed rule change.[3] The Pilot Program would permit both weekly expirations (''Weekly Expirations'') and end of month (''EOM'') expirations as explained below. Contract terms for the Weekly Expirations and EOM expirations will be similar to those of the a.m. settled broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks.

Weekly Expirations

The Exchange proposes to add new subsection (b)(vii)(1), Weekly Expirations, to Rule 1101A, Terms of Options Contracts. Under the proposed new rule the Exchange would be permitted to open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations would be subject to all provisions of Rule 1101A and would be treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations would be p.m.-settled. New series in Weekly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] P.M.-settled NASDAQ–100 index options with standard third Friday of the month expiration dates (''NDXPM'') have previously been approved for listing on the Exchange on a pilot basis. NDXPM and NDX are separate option classes. *See* Securities Exchange Act Release No. 81293 (August 2, 2017), 82 FR 37138 (August 8, 2017) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Permit the Listing and Trading of P.M.-Settled NASDAQ–100 Index(R) Options on a Pilot Basis). The Exchange anticipates that it will file a proposed rule change in the near future to move these NDXPM index options with standard third Friday of the month expiration dates to the NDX index option class. The Exchange notes that the Chicago Board Options Exchange (''CBOE'') recently did likewise with its P.M.-settled S&P 500 Index Options (''SPXPM''). *See* Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (approving SR–CBOE–2016–091).

Expirations could be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that could be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Wednesday expiration, or Friday expiration, as applicable) in a given class would be the same as the maximum number of expirations permitted for standard options on the same broad-based index. Weekly Expirations would not need to be for consecutive Monday, Wednesday, or Friday expirations as applicable. However, the expiration date of a non-consecutive expiration would not be permitted beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class could expire up to four weeks from the actual listing date. If the last trading day of a month were a Monday, Wednesday, or Friday and the Exchange were to list EOMs and Weekly Expirations as applicable in a given class, the Exchange would list an EOM instead of a Weekly Expiration in the given class. Other expirations in the same class would not be counted as part of the maximum number of Weekly Expirations for a broad-based index class. If the Exchange were not open for business on a respective Monday, the normally Monday expiring Weekly Expirations would expire on the following business day. If the Exchange were not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations would expire on the previous business day.

End of Month (''EOM'') Expirations

Under the proposal, the Exchange could open for trading EOMs on any broad-based index eligible for standard options trading to expire on last trading day of the month. EOMs would be subject to all provisions of Rule 1101A and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOMs would be P.M.-settled and new series in EOMs could be added up to and including on the expiration date for an expiring EOM.

The maximum number of expirations that could be listed for EOMs in a given class would be the same as the maximum number of expirations permitted for standard options on the same broad-based index. EOM expirations would not need to be for consecutive end of month expirations. However, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. EOMs that are first listed in a given class could expire up to four weeks from the actual listing date. Other expirations would not be counted as part of the maximum numbers of EOM expirations for a broad-based index class.

Contract Terms Trading Rules

Weekly Expirations and EOMs would be subject to the same rules that currently govern the trading of standard monthly broad-based index options, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for Weekly Expirations and EOMs would be the same as those for standard monthly broad-based index options. Since Weekly Expirations and EOMs will be a new type of series, and not a new class, the Exchange proposes that Weekly Expirations and EOMs shall be aggregated for any applicable reporting and other requirements.[4] Pursuant to new subsection (b)(vii)(4) of Rule 1101A, transactions in Weekly Expirations and EOMs could be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time).

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any additional traffic associated with the listing of the maximum number nonstandard expirations permitted under the Pilot.

Pilot Program

As stated above, this proposal is to establish a Nonstandard Expirations Pilot Program for broad-based index options on a pilot basis, for an initial period of twelve months from the date of approval of this proposed rule change. If the Exchange were to propose an extension of the Pilot or should the Exchange propose to make the Pilot permanent, the Exchange would submit a filing proposing such amendments to the Pilot.

Further, any positions established under the Pilot would not be impacted by the expiration of the Pilot. For example, if the Exchange lists a Weekly Expiration or EOM that expires after the Pilot expires (and is not extended) then those positions would continue to exist.

However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

As part of the Pilot, the Exchange will submit a Pilot report to the Commission at least two months prior to the expiration date of the Pilot (the ''annual report''). The annual report will contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity. The annual report will be provided to the Commission on a confidential basis.

Analysis of Volume and Open Interest

For all Weekly Expirations and EOM series, the annual report will contain the following volume and open interest data for each broad-based index overlying Weekly Expiration and EOM options:

(1) Monthly volume aggregated for all Weekly Expiration and EOM series,

(2) Volume in Weekly Expiration and EOM series aggregated by expiration date,

(3) Month-end open interest aggregated for all Weekly Expiration and EOM series,

(4) Month-end open interest for EOM series aggregated by expiration date and open interest for Weekly Expiration series aggregated by expiration date,

(5) Ratio of monthly aggregate volume in Weekly Expiration and EOM series to total monthly class volume, and

(6) Ratio of month-end open interest in EOM series to total month-end class open interest and ratio of open interest in each Weekly Expiration series to total class open interest.

In addition, the annual report will contain the information noted above for standard Expiration Friday, AM-settled series, if applicable, for the period covered in the pilot report as well as for the six-month period prior to the initiation of the pilot.

Upon request by the SEC, the Exchange will provide a data file containing: (1) Weekly Expiration and EOM option volume data aggregated by series, and (2) Weekly Expiration open interest for each expiring series and EOM month-end open interest for expiring series.

[4] *See* Rule 1001A(d) which sets forth the reporting requirements for certain market indexes that do not have position limits, including NDX. The Exchange is adding Nonstandard Expirations to Rule 1001A(e), Aggregation, to reflect the aggregation requirement. The Exchange notes that the proposed aggregation is consistent with the aggregation requirements for other types of option series (*e.g.* quarterly expiring options) that are listed on the Exchange and which do not expires on the customary ''third Friday''.

Monthly Analysis of Weekly Expiration and EOM Trading Patterns

In the annual report, the Exchange also proposes to identify Weekly Expiration and EOM trading patterns by undertaking a time series analysis of open interest in Weekly Expiration and EOM series aggregated by expiration date compared to open interest in near-term standard Expiration Friday A.M.-settled series in order to determine whether users are shifting positions from standard series to Weekly Expiration and EOM series. Declining open interest in standard series accompanied by rising open interest in Weekly Expiration and EOM series would suggest that users are shifting positions.

Provisional Analysis of Index Price Volatility and Share Trading Activity

For each Weekly Expiration and EOM expiration that has open interest that exceeds certain minimum thresholds, the annual report will contain the following analysis related to index price changes and, if needed, underlying share trading volume at the close on expiration dates:

(1) a comparison of index price changes at the close of trading on a given expiration date with comparable price changes from a control sample. The data will include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by an appropriate index agreed by the Commission and the Exchange, will be provided; and

(2) if needed, a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money Weekly Expiration and EOM expirations. The data, if needed, will include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for selecting the component securities, and sample periods will be determined by the Exchange and the Commission.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by expanding the ability of investors to hedge risks against market movements stemming from economic releases or market events that occur during the month and at the end of the month. Accordingly, the Exchange believes that weekly expirations and EOMs should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor their investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe the proposal will impose any burden on intramarket competition as all market participants will be treated in the same manner with respect to Weekly Expirations and EOMs. Additionally, the Exchange does not believe the proposal will impose any burden on intermarket competition as market participants are welcome to become members and trade at Phlx if they determine that this proposed rule change has made Phlx more attractive or favorable. Finally, all options exchanges are free to compete by listing and trading their own broad-based index options with weekly or end of month expirations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No.1, is consistent with the Act. In particular, the Commission solicits comment on the following:

- Will the pilot data contemplated in this notice allow the Commission to determine whether the weekly and monthly PM-settled options proposed in this filing have adverse effects on market volatility and the operation of fair and orderly markets in the underlying cash market?
- Will the pilot data contemplated in this notice allow the Commission to determine whether the weekly and monthly PM-settled options proposed in this filing have adverse effects on liquidity, volume, open interest, trading patterns, and volatility in other option contracts with standard expirations?
- Will the pilot data contemplated in this notice allow the Commission to determine whether the weekly and monthly PM-settled options proposed in this filing have adverse effects on index price volatility?
- Will the weekly and monthly PM-settled options proposed in this filing affect the market for options contracts with nonstandard expirations offered by CBOE? If so, how? In addition, how would this proposal affect the data and information related to nonstandard expirations that are provided by CBOE?
- What concerns do market participants have related to the proposed Nonstandard Expirations Pilot Program? If any, please be specific in describing your concerns. If any, will the pilot data contemplated in this notice allow the Commission to examine whether the concerns are valid?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2017–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2017–79. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–79, and should be submitted on or before November 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23831 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81969; File No. SR–MRX–2017–23]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Optional Kill Switch Protection

October 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2017, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to memorialize an optional Kill Switch protection.[3] The Kill Switch allows Members to cancel open orders and prevent new order submission.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to memorialize its Kill Switch risk protection which is applicable to all Members at MRX Rule 711(d). The Kill Switch allows Members to cancel open orders and prevent new order submission. This feature provides Members with a powerful risk management tool for immediate control of their order activity.

The Kill Switch is an optional tool that enables Members to initiate a message(s)[4] [sic] to the trading system (''System'') to promptly cancel orders and restrict entry of new orders until re-entry has been enabled. Members may submit a request to the System to cancel orders for that Member. Members may not remove orders by symbol using the Kill Switch. The System will send an automated message to the Member when a Kill Switch request has been processed by the Exchange's System.[5]

The Member must send a message to the Exchange to request the cancellation of all orders for the Member. The Member is unable to enter additional orders until re-entry has been enabled pursuant to subsection (d)(2) of Rule 711.

Proposed subsection (d)(2) stipulates that after orders are cancelled by the Member utilizing the Kill Switch, the Member is unable to enter additional orders until the Member has made a request to the Exchange and Exchange staff has set a re-entry indicator to enable re-entry.[6] Once enabled for re-entry, the System will send a Re-entry Notification Message to the Member. The applicable Clearing Member for that Member also is notified of the re-entry into the System after orders are cancelled as a result of the Kill Switch, provided the Clearing Member has requested to receive such notification.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by memorializing a risk protection available to Exchange Members. This risk feature promotes policy goals of the Commission which has encouraged execution venues, exchange and non-exchange alike, to offer risk protection tools and other mechanisms to decrease risk and increase stability. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Today, this feature is offered to Members. MRX transitioned from its legacy trading system to INET, the current technology, in 2017. While MRX offered this feature on its legacy system, the feature was not codified in the MRX Rulebook. At this time, the Exchange is codifying the Kill Switch feature to reflect the functionality.

[4] Members are able to send a message to the Exchange to initiate the Kill Switch or they may contact the Exchange directly. A message to remove orders may be sent through FIX, OTTO or Precise.

[5] Opening Sweep Orders will also be cancelled. Consistent with current auction functionality, PIM auction orders and responses will not be cancelled. *See* MRX Rule 723. Other auctions orders and responses would cancel. Quotes are unaffected.

[6] The Member must directly and verbally contact the Exchange to request the re-set.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Exchange believes that memorializing this feature will provide Members with specific information on cancelling orders.

The individual firm benefits of enhanced risk protections flow downstream to counter-parties both at the Exchange and at other options exchanges, thereby increasing systemic protections as well. This risk feature allows Members to enter orders without fear of inadvertent exposure to excessive risk, which in turn benefits investors through increased liquidity for the execution of their orders, thereby protecting investors and the public interest. By memorializing the features in this rule change, Members are aware of the impact of utilizing this risk tool.

This optional risk tool as noted above is offered to all Members. The Exchange further represents that its proposal operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and that the functionality is not mandatory. Specifically, any interest that is executable against a Member's orders that are received [9] by the Exchange, prior to the time the Kill Switch is processed by the System, will automatically execute at the price up to the Member's size prior to the removal of orders from the System as a result of the Kill Switch. The Kill Switch message is accepted by the System in the order of receipt in the queue and is processed in that order so that interest that is already accepted into the System is processed prior to the Kill Switch message.

With respect to providing information regarding the cancellation of orders as a result of the Kill Switch to the Clearing Member, each Member that transacts through a Clearing Member on the Exchange accepts financial responsibility for all Exchange transactions made by the Member on whose behalf the Clearing Member agrees to clear.[10] The Exchange believes that because Clearing Members guarantee all transactions on behalf of a Member, and therefore bear the risk associated with those transactions, it is appropriate for Clearing Members to have knowledge of the utilization by the member [sic] of the Kill Switch, should the Clearing Member request such notification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal does not impose an undue burden on intra-market competition because all Members may avail themselves of the Kill Switch. The Kill Switch functionality is optional. The proposed rule change protects Members in the event the Member is suffering from a systems issue or from the occurrence of unusual or unexpected market activity that would require them to withdraw from the market in order to protect investors. Utilizing this Kill Switch will permit the Member to protect itself from inadvertent exposure to excessive risk. Reducing such risk will enable Members to enter orders without fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market. For these reasons, the Exchange does not believe this proposal imposes an undue burden on inter-market competition because other exchanges offer the same functionality, which is being memorialized herein.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is similar to the rules of other options exchanges and the Exchange's proposal does not raise any new or novel issues. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2017–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2017–23. 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

[9] The time of receipt for an order is the time such message is processed by the Exchange Order Book.

[10] *See* MRX Rule 808(b).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2017–23, and should be submitted on or before November 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23827 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81972; File No. SR–NASDAQ–2017–115]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove References to Nasdaq Options Services

October 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2017, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove references to Nasdaq Options Services.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to remove references to ''Nasdaq Options Services'' or ''NOS'' and in certain cases replace those references with a reference to ''Nasdaq Execution Services'' or ''NES.'' The Exchange previously filed a proposed rule change which replaced Nasdaq Options Services with Nasdaq Execution Services.[3] Some references to Nasdaq Options Services were not removed from the Exchange's Rulebook. At this time, the Exchange proposes to remove those references to ''Nasdaq Options Services'' and ''NOS'' and were applicable change those references to ''Nasdaq Execution Services'' or ''NES'' if the entity is not already mentioned. Also, the Exchange proposes to make grammatical changes to the current sentence to accommodate the removal of the entity.

No other changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way. Accordingly, this filing is being submitted under Rule 19b–4(f)(3).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by avoiding confusion with the routing entity. The Exchange proposes to remove references to ''Nasdaq Options Services'' or ''NOS'' and in certain cases replace those references with a reference to ''Nasdaq Execution Services'' or ''NES,'' where applicable. The Exchange previously filed a proposed rule change which replaced Nasdaq Options Services with Nasdaq Execution Services.[6] This proposed change is non-substantive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The removal of references to ''Nasdaq Options Services'' or ''NOS'' and, where applicable, replacement with ''Nasdaq Execution Services'' or ''NES'' will avoid confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(3) thereunder,[8] the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization, and therefore has become effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71419 (January 28, 2014), 79 FR 6247 (February 3, 2014)(SR–NASDAQ–2014–007).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* Securities Exchange Act Release No. 71419 (January 28, 2014), 79 FR 6247 (February 3, 2014)(SR–NASDAQ–2014–007).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–115. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–115 and should be submitted on or before November 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–23829 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10186]

Review of the Designation as a Foreign Terrorist Organization of Abdallah Azzam Brigade (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: September 27, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–23786 Filed 11–1–17; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 10191]

Notice of Determinations: Culturally Significant Object Imported for Exhibition Determinations: ''Coming Away: Winslow Homer and England'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Coming Away: Winslow Homer and England,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Milwaukee Art Museum, Milwaukee, Wisconsin, from on or about March 2, 2018, until on or about May 20, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu 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.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–23873 Filed 11–1–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10189]

In the Matter of the Amendment of the Designation of Abdallah Azzam Brigades (and Other Aliases) as a Specially Designated Global Terrorist

Based upon a review of the administrative record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that Abdallah Azzam Brigades (and other aliases) is also known as Marwan Hadid Brigades, also known as Marwan Hadid Brigade.

Therefore, pursuant to Section 1(b) of Executive Order 13224, I hereby amend the designation of Abdallah Azzam Brigades as a Specially Designated Global Terrorist to include the following

[9] 17 CFR 200.30–3(a)(12).

new aliases: Marwan Hadid Brigades, also known as Marwan Hadid Brigade.

This determination shall be published in the **Federal Register**.

Dated: September 27, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–23788 Filed 11–1–17; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 10190]

Notice of Determinations; Culturally Significant Object Imported for Exhibition Determinations: ''Portraits of the World: Switzerland'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Portraits of the World: Switzerland,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the National Portrait Gallery, Smithsonian Institution, Washington, District of Columbia, from on or about December 15, 2017, until on or about November 12, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu 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.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–23875 Filed 11–1–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10188]

In the Matter of the Amendment of the Designation of Abdallah Azzam Brigades (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that the following are aliases of Abdallah Azzam Brigades (and other aliases): Marwan Hadid Brigades, also known as Marwan Hadid Brigade.

Therefore, pursuant to Section 219(b) of the INA, as amended (8 U.S.C. 1189(b)), I hereby amend the designation of Abdallah Azzam Brigades as a foreign terrorist organization to include the following new aliases: Marwan Hadid Brigades, also known as Marwan Hadid Brigade.

This determination shall be published in the **Federal Register**.

Dated: September 27, 2017.

Rex W. Tillerson,

Secretary of State.

[FR Doc. 2017–23789 Filed 11–1–17; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21077]

Sureride Charter Inc.—Acquisition of Control—McClintock Enterprises, Inc. D/B/A Goldfield Stage & Company

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: On October 3, 2017, Sureride Charter Inc. d/b/a Sundiego Charter Co. d/b/a SunExpress Charter Co. (SCI), an interstate passenger motor carrier, filed an application to acquire McClintock Enterprises, Inc. d/b/a Goldfield Stage & Company (the Acquisition Carrier), an interstate passenger motor carrier. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules.

DATES: Comments must be filed by December 18, 2017. The applicant may file a reply by January 2, 2018. If no opposing comments are filed by December 18, 2017, this notice shall be effective December 19, 2017.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21077 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to SCI's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson, & Feary, P.C., 10 W. Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher (202) 245–0355. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: SCI states that it is a California corporation and an interstate passenger motor carrier. It states that it is wholly owned by All Aboard America! Holdings, Inc. (AAAHI), which is wholly owned by AAAHI Acquisition Corporation, which is wholly owned by AAAHI Intermediate Holdings LLC, which is wholly owned by AAAHI Topco Corporation, which is in turn wholly owned by AAAHI Holdings LLC. According to SCI, the majority owner of AAAHI Holdings LLC is Tensile Capital Partners Master Fund LP, 89.6% of which is owned by Tensile Capital Partners LP. SCI further states that none of the entities that have a direct or indirect ownership interest in SCI (Ownership Entities) possess motor carrier authority or have USDOT Numbers or Safety Ratings.

SCI states that, in addition to SCI, AAAHI wholly owns the following passenger motor carriers (the Affiliated Carriers): Hotard Coaches, Inc. (Hotard); Industrial Bus Lines, Inc. d/b/a All Aboard America (Industrial); Ace Express Coaches, LLC (Ace Express); All Aboard Transit Services, LLC (AATS); and All Aboard America! School Transportation, LLC (AAAST). According to SCI, the Affiliated Carriers exercise substantial independence in running their diverse operations, and none of the Ownership Entities hold any controlling interest in any regulated bus transportation provider other than the Affiliated Carriers.

SCI provides a description of each of the Affiliated Carriers, as summarized below:

• Hotard is a Louisiana corporation that provides local and regional charter services within Louisiana and Mississippi, and to and from various points in the continental United States. It holds common carrier operating authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier of passengers (MC–143881). Hotard operates a fleet of 273 vehicles, of which 80 are full-sized motor coaches and the remainder are school buses. The school buses are mainly used for employee shuttle services under contract with large employers, operating interstate between Texas and Louisiana and intrastate within Louisiana.

• Industrial is a New Mexico corporation that provides local and regional charter services in Arizona, New Mexico, and Texas. Industrial holds common carrier operating authority from FMCSA as a motor carrier of passengers (MC–133171). Its fleet consists of 81 full-sized motor coaches and 13 minibuses.

• Ace Express is a Delaware limited liability company with its principal place of business in Golden, Colo. Ace Express operates charter, contract, and casino services. It holds common carrier operating authority from FMCSA as a motor carrier of passengers (MC–908184). Ace Express provides charter services with its fleet of 60 motor coaches and 17 minibuses. Other services are provided on a contract basis for corporate and municipal clients.

• AATS is a Delaware limited liability company with its principal place of business in Commerce City, Colo. AATS operates 82 paratransit vehicles that are provided by Denver Rapid Transit District, with whom it has a contract to provide paratransit services. AATS provides the drivers, maintenance of vehicles, and supervision of employees involved in the paratransit service. AATS does not conduct interstate passenger operations and thus does not hold passenger carrier operating authority from FMCSA. AATS states that it does not possess Colorado intrastate passenger carrier authority, as its operations are exempt from the need for such authority under Colo. Rev. Stat. § 40–10.1–105(e) (2011).

• AAAST is a Texas limited liability company that provides transportation for school children under contract with a number of school districts in Texas. The school districts typically provide the school buses and AAAST provides the drivers, maintenance of vehicles, and supervisions of employees. AAAST currently operates 67 buses for five school districts. AAAST does not conduct interstate passenger operations and thus does not hold passenger carrier operating authority from FMCSA. AAAST operates pursuant to intrastate authority issued by the Texas Department of Motor Vehicles under Certificate No. 007050629C.

SCI states that the Acquisition Carrier is a California corporation that holds common carrier operating authority from FMCSA as a motor carrier of passengers (MC–191442). The Acquisition Carrier provides local and regional charter service in California using 23 full-size coaches, five mini-coaches, two vans, and three cars. SCI states that the Acquisition Carrier is wholly owned by individuals Kevin and Dalyce McClintock (Sellers). According to SCI, the Sellers do not currently hold interests in any regulated bus transportation provider other than the Acquisition Carrier.

SCI explains that under the proposed transaction, SCI would assume 100% control of the Acquisition Carrier.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. SCI has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b) and a statement that the gross operating revenues of SCI, the Acquisition Carrier, and the Affiliated Carriers (which as described above are under common control with SCI) exceeded $2 million in both interstate and intrastate services for the preceding 12-month period ending June 30, 2017. *See* 49 U.S.C. 14303(g).[1]

SCI asserts that the transaction would not have a material, detrimental impact on the adequacy of transportation services available for the public. SCI further explains that it anticipates that services to the public would be improved because the Acquisition Carrier would continue to operate, but going forward, it would operate as part of the AAAHI corporate family. Under this new ownership, SCI states that the AAAHI corporate family intends to use its business and financial management skills, as well as its capital, to increase the efficiencies and enhance the viability of the Acquisition Carrier, thereby ensuring the continued availability of adequate passenger transportation service for the public. SCI also states that services currently provided by the Acquisition Carrier would continue to be provided under the same name currently used to provide such services.

According to SCI, fixed charges of the Acquisition Carrier are not expected to change materially. SCI states that its fixed charges, in the form of interest expense, will increase as a result of the borrowing of funds used to complete the contemplated transaction. SCI states, however, that such an increase is not expected to impact the provision of transportation services.

Regarding the interests of employees, SCI asserts that its current intent is ''to continue the existing operations of the Acquisition Carrier,'' but that it ''is evaluating its employment needs with a view to employing qualified personnel that are currently employed by the Acquisition Carrier to operate the relevant services.'' (App. 8.)

Finally, SCI asserts that the impact of the proposed transaction on the regulated motor carrier industry would be minimal and that neither competition nor the public interest would be adversely affected, as the proposed transaction involves merely the addition of a single interstate passenger motor carrier to a previously approved portfolio of carriers. *See AAAHI Acquis. Corp.—Acquis. of Control—All Aboard America! Holdings, Inc.,* MCF 21071 (STB served Oct. 28, 2016). SCI states that the Acquisition Carrier is a relatively small carrier in the overall markets in which it competes (providers of charter, mini-coach, sedan, and van services), and that neither SCI nor any of the Affiliated Carriers offer sedan and van services. SCI further asserts that there is limited overlap in service areas or in customer bases among the Affiliated Carriers and the Acquisition Carrier, and ''limited overlap in charter services and/or in customer bases of the Acquisition Carrier and SCI in [] San Diego,'' which has a variety of competitors and service offerings for ground transportation. (App. 10.)

On the basis of the application, the Board finds that the proposed acquisition is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to

[1] Applicants with gross operating revenues exceeding $2 million are required to meet the requirements of 49 CFR 1182.2(a)(5).

reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.

3. Notice of this decision will be published in the **Federal Register**.

4. This notice will be effective December 19, 2017, unless opposing comments are filed by December 18, 2017.

5. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: October 30, 2017.

By the Board, Board Members Begeman and Miller.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2017–23904 Filed 11–1–17; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2017.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22(f) for the time period specified above:

Rescinded ABR Issued

1. Repsol Oil & Gas USA, LLC, Pad ID: RENNEKAMP (05 104) R, ABR–201108044.R1, Pike Township, Bradford County, Pa.; Rescind Date: September 20, 2017.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 30, 2017.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2017–23887 Filed 11–1–17; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: September 1–30, 2017.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, 717–238–0423, ext. 1312, *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22 (f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(e)

1. Rutter Bros. Dairy, Inc., d/b/a Rutter's Dairy, Inc., ABR–201709007, Manchester Township, York County, Pa.; Consumptive Use of Up to 0.0400 mgd; Approval Date: September 29, 2017.

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Inflection Energy (PA), LLC, Pad ID: Fox B Well Site, ABR–201709001, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 7, 2017.
2. Chesapeake Appalachia, LLC, Pad ID: Shumhurst2, ABR–201709002, Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 14, 2017.
3. Cabot Oil & Gas Corporation, Pad ID: Precision Capital LP P1, ABR–201709003, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 18, 2017.
4. Cabot Oil & Gas Corporation, Pad ID: PennayG P1, ABR–201709004, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 18, 2017.
5. Chesapeake Appalachia, LLC, Pad ID: Rosiemar, ABR–201301016.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: September 18, 2017.
6. EOG Resources, Inc., Pad ID: WARD B Pad, ABR–201210009.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 25, 2017.
7. EOG Resources, Inc., Pad ID: KLINE A Pad, ABR–201210010.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 25, 2017.
8. EOG Resources, Inc., Pad ID: GRIPPIN A Pad, ABR–201210015.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 25, 2017.
9. EOG Resources, Inc., Pad ID: KINGSLY E Pad, ABR–201210016.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 25, 2017.
10. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 322 Pad A, ABR–201301004.R1, McHenry and Cummings Townships, Lycoming County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: September 25, 2017.
11. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract

322 Pad B, ABR–201301005.R1, McHenry and Cummings Townships, Lycoming County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: September 25, 2017.

12. ARD Operating, LLC, Pad ID: Mountain Meadow Lodge Pad B, ABR–201709005, McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 28, 2017.
13. ARD Operating, LLC, Pad ID: Mountain Meadow Lodge Pad A, ABR–201709006, McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: September 28, 2017.
14. EOG Resources, Inc., Pad ID: KLINE B Pad, ABR–201210011.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: September 29, 2017.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: October 30, 2017.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2017–23886 Filed 11–1–17; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–88]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 13, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0999 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Lynette Mitterer, AIR–673, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *Lynette.Mitterer@faa.gov,* phone (425) 227–1047; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *alphonso.pendergrass@faa.gov,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on October 27, 2017.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2017–0999.

Petitioner: Boeing.

Section of 14 CFR Affected: § 25.1301(a) and (d).

Description of Relief Sought: Boeing is petitioning for a time limited exemption to 14 CFR 25.1301(a) and (d) at amendment 25–0 for the annunciation of altitude callouts during an overflight scenario that does not allow full compliance of the Boeing Model 767–2C.

[FR Doc. 2017–23847 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–89]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 22, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0976 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can

be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–673, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *alphonso.pendergrass@faa.gov,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on October 27, 2017.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2017–0976.

Petitioner: Bombardier Inc.

Section of 14 CFR Affected: § 25.1447(c)(1).

Description of Relief Sought: ombardier requests an exemption to allow for the automatic deployment of oxygen dispensing units to occur at a higher pressure altitude than that required by 14 CFR 25.1447(c)(1) on BD–700–2A12 (Global 7000) and BD–700–2A13 (Global 8000) airplanes. Bombardier proposes that during operations at airports with elevations more than 13,800 feet above sea level, the FAA allow the required oxygen dispensing units to be automatically presented to the occupants before the cabin pressure altitude exceeds 17,000 feet rather than 15,000 feet.

[FR Doc. 2017–23860 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a New Information Collection: FAA Aircraft Noise Complaint and Inquiry System (FAA Noise Portal)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a voluntary information collection. The collection is part of FAA's goal to more effectively and efficiently address noise complaints or inquiries it receives. The collection includes information such as name, email address, street or cross street, city, state, zip code and a description of the aircraft noise complaint or inquiry. The level of information to be collected is necessary to allow FAA to respond to the noise complaint or inquiry. Currently, the FAA receives noise complaints or inquiries in many formats sent to many different people in the agency. This collection will provide clear points of entry at the FAA regional and headquarters level for the public to submit noise complaints or inquiries using a web based system with consistent collection fields that will populate a national database.

DATES: Written comments should be submitted by January 2, 2018.

ADDRESSES: Send comments to the FAA at the following address: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX.

Title: FAA Aircraft Noise Complaint and Inquiry System (FAA Noise Portal).

Form Numbers: There are no forms.

Type of Review: This is clearance of new information collection.

Background: The purpose of the FAA Noise Portal is to allow the FAA to more efficiently and effectively respond to and address noise complaints or inquiries in a clear, consistent and repeatable manner that is responsive to the public and applies the best use of FAA resources. Currently, there is no clear FAA process or point of entry for the public to submit noise complaints/inquiries. As a result, the public noise complaints are forwarded within the FAA until the appropriate person or organization responds to it. This creates a delay in FAA responses to the public.

A public link to the FAA Noise Portal collection will be posted on each of the nine FAA regional Web sites and the FAA Headquarters Noise Ombudsman Web site for members of the public who want to submit an aircraft related noise complaint or inquiry to the FAA. The FAA Noise Portal includes required and optional fields for the public to complete. Once completed, the information is automatically sent to the FAA Regional Administrators Office or Noise Ombudsman who in turn assigns it to the appropriate FAA office to respond to the complaint within a specified time frame. All incoming complaints/inquiries are automatically entered into an FAA database that can be tracked to ensure timely responses and queried for informational purposes.

The Web sites will also identify and provide links to other entities responsible for addressing aircraft noise related issues (*e.g.,* airports, military, helicopters) and will contain links to pertinent aircraft noise related policy, environmental or community involvement documents. In addition, the Web sites will contain a mailing address and phone number for those members of the public who wish to mail a postal letter or use a voice prompt and recording system option to complete the required fields included in the FAA Noise Portal.

Respondents: Generally, any member of the public in the United States with a valid email address who believes the FAA is the appropriate entity to answer their aircraft noise complaint or inquiry.

Frequency: Members of the public are not limited to the number of times they can submit a complaint/inquiry to the FAA.

Estimated Average Burden per Response: Fifteen minutes to enter the complaint or inquiry into the FAA Noise Portal fields.

Estimated Total Annual Burden: 11,250 hours.

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

Barbara L. Hall,

Paperwork Reduction Act Compliance Lead, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2017–23890 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2017–0043]

Motorcyclist Advisory Council to the Federal Highway Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the first meeting of the Motorcycle Advisory Council (MAC) to the FHWA. The purpose of this meeting is to advise the Secretary of Transportation, through the Administrator of the FHWA, on infrastructure issues of concern to motorcyclists, including; barrier design, road design, construction and maintenance practices, and the architecture and implementation of intelligent transportation system technologies, pursuant to Section 1426 of the Fixing America's Surface Transportation (FAST) Act.

DATES: The MAC will meet on December 5, 2017, from 8:30 a.m. to 4:30 p.m. EST.

ADDRESSES: The meeting will be held at the National Transportation Institute (NHI) located at 1310 North Courthouse Road, Suite 300, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Griffith, the Designated Federal Official, Office of Safety, 202–366–2829, (*mike.griffith@dot.gov*) or Ms. Guan Xu, 202–366–5892, (*guan.xu@dot.gov*) Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov;* the Government Publishing Office's database at: *https://www.gpo.gov/fdsys/;* or the specific docket page at: *www.regulations.gov.*

Background

Purpose of the Committee: Section 1426 of the FAST Act, Public Law 114–94 required the FHWA Administrator, on behalf of the Secretary, to establish a MAC. The MAC is responsible for providing advice and making recommendations concerning infrastructure issues related to motorcyclist safety including barrier design; road design, construction, and maintenance practices; and the architecture and implementation of intelligent transportation system technologies. On July 28, 2017, the Secretary of Transportation appointed 10 members to the MAC.

Tentative Agenda: The agenda will include a topical discussion of the infrastructure issues described above, namely: Barrier design; road design, construction, and maintenance practices; and the architecture and implementation of intelligent transportation system technologies.

Public Participation: This meeting will be open to the public. Members of the public who wish to attend in person are asked to send an email to *MAC@dot.gov* no later than November 24, 2017, in order to facilitate entry and guarantee seating. The Designated Federal Official and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting by submitting an electronic copy of that statement to *MAC@dot.gov* or the specific docket page at: *www.regulations.gov.* If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Michael Griffith at the phone number listed above or email your request to *MAC@dot.gov.* You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provisions will be made to include any such presentation on the agenda. Public comment will be limited to 3 minutes per speaker, per topic.

Services for Individuals with Disabilities: The public meeting will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to note this when they send an email about attending to *MAC@dot.gov* by November 24, 2017.

Minutes: An electronic copy of the minutes from all meetings will be available for download within 60 days of the conclusion of the meeting at: *https://safety.fhwa.dot.gov/motorcycles/.*

Authority: Section 1426 of Pub. L. 114–94.

Issued on: October 27, 2017.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2017–23862 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0099]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on September 22, 2017, the Rogue Valley Terminal Railroad Corporation (RVT) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223, *Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses.* FRA assigned the petition Docket Number FRA–2017–0099.

Specifically, RVT seeks a waiver for one diesel-electric switching locomotive, RVT 82. This locomotive is an EMD Model SW1200 constructed in 1965. RVT 82 will be used exclusively in common carrier industrial switching service on RVT non-main tracks and spurs (9.5 miles of track) and Central Oregon & Pacific Railroad, Inc. (CORP) yard limit trackage (2 miles of track). Speeds shall not exceed 10 miles per hour. All 11.5 miles of trackage are located within the Medford Industrial Park complex located in White City, Oregon. The glass currently installed on RVT 82 meets an ASI rating of AS–1. RVT states that the cost of replacing this glass with FRA-compliant safety glazing at this time would be prohibitively expensive and uneconomic due to the low volume of traffic presently handled by RVT.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the

appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 18, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

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

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2017–23843 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0107]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on October 6, 2017, the Vermilion Valley Railroad (VVRR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223, *Safety Glazing Standards.* FRA assigned the petition Docket Number FRA–2017–0107.

Specifically, VVRR has petitioned FRA for a waiver of compliance from 49 CFR 223.11, *Requirements for existing locomotives,* for two of its locomotives, IBCX 4210 and IBCX 4214. Both of these units are EMD F 9 units and were built in 1956 for the Erie Mining Company in Minnesota. These units have been used exclusively in private iron ore operations and were never required to be FRA compliant. They were saved from scrapping in 2015 by the Indiana Boxcar Corporation, which is the parent company of VVRR.

VVRR operates in a mostly rural area from Olin, IN to an interchange point with CSX in Danville, IL, with a 10 miles-per-hour maximum operating speed. VVRR states that the glass on the two locomotives is in good condition and retrofitting of the locomotives would be costly. In addition, VVRR states that retrofitting of the locomotives with compliant glazing would compromise the historical appearance by eliminating the ''roll down'' side windows and opening vent windows. VVRR further states that while the two units will be part of its freight locomotive fleet, their use will be sporadic and the units will primarily be used for photographs and special occasions.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 18, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

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

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2017–23846 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0002]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on September 27, 2017, CSX Transportation, Inc. (CSX) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at Title 49 Code of Federal Regulations (CFR) part 231. FRA assigned the petition Docket Number FRA–2011–0002.

CSX is requesting a five-year renewal of its waiver to operate RailRunner® Equipment. The original relief was granted under this docket on December 20, 2011. CSX allowed the relief to expire on December 20, 2016, due to lack of business opportunities. Granting this request would give CSX approval to operate RailRunner® equipment in

stand-alone dedicated RailRunner®-only trains, and the operation of RailRunner® equipment commingled with RoadRailer® trains/equipment. CSX has not operated RailRunner® equipment in any capacity to date, but is requesting renewal of this waiver should an operations opportunity be presented. In order to operate RailRunner® equipment, CSX seeks relief from provisions of the Railroad Safety Appliance Standards in 49 CFR part 231 that stipulate the number, location, and dimensions for handholds, ladders, sill steps, uncoupling levers, and handbrakes. CSX also seeks relief from 49 CFR 231.1, which sets the standard height for drawbars. CSX states that this relief is necessary to allow it to operate and commingle the RoadRailer® and RailRunner® equipment on dedicated trains. A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received December 18, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

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

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2017–23841 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0104]

Petition for Waiver of Compliance

Under Part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on October 2, 2017, Caltrain petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238. FRA assigned the petition Docket Number FRA–2017–0104.

Caltrain operates commuter rail passenger service throughout California's Peninsula corridor from San Francisco to Gilroy under the auspices of the Peninsula Corridor Joint Powers Board (JPB). In this petition, Caltrain seeks a waiver of compliance from a portion of 49 CFR 238.113(a)(2), *Emergency window exits,* for the Caltrain Electric Multiple Unit (EMU) restroom car. The Americans With Disabilities Act (ADA)-compliant restroom facility extends from the exterior side door to nearly the centerline of the car, thus precluding the placement of the emergency window exit in this quadrant of the car in the lower main level. Caltrain believes the intent of the emergency window requirement is met, since the position of the window provides the closest practical fulfillment of the location requirements, without otherwise compromising access to either the emergency window exit or the ADA restroom facility. Additionally, passengers have ready access to the exterior side door with a clear opening of 51 inches. However, since the design does not meet the literal interpretation of ''each end (half) of the car,'' Caltrain is requesting a waiver of this requirement for this restroom car.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 18, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter

provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

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

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2017–23845 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0029]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on October 9, 2017, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 231, *Railroad Safety Appliance Standards.* FRA assigned the petition Docket Number FRA–2008–0029.

Specifically, NS is seeking a renewal of its waiver of compliance from 49 CFR 231.1(k) which are the requirements for uncoupling levers for box and other house cars built or placed in service before October 1, 1966. NS seeks this waiver for its Rail Train service, which is non-revenue service operated by NS to deliver sections of continuously welded rail to rail gangs replacing rail throughout the NS system. This equipment has the sole purpose of hauling welded rail sections spanning from car to car throughout the train. Sections of welded rail span several cars at once and the cars serve as a continuous support for the sections of rail while in transit and at the work site.

NS requests approval to operate all Rail Trains with uncoupling levers removed from both ends of the rail cars that are coupled to one another in this train service. These trains operate only on NS property in Maintenance of Way service and are not operated in revenue service, nor are they offered to other carriers in interchange. NS states that its process of uncoupling cars allows for safe uncoupling through utilization of Mechanical Department personnel under Blue Flag Protection. Additionally, NS states that there are safety benefits to be gained in granting relief from 49 CFR 231.1(k). Namely, the waiver will help prevent unintentional train uncoupling during these operations and the resulting potential employee injuries and damage to rail structure and road bed.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 18, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2017–23840 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0093]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that on September 1, 2017, Siemens Rail Automation (Siemens) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 221.13. FRA assigned the petition Docket Number FRA–2017–0093.

Specifically, Siemens is seeking a waiver of compliance from 49 CFR 221.13(d), ''Marking Device Display,'' which requires the centroid of the marking device be located a minimum of 48 inches above the top of the rail. Siemens is currently working on new end-of-train device (EOT) models A90385 and A90390 and is proposing the centroid of the marking light be located between 42 inches and 48 inches (final exact height to be determined) above the rail for both of these new EOT models. Siemens states that the reasoning behind this request is that light from the marker in the new EOT, which is the same marker used in the current Q3920 EOT model, will be perceived equally well by a human observer behind the train when the marker is located anywhere between 48 inches and 42 inches above the rail.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since

the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 18, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

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

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2017–23842 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0100]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by an undated letter received on June 9, 2017, Arizona Eastern Railway (AZER) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices.* FRA assigned the petition Docket Number FRA–2017–0100.

In its petition, AZER requests a waiver of compliance from the requirement of 49 CFR 232.215, *Transfer train brake tests,* at its Clifton Yard in Clifton, AZ. AZER currently conducts a transfer train air brake test after doubling outbound rail cars together at the Clifton Yard. Due to an increase in AZER's traffic in Clifton, train size has increased from 25 to 40 cars, resulting in the blocking of multiple public grade crossings for an extended period of time while conducting air brake tests. AZER proposes to perform a Class III air brake test per 49 CFR 232.211 on rail cars doubled in Clifton and operate six miles to the AZER yard at South Siding, where the train will be profiled and receive a Class I air brake test under 49 CFR 232.205. AZER states its proposal would relieve vehicle congestion on Coronado Blvd. in Clifton, which would allow for better emergency access.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 18, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

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

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2017–23844 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The agency did not receive comments on the **Federal Register** Notice with a 60-day comment period published on July 20, 2017.

DATES: Comments must be submitted on or before December 4, 2017.

ADDRESSES: You may submit comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Dr. Kathy J. Sifrit, Office of Behavioral Safety Research (NPD–320), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–472, Washington, DC 20590. Dr. Sifrit's phone number is 202–366–0868, and her email address is *kathy.sifrit@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Older Driver Rearview Video Systems.

Type of Request: New information collection requirement.

Abstract: A 2014 final rule by NHTSA requires rear visibility technology in all new vehicles under 10,000 pounds by May 2018, but the anticipated safety gains strongly depend on the extent to which drivers understand and use the technology as intended. The purpose of this study is to assess the driving performance of adults 60 and older using traditional mirrors as compared to using a rearview video system (RVS) during backing tasks; and to develop, implement, and assess the effectiveness of an RVS training protocol.

Study staff will invite drivers 60 and older from residential communities, senior centers, and/or service or faith-based organizations in southeast Pennsylvania to a public meeting to describe the opportunity including inclusion and exclusion criteria. The project plans to recruit a total of 200 participants for the study: 80 for Segment 1 and 120 for Segment 2. Segment 1 participants will complete a series of backing tasks in an instrumented vehicle as directed by a driving evaluator. The 120 participants assigned to Segment 2 will complete a 30-minute training session, which will be based on participant errors and comments during Segment 1, before completing the backing tasks in the same manner as the Segment 1 participants. Participants will receive compensation for study participation at the completion of the backing tasks.

Findings will provide information about whether people ages 60 and older differ in backing performance when using RVS versus traditional inside traditional mirrors, which elements of RVS use are particularly difficult for this cohort, and whether RVS training improves older drivers' ability to use RVS to avoid obstacles while backing. NHTSA will use the information to inform recommendations to the public regarding backing practices for the purpose of reducing crashes.

Affected Public: Participants will include 200 licensed drivers 60 and older.

Estimated Total Annual Burden: The total burden for data collection would be 360 hours.

Comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the Department's estimate of the burden of the proposed information collection;

(iii) ways to enhance the quality, utility and clarity of the information to be collected; and

(iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on October 30, 2017.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2017–23871 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2017–0087]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 2, 2018.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2017–0087] by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail: Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://docketsinfo.dot.gov/.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Flaherty, Office of Emergency Medical Services, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., NPD–400, Room W44–322, Washington, DC 20590. (202) 366–2705. *laurie.flaherty@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60 day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has

promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses. In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Title: Medical Directors Workforce Assessment.

OMB Control Number: N/A.

Form Number: This collection of information uses no standard forms, but will utilize a Web-based, data reporting/collection tool.

Type of Review: New information collection.

Abstract: With over 50,000 separate Emergency Medical Services (EMS) agencies and fire departments providing care to millions of patients each year, a clear description of the training and backgrounds of those who provide medical direction of EMS services in the U.S. is surprisingly not available. An estimated 8,500 medical directors serve 20,000 EMS agencies and 30,000 fire departments across the country.

Public Safety Answering Points that answer 911 calls and provide emergency medical dispatch, aeromedical services, mass gathering events such as marathons and concerts, and police departments and their special operations teams also require medical directors if their personnel provide emergency care or instruction. Despite a growing number of trained and now boarded certified EMS physicians, prehospital medical direction faces several obstacles and unknowns. Currently data is difficult to identify, but many medical directors are thought to be from several specialties such as family practice, internal medicine, and surgery and have little or no EMS experience. In addition, individuals serving as EMS directors have varying degrees of involvement with their services. Medical directors' compensation, legal protections, involvement in research, and education are also largely unknown.

Knowing more about the population of EMS medical directors in the United States would create several benefits. Defining this groups' demographics, qualifications, number, types and sizes of agencies served, and their financial compensation and legal protections is critical to determining trends of employment, identifying professional and training needs, recognizing barriers for medical directors, and directing policy and advocacy efforts. Collecting this data is essential for improving EMS medical direction across the nation and the National Highway Safety Administration (NHTSA) and other federal departments would benefit from understanding its prehospital medical leadership from a national preparedness perspective.

The goal of the Medical Directors Workforce Assessment is to investigate and define key attributes of EMS and 911 medical directors across the United States in order to create a national picture of prehospital medical direction. The data will be used to establish an Emergency Medical Services Medical Director Workforce Assessment (EMSMDWA), which can guide future policy and investment in activities to support the improvement of preshospital medical direction.

Affected Public: Under this proposed effort, the respondents would voluntarily submit data described above utilizing a Web-based data collection tool. Reporting entities are EMS and 911 Medical Directors of state and local EMS and 911 systems. The total maximum number of respondents is estimated 350.

Estimated Number of Respondents: Under this proposed effort, several forums and organizations known for medical director involvement will be targeted by the Office of EMS, to respond to an online survey being developed by the National Association of EMS Physicians, under the terms of a cooperative agreement (DTNH22–16–H–00007). The total number of respondents is estimated at 350. This is a one-time survey and no annual or second survey is planned at this time.

Frequency: The reporting entities will be requested to submit data once, using the described Web-based tool.

Number of Responses: The total maximum number of responses is estimated at 350.

Estimated Total Burden: NHTSA estimates that the time required to submit the data described utilizing the Web-based tool will be one hour (no advance preparation, one hour of entry to Web site) per reporting entity, for a total of 350 hours for all entities. The respondents would not incur any reporting costs from the information collection beyond the time it takes to populate the Web-based data collection tool. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

The total estimated costs to respondents or record-keepers are based on the following:

- The total hour burden of the collection of information equaling 350 hours.
- Respondents will be EMS and 911 Medical Directors at of State, local, territorial, and tribal EMS and 911 systems. To estimate reasonable staff expenses to respond to this information collection, the Agencies reviewed the Bureau of Labor Statistics (BLS) Occupational Outlook Handbook and determined that the Physicians and Surgeons description closely aligns with the positions of personnel responsible for completing this request. BLS lists a median salary of $208,000 per year amounting to $100.00 per hour. There are no capital, start-up, or annual operation and maintenance costs involved in the collection of information.
- Total cost based on hour's burden equals $35,000.00.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on October 30, 2017.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2017–23867 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0053]

Highway Safety Programs; Conforming Products List of Evidential Breath Alcohol Measurement Devices

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice updates the Conforming Products List (CPL) published in the **Federal Register** on June 14, 2012 (77 FR 35747) for instruments that conform to the Model Specifications for Evidential Breath Alcohol Measurement Devices dated, September 17, 1993 (58 FR 48705). This notice also informs the public that all future updates to the CPL will be posted on NHTSA's Web site.

DATES: Applicable November 2, 2017.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Dr. Randolph Atkins, Behavioral Research Division, NPD–310, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone; (202) 366–5597.

For legal issues: Megan Brown, Office of Chief Counsel, NCC–300, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices (Model Specifications), and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice. Those instruments are identified on the CPL with an asterisk.

On September 17, 1993, NHTSA published a notice to amend the Model Specifications (58 FR 48705) and to update the CPL. That notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC, respectively. It also included a test for the presence of acetone and an expanded definition of alcohol to include other low molecular weight alcohols, *e.g.,* methyl or isopropyl. Since that time, the CPL has been annotated to indicate which instruments have been determined to meet the Model Specifications published in 1984, and which have been determined to meet the Model Specifications, as revised and published in 1993. Thereafter, NHTSA has periodically updated the CPL with those breath instruments found to conform to the Model Specifications. The most recent update to the CPL was published June 14, 2012 (77 FR 35747).

NHTSA published the 1974 Qualified Products List, the 1984 CPL and all succeeding updates to the CPL in the **Federal Register**. Future updates of the CPL will be posted on the NHTSA Web site (*https://www.nhtsa.dot.gov/drunk-driving/alcohol-measurement-devices*) rather than to the **Federal Register**. Online publication will make it easier for users to access the most recent CPL and will allow NHTSA to make more timely updates to the CPL. NHTSA will continue to publish any amendments to the Model Specifications in the **Federal Register**.

The CPL published today adds twelve (12) new instruments that have been evaluated and found to conform to the Model Specifications, as amended on September 17, 1993 for mobile and non-mobile use. One instrument is distributed by two different companies, so it has been listed twice. One manufacturer changed their legal name. One manufacturer added a new product option for USB and Ethernet connectivity. One manufacturer added a Bluetooth keyboard accessory to two (2) devices and a calibration accessory for seven (7) of its devices. These devices were found to conform with or without the accessories. Another seven (7) instruments are now being listed under a different distributer/manufacturer and those devices will be cross-referenced for legacy purposes. In alphabetical order by company, the new devices are:

(1) The ''AlcoMate TS600'' distributed by AK GlobalTech Corporation, Palisades Park, New Jersey. This device will be known as the Alcoscan ALP–1 outside of the U.S. The AlcoMate TS600 is a hand-held device with an electrochemical (EC) fuel cell sensor. This device is powered by internal batteries and is intended for mobile or stationary operations.

(2) The ''Intoxilyzer 500'' manufactured by CMI, Inc., Owensboro, Kentucky. This instrument is currently listed on the CPL for Alcohol Screening Devices and will be removed when that CPL is updated. Improvements to the device's sampling system allow it to conform as an EBT. It is a hand-held instrument intended for use in mobile or stationary operations. It uses a fuel cell sensor and is powered by an internal battery. The Intoxilyzer 500 is also distributed as the Lion Alcolmeter 500 by Lion Laboratories outside the U.S., so it has been listed twice on the CPL, once under each of its distributors/manufacturers.

(3) The ''Intoxilyzer 9000'' manufactured by CMI, Inc., Owensboro, Kentucky. This is a bench-top device that is intended for use in mobile or stationary operations. This device uses an infrared (IR) sensor to measure ethanol concentration. The Intoxilyzer 9000 can be powered by either 110 volts alternate current (AC) or 12 volts direct current (DC).

(4) The ''Alcotest 3820'' manufactured by Draeger, Inc., Irving, Texas. The Alcotest 3820 is a hand-held device that uses an electrochemical (EC) fuel cell sensor to measure ethanol concentration. This instrument is powered by internal batteries and is intended for use in stationary or mobile operations.

(5) The ''Alcotest 5510'' manufactured by Draeger, Inc., Irving, Texas. The Alcotest 5510 is a hand-held device that uses an electrochemical (EC) fuel cell senor to measure ethanol. This device is powered by internal batteries and is intended for use in mobile or stationary operations.

(6) The ''Alcotest 5820'' manufactured by Draeger, Inc., Irving, Texas. The Alcotest 5820 is a hand-held device that uses an electrochemical (EC) fuel cell senor to measure ethanol. This device is powered by internal batteries and is intended for use in mobile or stationary operations.

(7) The ''Alcotest 6820'' manufactured by Draeger, Inc., Irving, Texas. The Alcotest 6820 is a hand-held device that uses an electrochemical (EC) fuel cell senor to measure ethanol. This device is powered by internal batteries and is intended for use in mobile or stationary operations.

(8) The ''AlcoQuant 6020 Plus'' manufactured by EnviteC, Wismar, Germany and distributed by Honeywell GmbH, Fond du Lac, Wisconsin. The AlcoQuant 6020 Plus is a hand-held device with a fuel cell sensor. This device is powered by internal batteries and is intended for use in mobile and stationary operations.

(9) The Alco-Sensor FST manufactured by Intoximeters, Inc., Saint Louis, Missouri. The Alco-Sensor

FST is a hand-held Evidential Breath Tester that uses an electrochemical (EC) fuel cell sensor to measure ethanol concentration. This instrument is powered by internal batteries and is intended for use in stationary or mobile operations.

(10) The Intox DMT Dual Sensor manufactured by Intoximeters, Inc., Saint Louis, Missouri. The Intox DMT Dual Sensor is a bench-top Evidential Breath Tester that is intended for use in stationary or mobile operations. This device uses both an infrared (IR) sensor and an electrochemical (EC) fuel cell sensor. The Intox DMT Dual Sensor can be powered by either 110 volts AC or 12 volts DC.

(11) The ''Intox EC/IR II.t'' manufactured by Intoximeters, Inc, Saint Louis, Missouri. This is a bench-top device intended for use in mobile or stationary operations. This device uses both an electrochemical (EC) fuel cell sensor and an infrared (IR) sensor to measure ethanol concentrations. The Intox EC/IR II.t can be powered by either 110 volts AC or 12 volts DC.

(12) The ''FC10Plus'' manufactured by Lifeloc Technologies, Inc., Wheat Ridge, Colorado. This is a hand-held device that is intended for use in mobile or stationary operations. This device uses a fuel cell sensor and is powered by internal batteries.

This update indicates that two (2) devices (the Phoenix 6.0 and the FC20, manufactured by Lifeloc Technologies, Inc., Wheat Ridge, Colorado) come with Bluetooth keyboard support and five additional fields that users can use to enter additional information. With these features, these devices will be listed on the CPL as the ''Phoenix 6.0BT'' and the ''FC20BT''. This update indicates also that seven (7) devices manufactured by Lifeloc come with the EASYCAL calibration accessory. Those devices include the FC10, FC10Plus, FC20, FC20BT, EV30, Phoenix 6.0 and the Phoenix 6.0BT. The CPL specifies that each of these devices conforms to the model specifications ''w/or without the EASYCAL accessory.''

Intoximeters, Inc., Saint Louis, Missouri acquired the breath alcohol testing business of National Patent Analytical Systems, Inc. (NPAS). Since there have been no changes to the devices other than ownership and a device name change, all six devices previously listed under NPAS (BAC DataMaster (with or without the Delta-1 accessory), BAC Verifier DataMaster (w/or without the Delta-1 accessory), DataMaster cdm (w/or without the Delta-1 accessory), DataMaster DMT w/ Fuel Cell option, DataMaster DMT w/ Rev A Fuel Cell option, and DataMaster DMT) will now be listed under both Intoximeters and NPAS. The NPAS DataMaster DMT will now be known as the Intoximeters Intox DMT. Accordingly, this device will be listed under Intoximeters under both names.

The CPL has been updated to reflect that Draeger Safety Diagnostics, Inc. will begin operating under the name Draeger, Inc. effective July 1, 2017 in order to align all sales and service operations for Draeger in the United States.

In accordance with the foregoing, the CPL is updated, as set forth below.

Conforming Products List of Evidential Breath Measurement Devices

Manufacturer/Distributor and model	Mobile	Non-mobile
AK GlobalTech Corporation, Palisades Park, New Jersey:		
AlcoMate TS600 (aka: Alcoscan ALP–1 outside the U.S.)	X	X
Alcohol Countermeasure Systems Corp., Toronto, Ontario, Canada:		
Alert J3AD*	X	X
Alert J4X.ec	X	X
PBA3000C	X	X
SAF'IR Evolution	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer*	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, Kentucky:		
Intoxilyzer Model:		
200	X	X
200D	X	X
240 (aka: Lion Alcolmeter 400+ outside the U.S.)	X	X
300	X	X
400	X	X
400PA	X	X
500 (aka: Lion Alcolmeter 500 outside the U.S.)	X	X
600 (aka: Lion Alcolmeter 600 outside the U.S.)	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/3/8″ ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
8000	X	X
9000	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/Distributor and model	Mobile	Non-mobile
9000 (serial numbers 90–000500 and above)	X	X
PAC 1200*	X	X
S–D2	X	X
S–D5 (aka: Lion Alcolmeter SD–5 outside the U.S.)	X	X
Draeger, Inc. (aka: Draeger Safety Diagnostics, Inc. or National Draeger) Irving, Texas:		
Alcotest Model:		
3820	X	X
5510	X	X
5820	X	X
6510	X	X
6810	X	X
6820	X	X
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
7510	X	X
9510	X	X
Breathalyzer Model:		
900	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
EnviteC, Wismar, Germany, distributed by Honeywell GmbH, Fond du Lac, Wisconsin:		
AlcoQuant 6020	X	X
AlcoQuant 6020 Plus	X	X
Gall's Inc., Lexington, Kentucky:		
Alcohol Detection System-A.D.S. 500	X	X
Guth Laboratories, Inc., Harrisburg, Pennsylvania:		
Alcotector BAC–100	X	X
Alcotector C2H5OH	X	X
Guth 38	X	X
Intoximeters, Inc., St. Louis, Missouri:		
Auto Intoximeter*	X	X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Photo Electric Intoximeter*	.....	X
Intoximeter Model:		
3000	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor	.....	X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)	X	X
Alco-Sensor IV	X	X
Alco-Sensor IV XL	X	X
Alco-Sensor V	X	X
Alco-Sensor V XL	X	X
Alco-Sensor AZ	X	X
Alco-Sensor FST	X	X
Intox DMT Dual Sensor	X	X
Intox EC/IR	X	X
Intox EC/IR II	X	X
Intox EC/IR II (Enhanced with serial number 10,000 or higher)	.....	X
Intox EC/IR II.t	X	X
Portable Intox EC/IR	X	X
RBT–AZ	X	X
RBT–III	X	X
RBT III–A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
(Also Listed under National Patent Analytical Systems, Inc.) BAC DataMaster (with or without the Delta-1 accessory)	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/Distributor and model	Mobile	Non-mobile
BAC Verifier DataMaster (w/or without the Delta-1 accessory)	X	X
DataMaster cdm (w/or without the Delta-1 accessory)	X	X
DataMaster DMT w/Fuel Cell option	X	X
DataMaster DMT w/Rev A Fuel Cell option	X	X
DataMaster DMT (aka: Intox MT)	X	X
Intox DMT (aka: DataMaster DMT)	X	X
Komyo Kitagawa, Kogyo, K.K., Japan:		
Alcolyzer DPA-2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, Colorado:		
EV 30 (w/or without EASYCAL accessory)	X	X
FC 10 (w/or without EASYCAL accessory)	X	X
FC10Plus (w/or without EASYCAL accessory)	X	X
FC 20 (w/or without EASYCAL accessory)	X	X
FC20BT (w/or without EASYCAL accessory)	X	X
LifeGuard Pro	X	X
Phoenix	X	X
Phoenix 6.0 (w/or without EASYCAL accessory)	X	X
Phoenix 6.0BT (w/or without EASYCAL accessory)	X	X
Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom:		
Alcolmeter Model:		
300	X	X
400	X	X
400+ (aka: Intoxilyzer 240 in the U.S.)	X	X
500 (aka: Intoxilyzer 500 in the U.S.)	X	X
600 (aka: Intoxilyzer 600 in the U.S.)	X	X
EBA*	X	X
SD–2*	X	X
SD–5 (aka: S–D5 in the U.S.)	X	X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernardino, California:		
Alco-Analyzer Model:		
1000*		X
2000*		X
Nanopuls AB, Uppsala, Sweden:		
Evidenzer	X	X
National Patent Analytical Systems, Inc. (NPAS), Mansfield, Ohio:		
BAC DataMaster (with or without the Delta-1 accessory).		
BAC Verifier DataMaster (w/or without the Delta-1 accessory)	X	X
DataMaster cdm (w/or without the Delta-1 accessory)	X	X
DataMaster DMT (aka: Intox DMT)	X	X
DataMaster DMT w/Fuel Cell option SN: 555555	X	X
DataMaster DMT w/Rev A Fuel Cell option SN: 100630	X	X
Omicron Systems, Palo Alto, California:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
PAS International, Fredericksburg, Virginia:		
Alcovisor Jupiter	X	X
Alcovisor Mercury	X	X
Mark V Alcovisor	X	X
Plus 4 Engineering, Minturn, Colorado:		
5000 Plus 4*	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, New Jersey:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, Massachusetts:		
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, Michigan:		

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/Distributor and model	Mobile	Non-mobile
AlcoData	X	X
Seres Alco Master	X	X
Seres Alcopro	X	X
Stephenson Corp.:		
Breathalyzer 900*	X	X
Tokai-Denshi Inc., Tokyo, Japan:		
ALC–PRO II (US)	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, California:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, New York:		
BAC Verifier*	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (*i.e.,* instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC). Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on October 30, 2017.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2017–23869 Filed 11–1–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Guarantee Availability (NOGA) Inviting Qualified Issuer Applications and Guarantee Applications for the Community Development Financial Institutions (CDFI) Bond Guarantee Program

Announcement Type: Announcement of opportunity to submit Qualified Issuer Applications and Guarantee Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.011.

Key Dates: Qualified Issuer Applications and Guarantee Applications may be submitted to the CDFI Fund starting on the date of publication of this NOGA. In order to be considered for the issuance of a Guarantee in FY 2018, Qualified Issuer Applications must be submitted by 11:59 p.m. Eastern Standard Time (EST) on January 9, 2018 and Guarantee Applications must be submitted by 11:59 p.m. EST on January 23, 2018. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 11:59 p.m. EST on November 30, 2017. Under FY 2018 authority, which is contingent upon Congressional authorization, Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by September 30, 2018.

Executive Summary: This NOGA is published in connection with the CDFI Bond Guarantee Program, administered by the Community Development Financial Institutions Fund (CDFI Fund), the U.S. Department of the Treasury (Treasury). Through this NOGA, the CDFI Fund announces the availability of $500 million of Guarantee Authority in FY 2018, contingent upon Congressional authorization. This NOGA explains application submission and evaluation requirements and processes, and provides agency contacts and information on CDFI Bond Guarantee Program outreach. Parties interested in being approved for a Guarantee under the CDFI Bond Guarantee Program must submit Qualified Issuer Applications and Guarantee Applications for consideration in accordance with this NOGA.

Capitalized terms used in this NOGA and not defined elsewhere are defined in the CDFI Bond Guarantee Program regulations (12 CFR 1808.102) and the CDFI Program regulations (12 CFR 1805.104).

I. Guarantee Opportunity Description

A. *Authority.* The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701, *et seq.*) to provide authority to the Secretary of the Treasury (Secretary) to establish and administer the CDFI Bond Guarantee Program.

B. *Bond Issue size; Amount of Guarantee authority.* In FY 2018, the Secretary may guarantee Bond Issues having a minimum Guarantee of $100 million each, up to an aggregate total of $500 million, contingent upon Congressional authorization.

C. *Program summary.* The purpose of the CDFI Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued for Eligible Community or Economic Development Purposes, as authorized by section 1134 and 1703 of the Act. The Secretary, as the Guarantor of the Bonds, will provide a 100 percent Guarantee for the repayment of the Verifiable Losses of Principal, Interest, and Call Premium of Bonds issued by Qualified Issuers. Qualified Issuers, approved by the CDFI Fund, will issue Bonds that will be purchased by the Federal Financing Bank. The Qualified Issuer will use 100 percent of Bond Proceeds to provide Bond Loans to Eligible CDFIs, which will use Bond Loan proceeds for Eligible Community and Economic Development Purposes, including providing Secondary Loans to Secondary Borrowers.

D. *Review of Guarantee Applications, in general.*

1. Qualified Issuer Applications submitted with Guarantee Applications will have priority for review over Qualified Issuer Applications submitted without Guarantee Applications. With the exception of the aforementioned prioritized review, all Qualified Issuer Applications and Guarantee

Applications will be reviewed by the CDFI Fund on an ongoing basis, in the order in which they are received, or by such other criteria that the CDFI Fund may establish in its sole discretion.

2. Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to move the Guarantee Application to the next phase of review. Submitting an incomplete Guarantee Application earlier than other applicants does not ensure first approval.

3. Qualified Issuer Applications and Guarantee Applications that were received in FY 2017 and that were neither withdrawn nor declined in FY 2017 will be considered under FY 2018 authority.

4. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees issued per year or the number of Guarantee Applications accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

E. *Additional reference documents.* In addition to this NOGA, the CDFI Fund encourages interested parties to review the following documents, which have been posted on the CDFI Bond Guarantee Program page of the CDFI Fund's Web site at *http://www.cdfifund.gov/bond*.

1. CDFI Bond Guarantee Program Regulations. The regulations that govern the CDFI Bond Guarantee Program were published on February 5, 2013 (78 FR 8296; 12 CFR part 1808) (the Regulations), and provide the regulatory requirements and parameters for CDFI Bond Guarantee Program implementation and administration including general provisions, eligibility, eligible activities, applications for Guarantee and Qualified Issuer, evaluation and selection, terms and conditions of the Guarantee, Bonds, Bond Loans, and Secondary Loans.

2. Application materials. Details regarding Qualified Issuer Application and Guarantee Application content requirements are found in this NOGA and the respective application materials.

3. Program documentation. Interested parties should review the template Bond Documents and Bond Loan documents that will be used in connection with each Guarantee. The template documents are posted on the CDFI Fund's Web site for review. Such documents include, among others:

a. The Agreement to Guarantee, which describes the roles and responsibilities of the Qualified Issuer, will be signed by the Qualified Issuer and the Guarantor, and will include term sheets as exhibits that will be signed by each individual Eligible CDFI;

b. The Bond Trust Indenture, which describes responsibilities of the Master Servicer/Trustee in overseeing the Trust Estate and servicing of the Bonds, and will be entered into by the Qualified Issuer and the Master Servicer/Trustee;

c. The Bond Loan Agreement, which describes the terms and conditions of Bond Loans, and will be entered into by the Qualified Issuer and each Eligible CDFI that receives a Bond Loan;

d. The Bond Purchase Agreement, which describes the terms and conditions under which the Bond Purchaser will purchase the Bonds issued by the Qualified Issuer, and will be signed by the Bond Purchaser, the Qualified Issuer, the Guarantor and the CDFI Fund; and

e. The Future Advance Promissory Bond, which will be signed by the Qualified Issuer as its promise to repay the Bond Purchaser.

The template documents may be updated periodically, as needed, and will be tailored, as appropriate, to the terms and conditions of a particular Bond, Bond Loan, and Guarantee.

The Bond Documents and the Bond Loan documents reflect the terms and conditions of the CDFI Bond Guarantee Program and will not be substantially revised or negotiated prior to execution.

F. *Frequently Asked Questions.* The CDFI Fund will periodically post on its Web site responses to questions that are asked by parties interested in the CDFI Bond Guarantee Program.

G. *Designated Bonding Authority.* The CDFI Fund has determined that, for purposes of this NOGA, it will not solicit applications from entities seeking to serve as a Qualified Issuer in the role of the Designated Bonding Authority, pursuant to 12 CFR 1808.201, in FY 2018.

H. *Noncompetitive process.* The CDFI Bond Guarantee Program is a non-competitive program through which Qualified Issuer Applications and Guarantee Applications will undergo a merit-based evaluation (meaning, applications will not be scored against each other in a competitive manner in which higher ranked applicants are favored over lower ranked applicants).

I. *Relationship to other CDFI Fund programs.*

1. Award funds received under any other CDFI Fund Program cannot be used by any participant, including Qualified Issuers, Eligible CDFIs, and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool for a Bond Issue.

2. Bond Proceeds may be combined with New Markets Tax Credits (NMTC) derived equity (*i.e.,* leveraged loan) to make a Qualified Equity Investment (QEI) in a Community Development Entity or to refinance a Qualified Low-Income Community Investment (QLICI) at the beginning of the seven (7) year NMTC compliance period only under the following circumstances: If an Eligible CDFI proposes to use Bond Loan proceeds to finance a leveraged loan in a transaction that includes a NMTC investment, the Eligible CDFI must provide: (1) Additional collateral in the form of Other Pledged Loans or Cash Collateral; (2) a payment guarantee or similar Credit Enhancement; and/or (3) other assurances that are required by Treasury such as additional collateral or Credit Enhancements.

3. Credit Enhancements, and/or assurances must be from a non-Federal source, remain in force during the entire seven-year NMTC compliance period, and comply with the Secondary Loan Requirements. These requirements may be included in the term sheet (which is an exhibit to the Agreement to Guarantee that must be signed by the Eligible CDFI) and the final Bond Loan terms.

4. Bond Proceeds may not be used to refinance a leveraged loan during the seven-year NMTC compliance period. However, Bond Proceeds may be used to refinance a QLICI after the seven-year NMTC compliance period has ended, so long as all other programmatic requirements are met.

5. The terms Qualified Equity Investment, Community Development Entity, and QLICI are defined in the NMTC Program's authorizing statute, 26 U.S.C. 45D.

J. *Relationship and interplay with other Federal programs and Federal funding.* Eligible CDFIs may not use Bond Loans to refinance existing Federal debt or to service debt from other Federal credit programs.

1. The CDFI Bond Guarantee Program underwriting process will include a comprehensive review of the Eligible CDFI's concentration of sources of funds available for debt service, including the concentration of sources from other Federal programs and level of reliance on said sources, to determine the Eligible CDFI's ability to service the additional debt.

2. In the event that the Eligible CDFI proposes to use other Federal funds to service Bond Loan debt or as a Credit Enhancement, the CDFI Fund may require, in its sole discretion, that the Eligible CDFI provide written assurance

from such other Federal program, in a form that is acceptable to the CDFI Fund and that the CDFI Fund may rely upon, that said use is permissible.

K. *Contemporaneous application submission.* Qualified Issuer Applications may be submitted contemporaneously with Guarantee Applications; however, the CDFI Fund will review an entity's Qualified Issuer Application and make its Qualified Issuer determination prior to approving a Guarantee Application. As noted above in D (1), review priority will be given to any Qualified Issuer Application that is accompanied by a Guarantee Application.

L. *Other restrictions on use of funds.* Bond Proceeds may not be used to finance or refinance any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off-premises. Bond Proceeds may not be used to finance or refinance tax- exempt obligations or finance or refinance projects that are also financed by tax-exempt obligations if: (a) Such financing or refinancing results in the direct or indirect subordination of the Bond Loan or Bond Issue to the tax-exempt obligations or (b) such financing or refinancing results in a corresponding guarantee of the tax-exempt obligation. Qualified Issuers and Eligible CDFIs must ensure that any financing made in conjunction with tax-exempt obligations complies with CDFI Bond Guarantee Program Regulations.

II. General Application Information

The following requirements apply to all Qualified Issuer Applications and Guarantee Applications submitted under this NOGA, as well as any Qualified Issuer Applications and Guarantee Applications submitted under the FY 2017 NOGA that were neither withdrawn nor declined in FY 2017.

A. *CDFI Certification Requirements.*

1. In general. By statute and regulation, the Qualified Issuer applicant must be either a Certified CDFI (an entity that has been certified by the CDFI Fund as meeting the CDFI certification requirements set forth in 12 CFR 1805.201) or an entity designated by a Certified CDFI to issue Bonds on its behalf. An Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its CDFI certification throughout the term of the corresponding Bond.

2. CDFI Certification requirements. Pursuant to the regulations that govern CDFI certification (12 CFR 1805.201), an entity may be certified if it is a legal entity (meaning, that it has properly filed articles of incorporation or other organizing documents with the State or other appropriate body in the jurisdiction in which it was legally established, as of the date the CDFI Certification Application is submitted) and meets the following requirements:

a. Primary mission requirement (12 CFR 1805.201(b)(1)): To be a Certified CDFI, an entity must have a primary mission of promoting community development, which mission must be consistent with its Target Market. In general, the entity will be found to meet the primary mission requirement if its incorporating documents or board-approved narrative statement (*i.e.,* mission statement or resolution) clearly indicate that it has a mission of purposefully addressing the social and/or economic needs of Low-Income individuals, individuals who lack adequate access to capital and/or financial services, distressed communities, and other underserved markets. An Affiliate of a Controlling CDFI, seeking to be certified as a CDFI (and therefore, approved to be an Eligible CDFI to participate in the CDFI Bond Guarantee Program), must demonstrate that it meets the primary mission requirement on its own merit, pursuant to the regulations and the CDFI Certification Application and related guidance materials posted on the CDFI Fund's Web site.

b. Financing entity requirement (12 CFR 1805.201(b)(2)): To be a Certified CDFI, an entity must demonstrate that its predominant business activity is the provision of Financial Products and Financial Services, Development Services, and/or other similar financing.

i. On April 10, 2015, the CDFI Fund published a revision of 12 CFR 1805.201(b)(2), the section of the CDFI certification regulation that governs the ''financing entity'' requirement. The regulatory change creates a means for the CDFI Fund, in its discretion, to deem an Affiliate (meaning, in this case, an entity that is Controlled by a CDFI; see 12 CFR 1805.104(b)) to have met the financing entity requirement based on the financing activity or track record of the Controlling CDFI (Control is defined in 12 CFR 1805.104(q)), solely for the purpose of participating in the CDFI Bond Guarantee Program as an Eligible CDFI.

In order for the Affiliate to rely on the Controlling CDFI's financing track record, (A) the Controlling CDFI must be a Certified CDFI; (B) there must be an operating agreement that includes management and ownership provisions in effect between the two entities (prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund); and (C) the Affiliate must submit a complete CDFI Certification Application to the CDFI Fund no later than 11:59 p.m. EST on November 30, 2017 in order it to be considered for CDFI certification and participation in the FY 2018 application round of the CDFI Bond Guarantee Program.

This regulatory revision affects only the Affiliate's ability to meet the financing entity requirement for purposes of CDFI certification: Said Affiliate must meet the other certification criteria in accordance with the existing regulations governing CDFI certification.

ii. The revised regulation also states that, solely for the purpose of participating in the CDFI Bond Guarantee Program, the Affiliate's provision of Financial Products and Financial Services, Development Services, and/or other similar financing transactions need not be arms-length in nature if such transaction is by and between the Affiliate and Controlling CDFI, pursuant to an operating agreement that (a) includes management and ownership provisions, (b) is effective prior to the submission of a CDFI Certification Application, and (c) is in form and substance that is acceptable to the CDFI Fund.

iii. An Affiliate whose CDFI certification is based on the financing activity or track record of a Controlling CDFI is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the financing entity requirement based on its own activity or track record.

iv. If an Affiliate elects to satisfy the financing entity requirement based on the financing activity or track record of a Controlling CDFI, and if the CDFI Fund approves such Affiliate as an Eligible CDFI for the sole purpose of participation in the CDFI Bond Guarantee Program, said Affiliate's CDFI certification will terminate if: (A) It does not enter into Bond Loan documents with its Qualified Issuer within one (1) year of the date that it signs the term sheet (which is an exhibit to the Agreement to Guarantee); (B) it ceases to be an Affiliate of the Controlling CDFI; or (C) it ceases to adhere to CDFI certification requirements.

v. An Affiliate electing to satisfy the financing entity requirement based on the financing activity or track record of

a Controlling CDFI need not have completed any financing activities prior to the date the CDFI Certification Application is submitted or approved. However, the Affiliate and the Controlling CDFI must have entered into the operating agreement described in (b)(i)(B) above, prior to such date, in form and substance that is acceptable to the CDFI Fund.

c. Target Market requirement (12 CFR 1805.201(b)(3)):

i. To be a Certified CDFI, an entity must serve at least one eligible Target Market (either an Investment Area or a Targeted Population) by directing at least 60% of all of its Financial Product activities to one or more eligible Target Market.

ii. Solely for the purpose of participation as an Eligible CDFI in the FY 2018 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet the Target Market requirement by virtue of serving either:

(A) An Investment Area through ''borrowers or investees'' that serve the Investment Area or provide significant benefits to its residents (pursuant to 12 CFR 1805.201(b)(3)(ii)(F)). For purposes of this NOGA, the term ''borrower'' or ''investee'' includes a borrower of a loan originated by the Controlling CDFI that has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements), pursuant to an operating agreement with the Affiliate that includes ownership/investment and management provisions, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Investment Area requirement through one or more of such Controlling CDFIs' Investment Areas; or

(B) a Targeted Population ''indirectly or through borrowers or investees that directly serve or provide significant benefits to such members'' (pursuant to 12 CFR 1805.201(b)(3)(iii)(B)) if a loan originated by the Controlling CDFI has been transferred to the Affiliate as lender (which loan must meet Secondary Loan Requirements) and the Controlling CDFI's financing entity activities serve the Affiliate's Targeted Population pursuant to an operating agreement that includes ownership/investment and management provisions by and between the Affiliate and the Controlling CDFI, which agreement must be in effect prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund. Loans originated by the Controlling CDFI do not need to be transferred prior to application submission; however, such loans must be transferred before certification of the Affiliate is effective. If an Affiliate has more than one Controlling CDFI, it may meet this Targeted Population requirement through one or more of such Controlling CDFIs' Targeted Populations.

An Affiliate that meets the Target Market requirement through paragraphs (ii)(A) or (B) above, is not eligible to receive financial or technical assistance awards or tax credit allocations under any other CDFI Fund program until such time that the Affiliate meets the Target Market requirements based on its own activity or track record.

iii. If an Affiliate elects to satisfy the target market requirement based on paragraphs (c)(ii)(A) or (B) above, the Affiliate and the Controlling CDFI must have entered into the operating agreement as described above, prior to the date that the CDFI Certification Application is submitted, in form and substance that is acceptable to the CDFI Fund.

d. Development Services requirement (12 CFR 1805.201(b)(4)): To be a Certified CDFI, an entity must provide Development Services in conjunction with its Financial Products. Solely for the purpose of participation as an Eligible CDFI in the FY 2018 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet this requirement if: (i) Its Development Services are provided by the Controlling CDFI pursuant to an operating agreement that includes management and ownership provisions with the Controlling CDFI that is effective prior to the submission of a CDFI Certification Application and in form and substance that is acceptable to the CDFI Fund and (ii) the Controlling CDFI must have provided Development Services in conjunction with the transactions that the Affiliate is likely to purchase, prior to the date of submission of the CDFI Certification Application.

e. Accountability requirement (12 CFR 1805.201(b)(5)): To be a Certified CDFI, an entity must maintain accountability to residents of its Investment Area or Targeted Population through representation on its governing board and/or advisory board(s), or through focus groups, community meetings, and/or customer surveys. Solely for the purpose of participation as an Eligible CDFI in the FY 2018 application round of the CDFI Bond Guarantee Program, an Affiliate of a Controlling CDFI may be deemed to meet this requirement only if it has a governing board and/or advisory board that has the same composition as the Controlling CDFI and such governing board or advisory board has convened and/or conducted Affiliate business prior to the date of submission of the CDFI Certification Application. If an Affiliate has multiple Controlling CDFIs, the governing board and/or advisory board may have a mixture of representatives from each Controlling CDFI so long as there is at least one representative from each Controlling CDFI.

f. Non-government entity requirement (12 CFR 1805.201(b)(6)): To be a Certified CDFI, an entity can neither be a government entity nor be controlled by one or more governmental entities.

g. For the FY 2018 application round of the CDFI Bond Guarantee Program, only one Affiliate per Controlling CDFI may participate as an Eligible CDFI. However, there may be more than one Affiliate participating as an Eligible CDFI in any given Bond Issue.

3. Operating agreement: An operating agreement between an Affiliate and its Controlling CDFI, as described above, must provide, in addition to the elements set forth above, among other items: (i) Conclusory evidence that the Controlling CDFI Controls the Affiliate, through investment and/or ownership; (ii) explanation of all roles, responsibilities and activities to be performed by the Controlling CDFI including, but not limited to, governance, financial management, loan underwriting and origination, record-keeping, insurance, treasury services, human resources and staffing, legal counsel, dispositions, marketing, general administration, and financial reporting; (iii) compensation arrangements; (iv) the term and termination provisions; (v) indemnification provisions, if applicable; (vi) management and ownership provisions; and (vii) default and recourse provisions.

4. For more detailed information on CDFI certification requirements, please review the CDFI certification regulation (12 CFR 1805.201, as revised on April 10, 2015) and CDFI Certification Application materials/guidance posted on the CDFI Fund's Web site. Interested parties should note that there are specific regulations and requirements that apply to Depository Institution Holding Companies, Insured Depository Institutions, Insured Credit Unions, and State-Insured Credit Unions.

5. Uncertified entities, including an Affiliate of a Controlling CDFI, that wish to apply to be certified and designated as an Eligible CDFI in the FY 2018 application round of the CDFI Bond Guarantee Program must submit a CDFI Certification Application to the CDFI Fund by 11:59 p.m. EST on November 30, 2017. Any CDFI Certification Application received after such date and time, as well as incomplete applications that are not amended by the deadline, will not be considered for the FY 2018 application round of the CDFI Bond Guarantee Program.

6. In no event will the Secretary approve a Guarantee for a Bond from which a Bond Loan will be made to an entity that is not an Eligible CDFI. The Secretary must make FY 2018 Guarantee Application decisions, and the CDFI Fund must close the corresponding Bonds and Bond Loans, prior to the end of FY 2018 (September 30, 2018). Accordingly, it is essential that CDFI Certification Applications are submitted timely and in complete form, with all materials and information needed for the CDFI Fund to make a certification decision. Information on CDFI certification, the CDFI Certification Application, and application submission instructions may be found on the CDFI Fund's Web site at *www.cdfifund.gov*.

B. *Application Submission.*

1. Electronic submission. All Qualified Issuer Applications and Guarantee Applications must be submitted electronically through the CDFI Fund's internet-based myCDFIFund portal, which is assessed via the Awards Management Information System (AMIS). Applications sent by mail, fax, or other form will not be permitted, except in circumstances that the CDFI Fund, in its sole discretion, deems acceptable. Please note that Applications will not be accepted through *Grants.gov*. For more information on AMIS, please visit the AMIS Landing Page at *https://amis.cdfifund.gov*.

2. Applicant identifier numbers. Please note that, pursuant to Office of Management and Budget (OMB) guidance (68 FR 38402), each Qualified Issuer applicant and Guarantee applicant must provide, as part of its Application, its Dun and Bradstreet Data Universal Numbering System (DUNS) number, as well as DUNS numbers for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application and Guarantee Application. In addition, each Application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the IRS confirming the Qualified Issuer applicant's EIN, as well as EINs for its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. An Application that does not include such DUNS numbers, EINs, and documentation is incomplete and will be rejected by the CDFI Fund. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for the required identification numbers.

3. System for Award Management (SAM). Registering with SAM is required for each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in any Application. The CDFI Fund will not consider any Applications that do not meet the requirement that each entity must be properly registered before the date of Application submission. Any entity that needs to create a new account or update its current registration must register for a user account in SAM. The CDFI Fund does not manage the SAM registration process, so entities must contact SAM directly for issues related to registration. The CDFI Fund strongly encourages all applicants to ensure that their SAM registration (and the SAM registration for their Program Administrators, Servicers and each Certified CDFI that is included in the Qualified Issuer Application or Guarantee Application) is updated and that their accounts have not expired. For information regarding SAM registration, please visit *https://www.sam.gov*.

4. AMIS accounts. Each Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application or Guarantee Application must register User and Organization accounts in AMIS. Each such entity must be registered as an Organization and register at least one User Account in AMIS. As AMIS is the CDFI Fund's primary means of communication with applicants with regard to its programs, each such entity must make sure that it updates the contact information in its AMIS account before any Application is submitted. For more information on AMIS, please visit the AMIS Landing Page at *https://amis.cdfifund.gov*.

C. *Form of Application.*

1. As of the date of this NOGA, the Qualified Issuer Application, the Guarantee Application, and related application guidance may be found on the CDFI Bond Guarantee Program's page on the CDFI Fund's Web site at *http://www.cdfifund.gov/bond*.

2. Paperwork Reduction Act. Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the Qualified Issuer Application, the Guarantee Application, and the Secondary Loan Requirements have been assigned the following control number: 1559–0044.

3. Application deadlines. In order to be considered for the issuance of a Guarantee under FY 2018 program authority, Qualified Issuer Applications must be submitted by 11:59 p.m. EST on January 9, 2018, and Guarantee Applications must be submitted by 11:59 p.m. EST on January 23, 2018. Qualified Issuer Applications and Guarantee Applications received in FY 2017 that were neither withdrawn nor declined will be considered under FY 2018 authority. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 11:59 p.m. EST on November 30, 2017.

4. Format. Detailed Qualified Issuer Application and Guarantee Application content requirements are found in the Applications and application guidance. The CDFI Fund will read only information requested in the Application and reserves the right not to read attachments or supplemental materials that have not been specifically requested in this NOGA, the Qualified Issuer, or the Guarantee Application. Supplemental materials or attachments such as letters of public support or other statements that are meant to bias or influence the Application review process will not be read.

5. Application revisions. After submitting a Qualified Issuer Application or a Guarantee Application, the applicant will not be permitted to revise or modify the Application in any way unless authorized or requested by the CDFI Fund.

6. Material changes.

a. In the event that there are material changes after the submission of a Qualified Issuer Application prior to the designation as a Qualified Issuer, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The CDFI Fund will evaluate such material changes, along with the Qualified Issuer Application, to approve or deny the designation of the Qualified Issuer.

b. In the event that there are material changes after the submission of a Guarantee Application (including, but

not limited to, a revision of the Capital Distribution Plan or a change in the Eligible CDFIs that are included in the Application) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Agreement to Guarantee. This evaluation may result in a delay of the approval or denial of a Guarantee Application.

D. *Eligibility and completeness review.* The CDFI Fund will review each Qualified Issuer and Guarantee Application to determine whether it is complete and the applicant meets eligibility requirements described in the Regulations, this NOGA, and the Applications. An incomplete Qualified Issuer Application or Guarantee Application, or one that does not meet eligibility requirements, will be rejected. If the CDFI Fund determines that additional information is needed to assess the Qualified Issuer's and/or the Certified CDFIs' ability to participate in and comply with the requirements of the CDFI Bond Guarantee Program, the CDFI Fund may require that the Qualified Issuer furnish additional, clarifying, confirming or supplemental information. If the CDFI Fund requests such additional, clarifying, confirming or supplemental information, the Qualified Issuer must provide it within the timeframes requested by the CDFI Fund. Until such information is provided to the CDFI Fund, the Qualified Issuer Application and/or Guarantee Application will not be moved forward for the substantive review process. The Guarantor shall approve or deny a Guarantee Application no later than 90 days after the date the Guarantee Application has been advanced for substantive review.

E. *Regulated entities.* In the case of Qualified Issuer applicants, proposed Program Administrators, proposed Servicers, and Certified CDFIs that are included in the Qualified Issuer Application or Guarantee Application that are Insured Depository Institutions and Insured Credit Unions, the CDFI Fund will consider information provided by, and views of, the Appropriate Federal Banking Agencies. If any such entity is a CDFI bank holding company, the CDFI Fund will consider information provided by the Appropriate Federal Banking Agencies of the CDFI bank holding company and its CDFI bank(s). Throughout the Application review process, the CDFI Fund will consult with the Appropriate Federal Banking Agency about the applicant's financial safety and soundness. If the Appropriate Federal Banking Agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the applicant to be incapable of undertaking activities related to the CDFI Bond Guarantee Program. The CDFI Fund also reserves the right to require a regulated applicant to improve safety and soundness conditions prior to being approved as a Qualified Issuer or Eligible CDFI. In addition, the CDFI Fund will take into consideration Community Reinvestment Act assessments of Insured Depository Institutions and/or their Affiliates.

F. *Prior CDFI Fund recipients.* All applicants must be aware that success under any of the CDFI Fund's programs is not indicative of success under this NOGA. Prior CDFI Fund recipients should note the following:

1. Pending resolution of noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and (i) it has submitted reports to the CDFI Fund that demonstrate noncompliance with a previously executed agreement with the CDFI Fund, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is noncompliant with its previously executed agreement, the CDFI Fund will consider the Qualified Issuer Application or Guarantee Application pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.

2. Previous findings of noncompliance. If a Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application is a prior recipient or allocatee under any CDFI Fund program and the CDFI Fund has made a final determination that the entity is noncompliant with a previously executed agreement with the CDFI Fund, but has not notified the entity that it is ineligible to apply for future CDFI Fund program awards or allocations, the CDFI Fund will consider the Qualified Issuer Application or Guarantee Application. However, it is strongly advised that the entity take action to address such noncompliance finding, as repeat findings of noncompliance may result in the CDFI Fund determining the entity ineligible to participate in future CDFI Fund program rounds during the period of review of the Application, the applicant and Applications may be deemed ineligible for further review. The CDFI Bond Guarantee Program staff cannot resolve compliance matters; instead, please contact the CDFI Fund's Certification, Compliance Monitoring, and Evaluation Unit (CCME) if your organization has questions about its current compliance status or has been found not in compliance with a previously executed agreement with the CDFI Fund.

3. Ineligibility due to noncompliance. The CDFI Fund will not consider a Qualified Issuer Application or Guarantee Application if the applicant, its proposed Program Administrator, its proposed Servicer, or any of the Certified CDFIs included in the Qualified Issuer Application or Guarantee Application, is a prior recipient or allocatee under any CDFI Fund program and if, as of the date of Qualified Issuer Application or Guarantee Application submission, (i) the CDFI Fund has made a determination that such entity is noncompliant with a previously executed agreement and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for any future CDFI Fund program awards or allocations. Such entities will be ineligible to submit a Qualified Issuer or Guarantee Application, or be included in such submission, as the case may be, for such time period as specified by the CDFI Fund in writing.

4. Undisbursed award funds. The CDFI Fund will not consider a Qualified Issuer Application or Guarantee Application, if the applicant, its proposed Program Administrator, its proposed Servicer, its Affiliate, or any Certified CDFI that is included in the Qualified Issuer Application or Guarantee Application, is a recipient under any CDFI Fund program and has undisbursed award funds (as defined below) as of the Qualified Issuer Application or Guarantee Application submission date. The CDFI Fund will include the combined undisbursed prior awards, as of the date of the Qualified Issuer Application submission, of the applicant, the proposed Program Administrator, the proposed Servicer, and any Certified CDFIs included in the application.

For purposes of the calculation of undisbursed award funds for the Bank Enterprise Award (BEA) Program, only awards made to the Qualified Issuer applicant, its proposed Program

Administrator, its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application, three to five calendar years prior to the end of the calendar year of the Qualified Issuer Application submission date are included. For purposes of the calculation of undisbursed award funds for the CDFI Program, the Native American CDFI Assistance (NACA) Program, and the Capital Magnet Fund (CMF), only awards made to the Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application, three to five calendar years prior to the end of the calendar year of the Qualified Issuer Application submission date are included.

Undisbursed awards cannot exceed five percent of the total includable awards for the Applicant's BEA/CDFI/NACA/CMF awards as of the date of submission of the Qualified Issuer Application. The calculation of undisbursed award funds does not include: (i) Tax credit allocation authority made available through the New Markets Tax Credit Program; (ii) any award made available through the CDFI Bond Guarantee Program; (iii) any award funds for which the CDFI Fund received a full and complete disbursement request from the recipient by the date of submission of the Qualified Issuer Application; (iv) any award funds for an award that has been terminated in writing by the CDFI Fund or de-obligated by the CDFI Fund; or (v) any award funds for an award that does not have a fully executed assistance or award agreement. The CDFI Fund strongly encourages Qualified Issuer applicants, proposed Program Administrators, proposed Servicers, and any Certified CDFIs included in a Qualified Issuer Application that wish to request disbursements of undisbursed funds from prior awards to provide the CDFI Fund with a complete disbursement request at least 10 business days prior to the date of submission of a Qualified Issuer Application.

G. *Review of Bond and Bond Loan documents.* Each Qualified Issuer and proposed Eligible CDFI will be required to certify that its appropriate senior management, and its respective legal counsel, has read the Regulations (set forth at 12 CFR part 1808, as well as the CDFI certification regulations set forth at 12 CFR 1805.201, as amended, and the environmental quality regulations set forth at 12 CFR part 1815) and the template Bond Documents and Bond Loan documents posted on the CDFI Fund's Web site including, but not limited to, the following: Bond Trust Indenture, Supplemental Indenture, Bond Loan Agreement, Promissory Note, Bond Purchase Agreement, Designation Notice, Secretary's Guarantee, Collateral Assignment, Reimbursement Note, Opinion of Bond Counsel, Opinion of Counsel to the Borrower, Escrow Agreement, and Closing Checklist.

H. *Contact the CDFI Fund.* A Qualified Issuer applicant, its proposed Program Administrator, its proposed Servicer, or any Certified CDFIs included in the Qualified Issuer Application or Guarantee Application that are prior CDFI Fund recipients are advised to: (i) Comply with requirements specified in CDFI Fund assistance, allocation, and/or award agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). Any such parties that are unsure about the disbursement status of any prior award should contact the CDFI Fund's Senior Resource Manager via email at *CDFI.disburseinquiries@cdfi.treas.gov.* All outstanding reports and compliance questions should be directed to CCME staff by email at *ccme@cdfi.treas.gov* or by telephone at (202) 653–0423. The CDFI Fund will respond to applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOGA.

I. *Evaluating prior award performance.* In the case of a Qualified Issuer, a proposed Program Administrator, a proposed Servicer, or Certified CDFI that has received awards from other Federal programs, the CDFI Fund reserves the right to contact officials from the appropriate Federal agency or agencies to determine whether the entity is in compliance with current or prior award agreements, and to take such information into consideration before issuing a Guarantee. In the case of such an entity that has previously received funding through any CDFI Fund program, the CDFI Fund will review the entity's compliance history with the CDFI Fund, including any history of providing late reports, and consider such history in the context of organizational capacity and the ability to meet future reporting requirements.

The CDFI Fund may also bar from consideration any such entity that has, in any proceeding instituted against it in, by, or before any court, governmental, or administrative body or agency, received a final determination within the two years prior to the date of publication of this NOGA indicating that the entity has discriminated on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, including, but not limited, to discrimination under (i) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (ii) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1686), which prohibits discrimination on the basis of sex; (iii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (iv) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (v) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (vi) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (vii) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (viii) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (ix) any other nondiscrimination provisions in the specific statute(s) under which Federal assistance is being made; and (x) the requirements of any other nondiscrimination statutes which may apply to the CDFI Bond Guarantee Program.

J. *Changes to review procedures.* The CDFI Fund reserves the right to change its completeness, eligibility and evaluation criteria, and procedures if the CDFI Fund deems it appropriate. If such changes materially affect the CDFI Fund's decision to approve or deny a Qualified Issuer Application, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

K. *Decisions are final.* The CDFI Fund's Qualified Issuer Application decisions are final. The Guarantor's Guarantee Application decisions are final. There is no right to appeal the decisions. Any applicant that is not approved by the CDFI Fund or the Guarantor may submit a new Application and will be considered

based on the newly submitted Application. Such newly submitted Applications will be reviewed along with all other pending Applications in the order in which they are received, or by such other criteria that the CDFI Fund may establish, in its sole discretion.

III. Qualified Issuer Application

A. *General.* This NOGA invites interested parties to submit a Qualified Issuer Application to be approved as a Qualified Issuer under the CDFI Bond Guarantee Program.

1. Qualified Issuer. The Qualified Issuer is a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf, that meets the requirements of the Regulations and this NOGA, and that has been approved by the CDFI Fund pursuant to review and evaluation of its Qualified Issuer Application. The Qualified Issuer will, among other duties: (i) Organize the Eligible CDFIs that have designated it to serve as their Qualified Issuer; (ii) prepare and submit a complete and timely Qualified Issuer and Guarantee Application to the CDFI Fund; (iii) if the Qualified Issuer Application is approved by the CDFI Fund and the Guarantee Application is approved by the Guarantor, prepare the Bond Issue; (iv) manage all Bond Issue servicing, administration, and reporting functions; (v) make Bond Loans; (vi) oversee the financing or refinancing of Secondary Loans; (vii) ensure compliance throughout the duration of the Bond with all provisions of the Regulations, and Bond Documents and Bond Loan Documents entered into between the Guarantor, the Qualified Issuer, and the Eligible CDFI; and (viii) ensure that the Master Servicer/Trustee complies with the Bond Trust Indenture and all other applicable regulations. Further, the role of the Qualified Issuer also is to ensure that its proposed Eligible CDFI applicants possess adequate and well performing assets to support the debt service of the proposed Bond Loan.

2. Qualified Issuer Application. The Qualified Issuer Application is the document that an entity seeking to serve as a Qualified Issuer submits to the CDFI Fund to apply to be approved as a Qualified Issuer prior to consideration of a Guarantee Application.

3. Qualified Issuer Application evaluation, general. Each Qualified Issuer Application will be evaluated by the CDFI Fund and, if acceptable, the applicant will be approved as a Qualified Issuer, in the sole discretion of the CDFI Fund. The CDFI Fund's Qualified Issuer Application review and evaluation process is based on established procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Qualified Issuer applicants on a merit basis and in a fair and consistent manner. Each Qualified Issuer applicant will be reviewed on its ability to successfully carry out the responsibilities of a Qualified Issuer throughout the life of the Bond. The Applicant must currently meet the criteria established in the Regulations to be deemed a Qualified Issuer. Qualified Issuer Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria are unlikely to be approved. Qualified Issuer Application processing will be initiated in chronological order by date of receipt; however, Qualified Issuer Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Qualified Issuer Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. *Qualified Issuer Application: Eligibility.*

1. CDFI certification requirements. The Qualified Issuer applicant must be a Certified CDFI or an entity designated by a Certified CDFI to issue Bonds on its behalf.

2. Designation and attestation by Certified CDFIs. An entity seeking to be approved by the CDFI Fund as a Qualified Issuer must be designated as a Qualified Issuer by at least one Certified CDFI. A Qualified Issuer may not designate itself. The Qualified Issuer applicant will prepare and submit a complete and timely Qualified Issuer Application to the CDFI Fund in accordance with the requirements of the Regulations, this NOGA, and the Application. A Certified CDFI must attest in the Qualified Issuer Application that it has designated the Qualified Issuer to act on its behalf and that the information in the Qualified Issuer Application regarding it is true, accurate, and complete.

C. *Substantive review and approval process.*

1. Substantive review.

a. If the CDFI Fund determines that the Qualified Issuer Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations, this NOGA, the Qualified Issuer Application, and CDFI Bond Guarantee Program policies.

b. As part of the substantive evaluation process, the CDFI Fund reserves the right to contact the Qualified Issuer applicant (as well as its proposed Program Administrator, its proposed Servicer, and each designating Certified CDFI in the Qualified Issuer Application) by telephone, email, mail, or through on-site visits for the purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming, or supplemental information from said entities as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the Qualified Issuer Application will be rejected.

2. Qualified Issuer criteria. In total, there are more than 60 individual criteria or sub-criteria used to evaluate a Qualified Issuer applicant and all materials provided in the Qualified Issuer Application will be used to evaluate the applicant. Qualified Issuer determinations will be made based on Qualified Issuer applicants' experience and expertise, in accordance with the following criteria:

a. Organizational capability.

i. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to issue Bonds for Eligible Purposes, or is otherwise qualified to serve as Qualified Issuer, as well as manage the Bond Issue on the terms and conditions set forth in the Regulations, this NOGA, and the Bond Documents, satisfactory to the CDFI Fund.

ii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to originate, underwrite, service and monitor Bond Loans for Eligible Purposes, targeted to Low-Income Areas and Underserved Rural Areas.

iii. The Qualified Issuer applicant must demonstrate that it has the appropriate expertise, capacity, experience, and qualifications to manage the disbursement process set forth in the Regulations at 12 CFR 1808.302 and 1808.307.

b. Servicer. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Servicer. The Qualified Issuer Application must

provide information that demonstrates that the Qualified Issuer's Servicer has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, Bond Loan servicing functions).

c. Program Administrator. The Qualified Issuer applicant must demonstrate that it has (either directly or contractually through another designated entity) the appropriate expertise, capacity, experience, and qualifications, or is otherwise qualified to serve as Program Administrator. The Qualified Issuer Application must provide information that demonstrates that the Qualified Issuer's Program Administrator has the expertise, capacity, experience, and qualifications necessary to perform certain required administrative duties (including, but not limited to, compliance monitoring and reporting functions).

d. Strategic alignment. The Qualified Issuer applicant will be evaluated on its strategic alignment with the CDFI Bond Guarantee Program on factors that include, but are not limited to: (i) Its mission's strategic alignment with community and economic development objectives set forth in the Riegle Act at 12 U.S.C. 4701; (ii) its strategy for deploying the entirety of funds that may become available to the Qualified Issuer through the proposed Bond Issue; (iii) its experience providing up to 30-year capital to CDFIs or other borrowers in Low-Income Areas or Underserved Rural Areas as such terms are defined in the Regulations at 12 CFR 1808.102; (iv) its track record of activities relevant to its stated strategy; and (v) other factors relevant to the Qualified Issuer's strategic alignment with the program.

e. Experience. The Qualified Issuer applicant will be evaluated on factors that demonstrate that it has previous experience: (i) Performing the duties of a Qualified Issuer including issuing bonds, loan servicing, program administration, underwriting, financial reporting, and loan administration; (ii) lending in Low-Income Areas and Underserved Rural Areas; and (iii) indicating that the Qualified Issuer's current principals and team members have successfully performed the required duties, and that previous experience is applicable to the current principals and team members.

f. Management and staffing. The Qualified Issuer applicant must demonstrate that it has sufficiently strong management and staffing capacity to undertake the duties of Qualified Issuer. The applicant must also demonstrate that its proposed Program Administrator and its proposed Servicer have sufficiently strong management and staffing capacity to undertake their respective requirements under the CDFI Bond Guarantee Program. Strong management and staffing capacity is evidenced by factors that include, but are not limited to: (i) A sound track record of delivering on past performance; (ii) a documented succession plan; (iii) organizational stability including staff retention; and (iv) a clearly articulated, reasonable, and well- documented staffing plan.

g. Financial strength. The Qualified Issuer applicant must demonstrate the strength of its financial capacity and activities including, among other items, financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, or auditors. Such financially sound business practices will demonstrate: (i) The financial wherewithal to perform activities related to the Bond Issue such as administration and servicing; (ii) the ability to originate, underwrite, close, and disburse loans in a prudent manner; (iii) whether the applicant is depending on external funding sources and the reliability of long-term access to such funding; (iv) whether there are foreseeable counterparty issues or credit concerns that are likely to affect the applicant's financial stability; and (v) a budget that reflects reasonable assumptions about upfront costs as well as ongoing expenses and revenues.

h. Systems and information technology. The Qualified Issuer applicant must demonstrate that it (as well as its proposed Program Administrator and its proposed Servicer) has, among other things: (i) A strong information technology capacity and the ability to manage loan servicing, administration, management, and document retention; (ii) appropriate office infrastructure and related technology to carry out the CDFI Bond Guarantee Program activities; and (iii) sufficient backup and disaster recovery systems to maintain uninterrupted business operations.

i. Pricing structure. The Qualified Issuer applicant must provide its proposed pricing structure for performing the duties of Qualified Issuer, including the pricing for the roles of Program Administrator and Servicer. Although the pricing structure and fees shall be decided by negotiation between market participants without interference or approval by the CDFI Fund, the CDFI Fund will evaluate whether the Qualified Issuer applicant's proposed pricing structure is feasible to carry out the responsibilities of a Qualified Issuer over the life of the Bond and sound implementation of the program.

j. Other criteria. The Qualified Issuer applicant must meet such other criteria as may be required by the CDFI Fund, as set forth in the Qualified Issuer Application or required by the CDFI Fund in its sole discretion, for the purposes of evaluating the merits of a Qualified Issuer Application. The CDFI Fund may request an on-site review of Qualified Issuer applicant to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

k. Third-party data sources. The CDFI Fund, in its sole discretion, may consider information from third-party sources including, but not limited to, periodicals or publications, publicly available data sources, or subscriptions services for additional information about the Qualified Issuer applicant, the proposed Program Administrator, the proposed Servicer, and each Certified CDFI that is included in the Qualified Issuer Application. Any additional information received from such third-party sources will be reviewed and evaluated through a systematic and formalized process.

D. *Notification of Qualified Issuer determination.* Each Qualified Issuer applicant will be informed of the CDFI Fund's decision in writing, by email using the addresses maintained in the entity's AMIS account. The CDFI Fund will not notify the proposed Program Administrator, the proposed Servicer, or the Certified CDFIs included in the Qualified Issuer Application of its decision regarding the Qualified Issuer Application; such contacts are the responsibility of the Qualified Issuer applicant.

E. *Qualified Issuer Application rejection.* In addition to substantive reasons based on the merits of its review, the CDFI Fund reserves the right to reject a Qualified Issuer Application if information (including administrative errors) comes to the attention of the CDFI Fund that adversely affects an applicant's eligibility, adversely affects the CDFI Fund's evaluation of a Qualified Issuer Application, or indicates fraud or mismanagement on the part of a Qualified Issuer applicant or its proposed Program Administrator,

its proposed Servicer, and any Certified CDFI included in the Qualified Issuer Application. If the CDFI Fund determines that any portion of the Qualified Issuer Application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

IV. Guarantee Applications

A. *General.* This NOGA invites Qualified Issuers to submit a Guarantee Application to be approved for a Guarantee under the CDFI Bond Guarantee Program.

1. Guarantee Application.

a. The Guarantee Application is the application document that a Qualified Issuer (in collaboration with the Eligible CDFI(s) that seek to be included in the proposed Bond Issue) must submit to the CDFI Fund in order to apply for a Guarantee. The Qualified Issuer shall provide all required information in its Guarantee Application to establish that it meets all criteria set forth in the Regulations at 12 CFR 1808.501 and this NOGA and can carry out all CDFI Bond Guarantee Program requirements including, but not limited to, information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes.

b. The Guarantee Application comprises a Capital Distribution Plan and at least one Secondary Capital Distribution Plan, as well as all other requirements set forth in this NOGA or as may be required by the Guarantor and the CDFI Fund in their sole discretion, for the evaluation and selection of Guarantee applicants.

2. Guarantee Application evaluation, general. The Guarantee Application review and evaluation process will be based on established standard procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the Application review process, the CDFI Fund will evaluate Guarantee applicants on a merit basis and in a fair and consistent manner. Each Guarantee applicant will be reviewed on its ability to successfully implement and carry out the activities proposed in its Guarantee Application throughout the life of the Bond. Eligible CDFIs must currently meet the criteria established in the Regulations to participate in the CDFI Bond Guarantee Program. Guarantee Applications that are forward-looking or speculate as to the eventual acquisition of the required capabilities and criteria by the Eligible CDFI(s) are unlikely to be approved. Guarantee Application processing will be initiated in chronological order by date of receipt; however, Guarantee Applications that are incomplete or require the CDFI Fund to request additional or clarifying information may delay the ability of the CDFI Fund to deem the Guarantee Application complete and move it to the next phase of review. Submitting a substantially incomplete application earlier than other applicants does not ensure first approval.

B. *Guarantee Application: Eligibility.*

1. Eligibility; CDFI certification requirements. If approved for a Guarantee, each Eligible CDFI must be a Certified CDFI as of the Bond Issue Date and must maintain its respective CDFI certification throughout the term of the corresponding Bond. For more information on CDFI Certification and the certification of affiliated entities, including the deadlines for submission of certification applications, see part II of this NOGA.

2. Qualified Issuer as Eligible CDFI. A Qualified Issuer may not participate as an Eligible CDFI within its own Bond Issue, but may participate as an Eligible CDFI in a Bond Issue managed by another Qualified Issuer.

3. Attestation by proposed Eligible CDFIs. Each proposed Eligible CDFI must attest in the Guarantee Application that it has designated the Qualified Issuer to act on its behalf and that the information pertaining to the Eligible CDFI in the Guarantee Application is true, accurate and complete. Each proposed Eligible CDFI must also attest in the Guarantee Application that it will use Bond Loan proceeds for Eligible Purposes and that Secondary Loans will be financed or refinanced in accordance with the applicable Secondary Loan Requirements.

C. *Guarantee Application: Preparation.* When preparing the Guarantee Application, the Eligible CDFIs and Qualified Issuer must collaborate to determine the composition and characteristics of the Bond Issue, ensuring compliance with the Act, the Regulations, and this NOGA. The Qualified Issuer is responsible for the collection, preparation, verification, and submission of the Eligible CDFI information that is presented in the Guarantee Application. The Qualified Issuer will submit the Guarantee Application for the proposed Bond Issue, including any information provided by the proposed Eligible CDFIs. In addition, the Qualified Issuer will serve as the primary point of contact with the CDFI Fund during the Guarantee Application review and evaluation process.

D. *Review and approval process.*

1. Substantive review.

a. If the CDFI Fund determines that the Guarantee Application is complete and eligible, the CDFI Fund will undertake a substantive review in accordance with the criteria and procedures described in the Regulations at 12 CFR 1808.501, this NOGA, and the Guarantee Application. The substantive review of the Guarantee Application will include due diligence, underwriting, credit risk review, and Federal credit subsidy calculation, in order to determine the feasibility and risk of the proposed Bond Issue, as well as the strength and capacity of the Qualified Issuer and each proposed Eligible CDFI. Each proposed Eligible CDFI will be evaluated independently of the other proposed Eligible CDFIs within the proposed Bond Issue; however, the Bond Issue must then cumulatively meet all requirements for Guarantee approval. In general, applicants are advised that proposed Bond Issues that include a large number of proposed Eligible CDFIs are likely to substantially increase the review period.

b. As part of the substantive review process, the CDFI Fund may contact the Qualified Issuer (as well as the proposed Eligible CDFIs included in the Guarantee Application) by telephone, email, mail, or through an on-site visit for the sole purpose of obtaining additional, clarifying, confirming, or supplemental application information. The CDFI Fund reserves the right to collect such additional, clarifying, confirming or supplemental information as it deems appropriate. If contacted for additional, clarifying, confirming, or supplemental information, said entities must respond within the time parameters set by the CDFI Fund or the Guarantee Application will be rejected.

2. Guarantee Application criteria.

a. In general, a Guarantee Application will be evaluated based on the strength and feasibility of the proposed Bond Issue, as well as the creditworthiness and performance of the Qualified Issuer and the proposed Eligible CDFIs. Guarantee Applications must demonstrate that each proposed Eligible CDFI has the capacity for its respective Bond Loan to be a secured, general recourse obligation of the proposed Eligible CDFI and to deploy the Bond Loan proceeds within the required disbursement timeframe as described in the Regulations. Unless receiving significant third-party support, support from a Controlling CDFI, or Credit Enhancements, Eligible CDFIs should not request Bond Loans greater than

their current total asset size or which would otherwise significantly impair their net asset or net equity position. In general, an applicant requesting a Bond Loan more than 50 percent of its total asset size should be prepared to clearly demonstrate that it has a reasonable plan to scale its operations prudently and in a manner that does not impair its net asset or net equity position. Further, an entity with a limited operating history or a history of operating losses is unlikely to meet the strength and feasibility requirements of the CDFI Bond Guarantee Program, unless it receives significant third-party support, support from a Controlling CDFI, or Credit Enhancements.

b. The Capital Distribution Plan must demonstrate the Qualified Issuer's comprehensive plan for lending, disbursing, servicing and monitoring each Bond Loan in the Bond Issue. It includes, among other information, the following components:

i. Statement of Proposed Sources and Uses of Funds: Pursuant to the requirements set forth in the Regulations at 12 CFR 1808.102(bb) and 1808.301, the Qualified Issuer must provide: (A) A description of the overall plan for the Bond Issue; (B) a description of the proposed uses of Bond Proceeds and proposed sources of funds to repay principal and interest on the proposed Bond and Bond Loans; (C) a certification that 100 percent of the principal amount of the proposed Bond will be used to make Bond Loans for Eligible Purposes on the Bond Issue Date; and (D) description of the extent to which the proposed Bond Loans will serve Low-Income Areas or Underserved Rural Areas;

ii. Bond Issue Qualified Issuer cash flow model: The Qualified Issuer must provide a cash flow model displaying the orderly repayment of the Bond and the Bond Loans according to their respective terms. The cash flow model shall include disbursement and repayment of Bonds, Bond Loans, and Secondary Loans. The cash flow model shall match the aggregated cash flows from the Secondary Capital Distribution Plans of each of the underlying Eligible CDFIs in the Bond Issue pool. Such information must describe the expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

iii. Organizational capacity: If not submitted concurrently, the Qualified Issuer must attest that no material changes have occurred since the time that it submitted the Qualified Issuer Application.

iv. Credit Enhancement (if applicable): The Qualified Issuer must provide information about the adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. This includes, but is not limited to, the amount and quality of any Credit Enhancements, terms and specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement. For any third-party providing a Credit Enhancement, the Qualified Issuer must provide the following information on the third-party: Most recent three years of audited financial statements, a brief analysis of the such entity's creditworthiness, and an executed letter of intent from such entity that indicates the terms and conditions of the Credit Enhancement. Any Credit Enhancement must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank;

v. Proposed Term Sheets: For each Eligible CDFI that is part of the proposed Bond Issue, the Qualified Issuer must submit a proposed Term Sheet using the template provided on the CDFI Fund's Web site. The proposed Term Sheet must clearly state all relevant and critical terms of the proposed Bond Loan including, but not limited to: Any requested prepayment provisions, unique conditions precedent, proposed covenants and exact amounts/percentages for determining the Eligible CDFI's ability to meet program requirements, and terms and exact language describing any Credit Enhancements. Terms may be either altered and/or negotiated by the CDFI Fund in its sole discretion, based on the proposed structure in the application, to ensure that adequate protection is in place for the Guarantor;

vi. Secondary Capital Distribution Plan(s): Each proposed Eligible CDFI must provide a comprehensive plan for financing, disbursing, servicing and monitoring Secondary Loans, address how each proposed Secondary Loan will meet Eligible Purposes, and address such other requirements listed below that may be required by the Guarantor and the CDFI Fund. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the Controlling CDFI must describe how the Eligible CDFI and the Controlling CDFI, together, will meet the requirements listed below:

(A) Narrative and Statement of Proposed Sources and Uses of Funds: Each Eligible CDFI will: (1) Provide a description of proposed uses of funds, including the extent to which Bond Loans will serve Low-Income Areas or Underserved Rural Areas, and the extent to which Bond Loan proceeds will be used (i) to make the first monthly installment of a Bond Loan payment, (ii) pay Issuance Fees up to one percent of the Bond Loan, and (iii) finance Loan Loss Reserves related to Secondary Loans; (2) attest that 100 percent of Bond Loan proceeds designated for Secondary Loans will be used to finance or refinance Secondary Loans that meet Secondary Loan Requirements; (3) describe a plan for financing, disbursing, servicing, and monitoring Secondary Loans; (4) indicate the expected asset classes to which it will lend under the Secondary Loan Requirements; (5) indicate examples of previous lending and years of experience lending to a specific asset class, especially with regards to the number and dollar volume of loans made in the five years prior to application submission to the specific asset classes to which an Eligible CDFI is proposing to lend Bond Loan proceeds; (6) provide a table detailing specific uses and timing of disbursements, including terms and relending plans if applicable; and (7) a community impact analysis, including how the proposed Secondary Loans will address financing needs that the private market is not adequately serving and specific community benefit metrics;

(B) Eligible CDFI cash flow model: Each Eligible CDFI must provide a cash flow model of the proposed Bond Loan which: (1) Matches each Eligible CDFI's portion of the Qualified Issuer's cash flow model; and (2) tracks the flow of funds through the term of the Bond Issue and demonstrates disbursement and repayment of the Bond Loan, Secondary Loans, and any utilization of the Relending Fund, if applicable. Such information must describe: The expected distribution of asset classes to which each Eligible CDFI expects to disburse funds, the proposed disbursement schedule, quarterly or semi-annual amortization schedules, interest-only periods, maturity date of each advance of funds, and the assumed net interest margin on Secondary Loans above the assumed Bond Loan rate;

(C) Organizational capacity: Each Eligible CDFI must provide documentation indicating the ability of the Eligible CDFI to manage its Bond Loan including, but not limited to: (1)

Organizational ownership and a chart of affiliates; (2) organizational documents, including policies and procedures related to loan underwriting and asset management; (3) management or operating agreement, if applicable; (4) an analysis by management of its ability to manage the funding, monitoring, and collection of loans being contemplated with the proceeds of the Bond Loan; (5) information about its board of directors; (6) a governance narrative; (7) description of senior management and employee base; (8) independent reports, if available; (9) strategic plan or related progress reports; and (10) a discussion of the management and information systems used by the Eligible CDFI;

(D) Policies and procedures: Each Eligible CDFI must provide relevant policies and procedures including, but not limited to: A copy of the asset-liability matching policy, if applicable; and loan policies and procedures which address topics including, but not limited to: Origination, underwriting, credit approval, interest rates, closing, documentation, asset management, and portfolio monitoring, risk-rating definitions, charge-offs, and loan loss reserve methodology;

(E) Financial statements: Each Eligible CDFI must provide information about the Eligible CDFI's current and future financial position, including but not limited to: (1) Audited financial statements for the prior three (3) most recent Fiscal Years; (2) current year-to-date or interim financial statement for the immediately prior quarter end of the Fiscal Year; (3) a copy of the current year's approved budget or projected budget if the entity's Board has not yet approved such budget; and (4) a three (3) year pro forma projection of the statement of financial position or balance sheet, statement of activities or income statement, and statement of cash flows in the standardized template provided by the CDFI Fund;

(F) Loan portfolio information: Each Eligible CDFI must provide information including, but not limited to: (1) Loan portfolio quality report; (2) pipeline report; (3) portfolio listing; (4) a description of other loan assets under management; (5) loan products; (6) independent loan review report; (7) impact report case studies; and (8) a loan portfolio by risk rating and loan loss reserves; and

(G) Funding sources and financial activity information: Each Eligible CDFI must provide information including, but not limited to: (1) Current grant information; (2) funding projections; (3) credit enhancements; (4) historical investor renewal rates; (5) covenant compliance; (6) off-balance sheet contingencies; (7) earned revenues; and (8) debt capital statistics.

vii. Assurances and certifications that not less than 100 percent of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b); and

viii. Such other information that the Guarantor, the CDFI Fund and/or the Bond Purchaser may deem necessary and appropriate.

c. The CDFI Fund will use the information described in the Capital Distribution Plan and Secondary Capital Distribution Plan(s) to evaluate the feasibility of the proposed Bond Issue, with specific attention paid to each Eligible CDFI's financial strength and organizational capacity. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will pay specific attention to the Controlling CDFI's financial strength and organizational capacity as well as the operating agreement between the proposed Eligible CDFI and the Controlling CDFI. All materials provided in the Guarantee Application will be used to evaluate the proposed Bond Issue. In total, there are more than 100 individual criteria or sub-criteria used to evaluate each Eligible CDFI. Specific criteria used to evaluate each Eligible CDFI shall include, but not be limited to, the following criteria below. For each proposed Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the following specific criteria will also be used to evaluate both the proposed Eligible CDFI and the Controlling CDFI:

i. Historical financial ratios: Ratios which together have been shown to be predictive of possible future default will be used as an initial screening tool, including total asset size, net asset or Tier 1 Core Capital ratio, self-sufficiency ratio, non-performing asset ratio, liquidity ratio, reserve over nonperforming assets, and yield cost spread;

ii. Quantitative and qualitative attributes under the ''CAMEL'' framework: After initial screening, the CDFI Fund will utilize a more detailed analysis under the ''CAMEL'' framework, including but not limited to:

(A) Capital Adequacy: Attributes such as the debt-to-equity ratio, status, and significance of off-balance sheet liabilities or contingencies, magnitude, and consistency of cash flow performance, exposure to affiliates for financial and operating support, trends in changes to capitalization, and other relevant attributes;

(B) Asset Quality: Attributes such as the charge-off ratio, adequacy of loan loss reserves, sector concentration, borrower concentration, asset composition, security and collateralization of the loan portfolio, trends in changes to asset quality, and other relevant attributes;

(C) Management: Attributes such as documented best practices in governance, strategic planning and board involvement, robust policies and procedures, tenured and experienced management team, organizational stability, infrastructure and information technology systems, and other relevant attributes;

(D) Earnings and Performance: Attributes such as net operating margins, deployment of funds, self-sufficiency, trends in earnings, and other relevant attributes;

(E) Liquidity: Attributes such as unrestricted cash and cash equivalents, ability to access credit facilities, access to grant funding, covenant compliance, affiliate relationships, concentration of funding sources, trends in liquidity, and other relevant attributes;

iii. Projected performance and other relevant criteria: The CDFI Fund will stress test each Eligible CDFI's projected financial performance under scenarios that are specific to the unique circumstance and attributes of the organization. Additionally, the CDFI Fund will consider other relevant criteria that have not been adequately captured in the preceding steps as part of the due diligence process. Such criteria may include, but not be limited to, the size and quality of any third-party Credit Enhancements or other forms of credit support.

(A) Overcollateralization: The commitment by an Eligible CDFI to over-collateralize a proposed Bond Loan with excess Secondary Loans is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government, by decreasing the probability of default, and/or increasing the recovery rate in the event of default. An Eligible CDFI committing to overcollateralization may not be required to deposit funds in the Relending Account, subject to the maintenance of certain unique requirements that are detailed in the template Agreement to Guarantee and Bond Loan Agreement.

(B) Credit Enhancements: The provision of third-party Credit Enhancements, including any Credit Enhancement from a Controlling CDFI

or any other affiliated entity, is a criterion that may affect the viability of a Guarantee Application by decreasing the estimated net present value of the long-term cost of the Guarantee to the Federal Government. Credit Enhancements are considered in the context of the structure and circumstances of each Guarantee Application.

(C) On-Site Review: The CDFI Fund may request an on-site review of an Eligible CDFI to confirm materials provided in the written application, as well as to gather additional due diligence information. The on-site reviews are a critical component of the application review process and will generally be conducted for all applicants not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency. The CDFI Fund reserves the right to conduct a site visit of regulated entities, in its sole discretion.

(D) Secondary Loan Asset Classes: Eligible CDFIs that propose to use funds for new products or lines of business must demonstrate that they have the organizational capacity to manage such activities in a prudent manner. Failure to demonstrate such organizational capacity may be factored into the consideration of Asset Quality or Management criteria as listed above in this section.

3. Credit subsidy cost. The credit subsidy cost is the net present value of the estimated longterm cost of the Guarantee to the Federal Government as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended (FCRA). Treasury has not received appropriated amounts from Congress to cover the credit subsidy costs associated with the Guarantees issued pursuant to this NOGA. In accordance with FCRA, Treasury must consult with, and obtain the approval of, OMB for Treasury's calculation of the credit subsidy cost of each Guarantee prior to entering into any Agreement to Guarantee.

E. *Guarantee approval; Execution of documents.*

1. The Guarantor, in the Guarantor's sole discretion, may approve a Guarantee, after consideration of the recommendation from the CDFI Bond Guarantee Program's Credit Review Board and/or based on the merits of the Guarantee Application. The Guarantor shall approve or deny a Guarantee Application no later than 90 days after the date the Guarantee Application was advanced for substantive review.

2. The Guarantor reserves the right to approve Guarantees, in whole or in part, in response to any, all, or none of the Guarantee Applications submitted in response to this NOGA. The Guarantor also reserves the right to approve any Guarantees in an amount that is less than requested in the corresponding Guarantee Application. Pursuant to the Regulations at 12 CFR 1808.504(c), the Guarantor may limit the number of Guarantees made per year to ensure that a sufficient examination of Guarantee Applications is conducted.

3. The CDFI Fund will notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application. Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by September 30, 2018.

4. Please note that the most recently dated templates of Bond Documents and Bond Loan documents that are posted on the CDFI Fund's Web site will not be substantially revised or negotiated prior to closing of the Bond and Bond Loan and issuance of the corresponding Guarantee. If a Qualified Issuer or a proposed Eligible CDFI does not understand the terms and conditions of the Bond Documents or Bond Loan documents (including those listed in Section II.G., above), it should ask questions or seek technical assistance from the CDFI Fund. However, if a Qualified Issuer or a proposed Eligible CDFI disagrees or is uncomfortable with any term/condition, or if legal counsel to either cannot provide a legal opinion in substantially the same form and content of the required legal opinion, it should not apply for a Guarantee.

5. The Guarantee shall not be effective until the Guarantor signs and delivers the Guarantee.

F. *Guarantee denial.* The Guarantor, in the Guarantor's sole discretion, may deny a Guarantee, after consideration of the recommendation from the Credit Review Board and/or based on the merits of the Guarantee Application. In addition, the Guarantor reserves the right to deny a Guarantee Application if information (including any administrative error) comes to the Guarantor's attention that adversely affects the Qualified Issuer's eligibility, adversely affects the evaluation or scoring of an Application, or indicates fraud or mismanagement on the part of the Qualified Issuer, Program Administrator, Servicer, and/or Eligible CDFIs. Further, if the Guarantor determines that any portion of the Guarantee Application is incorrect in any material respect, the Guarantor reserves the right, in the Guarantor's sole discretion, to deny the Application.

V. Guarantee Administration

A. *Pricing information.* Bond Loans will be priced based upon the underlying Bond issued by the Qualified Issuer and purchased by the Federal Financing Bank (FFB or Bond Purchaser). The FFB will set the liquidity premium at the time of the Bond Issue Date, based on the duration and maturity of the Bonds according to the FFB's lending policies (*www.treasury.gov/ffb*). Liquidity premiums will be charged in increments of 1/8th of a percent (*i.e.,* 12.5 basis points).

B. *Fees and other payments.* The following table includes some of the fees that may be applicable to Qualified Issuers and Eligible CDFIs after approval of a Guarantee of a Bond Issue, as well as Risk-Share Pool funding, prepayment penalties or discounts, and Credit Enhancements. The table is not exhaustive; additional fees payable to the CDFI Fund or other parties may apply.

Fee	Description
Agency Administrative Fee	Payable annually to the CDFI Fund by the Qualified Issuer. Equal to 10 basis points on the amount of the unpaid principal of the Bond Issue.
Bond Issuance Fees	Amounts paid by an Eligible CDFI for reasonable and appropriate expenses, administrative costs, and fees for services in connection with the issuance of the Bond (but not including the Agency Administrative Fee) and the making of the Bond Loan. Fees negotiated between the Qualified Issuer, the Master Servicer/Trustee, and the Eligible CDFI. Up of 1% of Bond Loan Proceeds may be used to finance Bond Issuance Fees.
Servicer Fee	The fees paid by the Eligible CDFI to the Qualified Issuer's Servicer. Servicer fees are negotiated between the Qualified Issuer and the Eligible CDFI.

Fee	Description
Program Administrator Fee	The fees paid by the Eligible CDFI to the Qualified Issuer's Program Administrator. Program Administrator fees are negotiated between the Qualified Issuer and the Eligible CDFI.
Master Servicer/Trustee Fee	The fees paid by the Qualified Issuer and the Eligible CDFI to the Master Servicer/Trustee to carry out the responsibilities of the Bond Trust Indenture. In general, the Master Servicer/Trustee fee for a Bond Issue with a single Eligible CDFI is the greater of 16 basis points per annum or $10,000 per month once the Bond Loans are fully disbursed. Fees for Bond Issues with more than one Eligible CDFI are negotiated between the Master Servicer/Trustee, Qualified Issuer, and Eligible CDFI. Any special servicing costs and resolution or liquidation fees due to a Bond Loan default are the responsibility of the Eligible CDFI. Please see the template legal documents at *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/closing-disbursement-step.aspx#step4* for more specific information. *https://www.cdfifund.gov/programs-training/Programs/cdfi-bond/Pages/closing-disbursement-step.aspx#step4* for more specific information.
Risk-Share Pool Funding	The funds paid by the Eligible CDFIs to cover Risk-Share Pool requirements; capitalized by pro rata payments equal to 3% of the amount disbursed on the Bond Loan from all Eligible CDFIs within the Bond Issue.
Prepayment Penalties or Discounts	Prepayment penalties or discounts may be determined by the FFB at the time of prepayment.
Credit Enhancements	Pledges made to enhance the quality of a Bond and/or Bond Loan. Credit Enhancements include, but are not limited to, the Principal Loss Collateral Provision and letters of credit. Credit Enhancements must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

C. *Terms for Bond Issuance and disbursement of Bond Proceeds.* In accordance with 12 CFR 1808.302(f), each year, beginning on the one year anniversary of the Bond Issue Date (and every year thereafter for the term of the Bond Issue), each Qualified Issuer must demonstrate that no less than 100 percent of the principal amount of the Guaranteed Bonds currently disbursed and outstanding has been used to make loans to Eligible CDFIs for Eligible Purposes. If a Qualified Issuer fails to demonstrate this requirement within the 90 days after the anniversary of the Bond Issue Date, the Qualified Issuer must repay on that portion of Bonds necessary to bring the Bonds that remain outstanding after such repayment is in compliance with the 100 percent requirement above.

D. *Secondary Loan Requirements.* In accordance with the Regulations, Eligible CDFIs must finance or refinance Secondary Loans for Eligible Purposes (not including loan loss reserves) that comply with Secondary Loan Requirements. The Secondary Loan Requirements are found on the CDFI Fund's Web site at *www.cdfifund.gov.* Applicants should become familiar with the published Secondary Loan Requirements. Secondary Loan Requirements are classified by asset class and are subject to a Secondary Loan commitment process managed by the Qualified Issuer.

Eligible CDFIs must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows: (i) No later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of the Bond Loan proceeds allocated for Secondary Loans, and (ii) no later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of the Bond Loan proceeds allocated for Secondary Loans. In the event that the Eligible CDFI does not comply with the foregoing requirements of clauses (i) or (ii) of this paragraph, the available Bond Loan proceeds at the end of the applicable period shall be reduced by an amount equal to the difference between the amount required by clauses (i) or (ii) for the applicable period minus the amount previously committed to the Secondary Loans in the applicable period. Secondary Loans shall carry loan maturities suitable to the loan purpose and be consistent with loan-to-value requirements set forth in the Secondary Loan Requirements. Secondary Loan maturities shall not exceed the corresponding Bond or Bond Loan maturity date. It is the expectation of the CDFI Fund that interest rates for the Secondary Loans will be reasonable based on the borrower and loan characteristics.

E. *Secondary Loan collateral requirements.*

1. The Regulations state that Secondary Loans must be secured by a first lien of the Eligible CDFI on pledged collateral, in accordance with the Regulations (at 12 CFR 1808.307(f)) and within certain parameters. Examples of acceptable forms of collateral may include, but are not limited to: real property (including land and structures), leasehold mortgages, machinery, equipment and movables, cash and cash equivalents, accounts receivable, letters of credit, inventory, fixtures, contracted revenue streams from non-Federal counterparties, provided the Secondary Borrower pledges all assets, rights and interests necessary to generate such revenue stream, and a Principal Loss Collateral Provision. Intangible assets, such as customer relationships, intellectual property rights, and to-be-constructed real estate improvements, are not acceptable forms of collateral.

2. The Regulations require that Bond Loans must be secured by a first lien on a collateral assignment of Secondary Loans, and further that the Secondary Loans must be secured by a first lien or parity lien on acceptable collateral.

3. Valuation of the collateral pledged by the Secondary Borrower must be based on the Eligible CDFI's credit policy guidelines and must conform to the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the Secondary Loan Requirements.

4. Independent third-party appraisals are required for the following collateral: real estate, leasehold interests, fixtures, machinery and equipment, movables stock valued in excess of $250,000, and contracted revenue stream from non-Federal creditworthy counterparties. Secondary Loan collateral shall be valued using the cost approach, net of depreciation and shall be required for the following: accounts receivable, machinery, equipment and movables, and fixtures.

F. *Qualified Issuer approval of Bond Loans to Eligible CDFIs.* The Qualified Issuer shall not approve any Bond Loans to an Eligible CDFI where the Qualified Issuer has actual knowledge, based upon reasonable inquiry, that within the past five (5) years the Eligible CDFI: (i) Has been delinquent on any payment obligation (except upon a demonstration by the Qualified Issuer satisfactory to the CDFI Fund that the delinquency does not affect the Eligible CDFI's

creditworthiness), or has defaulted and failed to cure any other obligation, on a loan or loan agreement previously made under the Act; (ii) has been found by the Qualified Issuer to be in default of any repayment obligation under any Federal program; (iii) is financially insolvent in either the legal or equitable sense; or (iv) is not able to demonstrate that it has the capacity to comply fully with the payment schedule established by the Qualified Issuer.

G. *Credit Enhancements; Principal Loss Collateral Provision.*

1. In order to achieve the statutory zero-credit subsidy constraint of the CDFI Bond Guarantee Program and to avoid a call on the Guarantee, Eligible CDFIs are encouraged to include Credit Enhancements and Principal Loss Collateral Provisions structured to protect the financial interests of the Federal Government. Any Credit Enhancement or Principal Loss Collateral Provision must be pledged, as part of the Trust Estate, to the Master Servicer/Trustee for the benefit of the Federal Financing Bank.

2. Credit Enhancements may include, but are not limited to, payment guarantees from third parties or Affiliate(s), non-Federal capital, lines or letters of credit, or other pledges of financial resources that enhance the Eligible CDFI's ability to make timely interest and principal payments under the Bond Loan.

3. As distinct from Credit Enhancements, Principal Loss Collateral Provisions may be provided in lieu of pledged collateral and/or in addition to pledged collateral. A Principal Loss Collateral Provision shall be in the form of cash or cash equivalent guarantees from non-Federal capital in amounts necessary to secure the Eligible CDFI's obligations under the Bond Loan after exercising other remedies for default. For example, a Principal Loss Collateral Provision may include a deficiency guarantee whereby another entity assumes liability after other default remedies have been exercised, and covers the deficiency incurred by the creditor. The Principal Loss Collateral Provision shall, at a minimum, provide for the provision of cash or cash equivalents in an amount that is not less than the difference between the value of the collateral and the amount of the accelerated Bond Loan outstanding.

4. In all cases, acceptable Credit Enhancements or Principal Loss Collateral Provisions shall be proffered by creditworthy providers and shall provide information about the adequacy of the facility in protecting the financial interests of the Federal Government, either directly or indirectly through supporting the financial strength of the Bond Issue. This includes, but is not limited to, the amount and quality of any Credit Enhancements, the financial strength of the provider of the Credit Enhancement, the terms, specific conditions such as renewal options, and any limiting conditions or revocability by the provider of the Credit Enhancement.

5. For Secondary Loans benefitting from a Principal Loss Collateral Provision (*e.g.,* a deficiency guarantee), the entity providing the Principal Loss Collateral Provision must be underwritten based on the same criteria as if the Secondary Loan were being made directly to that entity with the exception that the guarantee need not be collateralized.

6. If the Principal Loss Collateral Provision is provided by a financial institution that is regulated by an Appropriate Federal Banking Agency or an Appropriate State Agency, the guaranteeing institution must demonstrate performance of financially sound business practices relative to the industry norm for providers of collateral enhancements as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and auditors, as appropriate.

H. *Reporting requirements.*

1. Reports.

a. General. As required pursuant to the Regulations at 12 CFR 1808.619, and as set forth in the Bond Documents and the Bond Loan documents, the CDFI Fund will collect information from each Qualified Issuer which may include, but will not be limited to:

(i) Quarterly and annual financial reports and data (including an OMB single audit, as applicable) for the purpose of monitoring the financial health, ratios and covenants of Eligible CDFIs that include asset quality (nonperforming assets, loan loss reserves, and net charge-off ratios), liquidity (current ratio, working capital, and operating liquidity ratio), solvency (capital ratio, self-sufficiency, fixed charge, leverage, and debt service coverage ratios); (ii) annual reports as to the compliance of the Qualified Issuer and Eligible CDFIs with the Regulations and specific requirements of the Bond Documents and Bond Loan documents; (iii) monthly reports on uses of Bond Loan proceeds and Secondary Loan proceeds; (iv) Master Servicer/Trustee summary of program accounts and transactions for each Bond Issue; (v) Secondary Loan certifications describing Eligible CDFI lending, collateral valuation, and eligibility;

(vi) financial data on Secondary Loans to monitor underlying collateral, gauge overall risk exposure across asset classes, and assess loan performance, quality, and payment history; (vii) annual certifications of compliance with program requirements; (viii) material event disclosures including any reports of Eligible CDFI management and/or organizational changes; (ix) annual updates to the Capital Distribution Plan (as described below); (x) supplements and/or clarifications to correct reporting errors (as applicable); (xi) project level reports to understand overall program impact and the manner in which Bond Proceeds are deployed for Eligible Community or Economic Development Purposes; and (xii) such other information that the CDFI Fund and/or the Bond Purchaser may require, including but not limited to racial and ethnic data showing the extent to which members of minority groups are beneficiaries of the CDFI Bond Guarantee Program, to the extent permissible by law.

b. Additional reporting by Qualified Issuers. A Qualified Issuer receiving a Guarantee shall submit annual updates to the approved Capital Distribution Plan, including an updated Proposed Sources and Uses of Funds for each Eligible CDFI, noting any deviation from the original baseline with regards to both timing and allocation of funding among Secondary Loan asset classes. The Qualified Issuer shall also submit a narrative, no more than five (5) pages in length for each Eligible CDFI, describing the Eligible CDFI's capacity to manage its Bond Loan. The narrative shall address any Notification of Material Events and relevant information concerning the Eligible CDFI's management information systems, personnel, executive leadership or board members, as well as financial capacity. The narrative shall also describe how such changes affect the Eligible CDFI's ability to generate impacts in Low-Income or Underserved Rural Areas.

c. Change of Secondary Loan asset classes. Any Eligible CDFI seeking to expand the allowable Secondary Loan asset classes beyond what was approved by the CDFI Bond Guarantee Program's Credit Review Board or make other deviations that could potentially result in a modification, as that term is defined in OMB Circulars A–11 and A–129, must receive approval from the CDFI Fund before the Eligible CDFI can begin to enact the proposed changes. The CDFI Fund will consider whether the Eligible CDFI possesses or has acquired the appropriate systems, personnel, leadership, and financial capacity to implement the revised Capital Distribution Plan. The CDFI Fund will

also consider whether these changes assist the Eligible CDFI in generating impacts in Low-Income or Underserved Rural Areas. Such changes will be reviewed by the CDFI Bond Guarantee Program and presented to the Credit Review Board for approval, and appropriate consultation will be made with OMB to ensure compliance with OMB Circulars A–11 and A–129, prior to notifying the Eligible CDFI if such changes are acceptable under the terms of the Bond Loan Agreement. An Eligible CDFI may request such an update to its Capital Distribution Plan prior to Bond Issue Closing, and thereafter may only request such an update once per the Eligible CDFI's fiscal year.

d. Reporting by Affiliates and Controlling CDFIs. In the case of an Eligible CDFI relying, for CDFI certification purposes, on the financing entity activity of a Controlling CDFI, the CDFI Fund will require that the Affiliate and Controlling CDFI provide certain joint reports, including but not limited to those listed in subparagraph 1(a) above.

e. Detailed information on specific reporting requirements and the format, frequency, and methods by which this information will be transmitted to the CDFI Fund will be provided to Qualified Issuers, Program Administrators, Servicers, and Eligible CDFIs through the Bond Loan Agreement, correspondence, and webinar trainings, and/or scheduled outreach sessions.

f. Reporting requirements will be enforced through the Agreement to Guarantee and the Bond Loan Agreement, and will contain a valid OMB control number pursuant to the Paperwork Reduction Act, as applicable.

g. Each Qualified Issuer will be responsible for the timely and complete submission of the annual reporting documents, including such information that must be provided by other entities such as Eligible CDFIs, Secondary Borrowers or Credit Enhancement providers. If such other entities are required to provide annual report information or documentation, or other documentation that the CDFI Fund may require, the Qualified Issuer will be responsible for ensuring that the information is submitted timely and complete. Notwithstanding the foregoing, the CDFI Fund reserves the right to contact such entities and require that additional information and documentation be provided directly to the CDFI Fund.

h. Annual Assessments. Each Qualified Issuer and Eligible CDFI will be required to have an independent third-party conduct an Annual Assessment of its Bond Loan portfolio. The Annual Assessment is intended to support the CDFI Fund's annual monitoring of the Bond Loan portfolio and to collect financial health, internal control, investment impact measurement methodology information related to the Eligible CDFIs. This assessment is consistent with the program's requirements for Compliance Management and Monitoring (CMM) and Portfolio Management and Loan Monitoring (PMLM), and will be required pursuant to the Bond Documents and the Bond Loan documents. The assessment will also add to the Department of the Treasury's review and impact analysis on the use of Bond Loan proceeds in underserved communities and support the CDFI Fund in proactively managing portfolio risks and performance. The Annual Assessment criteria for Qualified Issuers and Eligible CDFIs is available on the CDFI Fund's Web site.

i. The CDFI Fund reserves the right, in its sole discretion, to modify its reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Qualified Issuers. Additional information about reporting requirements pursuant to this NOGA, the Bond Documents and the Bond Loan documents will be subject to the Paperwork Reduction Act, as applicable.

2. Accounting.

a. In general, the CDFI Fund will require each Qualified Issuer and Eligible CDFI to account for and track the use of Bond Proceeds and Bond Loan proceeds. This means that for every dollar of Bond Proceeds received from the Bond Purchaser, the Qualified Issuer is required to inform the CDFI Fund of its uses, including Bond Loan proceeds. This will require Qualified Issuers and Eligible CDFIs to establish separate administrative and accounting controls, subject to the applicable OMB Circulars.

b. The CDFI Fund will provide guidance to Qualified Issuers outlining the format and content of the information that is to be provided on an annual basis, outlining and describing how the Bond Proceeds and Bond Loan proceeds were used.

VI. Agency Contacts

A. *General information on questions and CDFI Fund support.* The CDFI Fund will respond to questions and provide support concerning this NOGA, the Qualified Issuer Application and the Guarantee Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting with the date of the publication of this NOGA. The final date to submit questions is January 16, 2018. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post on its Web site responses to questions of general applicability regarding the CDFI Bond Guarantee Program.

B. *The CDFI Fund's contact information is as follows:*

TABLE 2—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Email addresses
CDFI Bond Guarantee Program	(202) 653–0421, Option 5	*bgp@cdfi.treas.gov*
CDFI Certification	(202) 653–0423	*ccme@cdfi.treas.gov*
Compliance Monitoring and Evaluation	(202) 653–0423	*ccme@cdfi.treas.gov*
Information Technology Support	(202) 653–0422	*AMIS@cdfi.treas.gov*

C. *Communication with the CDFI Fund.* The CDFI Fund will use the AMIS internet interface to communicate with applicants, Qualified Issuers, Program Administrators, Servicers, Certified CDFIs and Eligible CDFIs, using the contact information maintained in their respective AMIS accounts. Therefore, each such entity must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in its respective AMIS account. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

VII. Information Sessions and Outreach

The CDFI Fund may conduct webcasts, webinars, or information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Bond Guarantee Program. The CDFI Fund intends to provide targeted outreach to both Qualified Issuer and Eligible CDFI participants to clarify the roles and requirements under the CDFI Bond Guarantee Program. For further information, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

Authority: Pub. L. 111–240; 12 U.S.C. 4701, *et seq.;* 12 CFR part 1808; 12 CFR part 1805; 12 CFR part 1815.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2017–23888 Filed 11–1–17; 8:45 am]

BILLING CODE 4810–70–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 September 30, 2017. 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
ABERNETHY	BRENT	LESLIE
ABRAMS	JO-ANNE	
ACHESON	SOPHIE	LOUISE
ADAMS	VICTORIA	SARAH
AESCHBACHER	HEIDI	
AGARWAL	SWATI	
AGUIAR	TONYA	JEANNE
AHN	JEE	EUN
AHN	MICHAEL	
AKERS	SANDRA	LEE
AKERT	KARIN	ROSEMARIE
AL ANSARI	KHALIFA	ABDULLA
AL FAROUKI	TANIA	ALTAJI
ALAWI-WESTPHAL	MARGARET	NASSER
ALBOINI	LESLEY	ANNE LEMESURIER
ALBRECHT	PABLO	
ALDRICH	CASSANDRA	FRANCES CASSON
AL-HAMMAD	MESHAL	ABDULRAZZAK
ALKANDARI	SARAH	H.M. TALEB
ALKHADRA	FAHED	FOUAD
AL-KHALIFA	ABDULLA	
ALLARD	MICHAEL	PAUL
ALLEN	JACQUELYNE	MARIE
ALLEN	JENNIFER	LEIGH
ALLEN	JOSEPH	CARL
ALLURED	BRIAN	GEORGE
AL-MAHMOOD	HANAN	MOHAMED
AL-MUTAIRI	HUSSAIN	A.
AL-YAHYA	HEND	OTHMAN KHALID
ALZABIN	DANAH	AHMAD
AMBROZIC-DUB	MARIA	SUZANNE
AMETAME ELROD	ERIKA	LOUISE
ANASTASOPOULOS	SUSAN	THELMA
ANDERSEN	COLTER	ETHAN
ANDERSEN	LIV	KINGE
ANDREW	DONIA	
ANDROULIDAKIS	EMMANUEL	KIRIAKOS
ARAS	STEPHEN	FRANCIS
ARBUCKLE	STEPHANIE	SHELLY
ARMSTRONG	HELEN	KAY
ARMSTRONG	JULIE	ANN
ASAMI	EIKO	
ASAMI	KIYOSHI	
ASSIRELLI	JUDITH	BEESON
ASTOR	MARCIA	FRANCES
ATIE-HARRICK	BERTRICE	
ATKINS	NICHOLAS	GEOFFREY
ATTENHOFER-PATT	CORNELIA	LOUISE
AUBERT	ROBIN	JOSQUIN CASIMIR
AUBRY	ANTOINE	JOSEPH
AUBRY	ARIEL	MARC
AUGER	FRANCOIS	SERGE

Last name	First name	Middle name/initials
AURINI	JASON	KENNETH
AUSTIN	DAVID	GRAHAM
AUSTRENG-VON WYL	MARY	LOU
BACH	CLIVE	DAVID
BACQUAERT	HADRIEN	LAWRENCE
BADR	GWENDOLYN	JANE
BAE	HYUN	TAK
BAEK	YOUNG	NAHN
BAGSHAW	ROBERTA	LEE
BAILER-JONES	CORYN	ANDREAS LEVERING
BAILLY	MATTHEW	DOUGLAS
BAIRD	LEE-ANNE	MARIE
BAKHSHIAN	LINDA	
BAKKUM	NANNEKE	MARIETTE
BALLINGER	JANE	ELLEN
BANCROFT	IAN	DAVID
BARBER	SUSAN	BARBARA
BARKER	ANNA	BROOKE
BARNE	THOMAS	MICHAEL
BARNES	DAVID	JESSE
BARRACLOUGH	LEE	TRACEY
BARTLETT	LEAH	DANIELLE
BARTLETT	SHERYL	ANNE
BARTON	JOHN	FRANK
BAR-YAACOV	KEREN	RACHEL
BASIN	DAVID	ALAN
BAXTER	BRIAN	GRANT
BEATTY	MADELINE	EDITH
BECKER	CARL	RAY
BECKERS	STEVE	WILLIAM
BECKLER	TRACEY	JEAN
BEGG	KERENE	REGINA CHRISTOPHA
BEITEY	DAVID	JAMES
BELIEN	CHRISTOPHE	LILIANE KOEN
BELL	EMILY	KATHERINE
BELL	MARY	OLIVIA
BELL	SARINA	MARIE
BELT	LYNDA	JOY
BENESTANTE	JAMES	
BENNETT	JOHN	
BENNETT	RICHARD	JAMES
BENT	MAXINE	SULAINE
BERETTA	ALLISON	MARY AGNES
BERGMAN	MARK	HALVARSON
BERKELHEIMER	SANDRA	BETH
BERNBAUM	LORNA	KAY
BERNSTEIN	DOROTHEE	BARBAR
BERT	DOMINIQUE	CLAUDE
BERTSCH	EVELYN	MAE
BESONHE	KATHLEEN	BERNADETTE MICHELE
BEUKERS-VOIGT	INGRID	MARIAN
BEYER	LYNDA	MARIE
BHARUCHA	PERIN	
BI	ZI	MING
BIRDWELL	JULIA	LEE
BLACKBOURN	CATHERINE	LEE
BLAKE	VALERIE	ANN
BLAKER	MARK	RICHARD
BLEICH	DANIEL	JUDAH
BLOOS	ROBB	O'BRIAN
BODENSTEIN	DEBORAH	ANN
BOELMAN	SHANNA	MARIE
BOIVIN	INGRID	ALEXANDRA
BOLLA	JASON	JOSEPH
BOLLIGER	JEANNE	MARIE
BOLTON	TIMOTHY	MICHAEL
BORNSTEIN	ELI	
BOSSHARD	MICHELLE	MARTOWICZ
BOUNIN	KATRINA	MARGARETE-HELENE
BOURGEOIS	SCOTT	DAVID
BOURIS	JULIE	ADRIENNE
BOURNAZEL	AURORE	HEMERA
BOURNE	NANETTE	KATHRYN
BOUTEILLER	VICTOR	DONALD

Last name	First name	Middle name/initials
BOYD	JOAQUIN	ALCIDES
BRADSHAW	MICHAEL	RODMOND
BRANDA	ERICA	MERYL
BRANDENBURG	DENNIS	
BRANDT	MICHAEL	PAUL
BRANTLEY	MICHAEL	SEAN
BRASNETT	ROZANNE	FAITH
BREDSCHNEIDER	AMY	SUSAN
BREIDENBACH	ANTONIA	MARTINHO DA ROCHA
BREITENSTEIN	KIRIANNE	REBECCA
BRESLOW	MAURICE	ALLEN
BRINGOL	RANDALL	JOHN
BROUGHTON	DAVID	WILLIAM
BROWN	NINA	NOVICOV
BROWN	STEPHANIE	JILL
BRUGALETTE	HEATHER	JOYCE
BRUYNINCKX	BOB	BEN FRANCIS
BRYAN	JOHN	CULLEN
BUCKLAND	TIMOTHY	ANDREW
BUEHNING	MARILYN	JOY
BUERGI	MARC	ANDRES
BUI	GUYET-MINH	THI
BULL	BARBARA	JEAN
BULLIMORE	ROSS	DANIEL
BURNS	ALEXANDER	DAVID
BURNSTAD	KARISSA	JANE
BUSCHKUEHLE	SONJA	GEORGIA
BUSH	ERIC	LENNOX
BYRNES	BRIAN	MICHAEL
CACHIN	ANGELA	
CACHO	SANDRA	UGARTE
CAEN	DEBORAH	VICOLA
CALLENS	CECILE	PAULINE
CAMPBELL	DONALD	HUGH
CAMPBELL	KEVIN	ROSS
CAMPEAU	ALAIN	PIERRE
CANION	PATRICK	STANLEY
CARLSON	MATTHEW	PETER JAMES
CARPENTER	ANITA	SUE
CARPENTER	JOHN	LINDSAY
CARPENTIER	CAROLINE	JOSEPHA
CARREAU	SARAH	JANE
CARSON	CHRISTIE	ELENA
CARSON-SMITH	SARA	
CARTER	LAURA	MARY
CARTER	LYNDA	JEAN
CARTER	SAMUEL	SCOTT
CARVER	BETTY	BINGHAM
CASELLA	CAROL	KATHLEEN
CASTELLINI	LAVINIA	LETIZIA
CHAMBERS	LISA	JEANNE
CHAN	DOMINIC	HON-CHUNG
CHAN	KOON	YUEN
CHAN	SOPHIA	SHIN SIEN
CHANG	JOSEPH	
CHANG	SHU-WEI	PHILIP
CHANG	TA-LIN	
CHANG	TIFFANY	TEFEN
CHAO	HSIN-YING	
CHARLEBOIS	PATRICIA	ANN
CHARLES	MADELEINE	MARIE
CHARLES	PEARNEL	PATROE
CHARLESWORTH	LYNNE	FRANCES
CHASE	MARK	HAMILTON
CHASE	SHERRILL	ANN
CHAUDHARY	WAJEEHA	SHAHID
CHAUDRON	CHARLES	DOUGLAS
CHEATHAM	JAMES	KIMBERLEY
CHEN	I-HSUNG	
CHEN	JAMES	LI-JEN
CHEN	JIMMY	
CHEN	KEANE	WU
CHEN	SU	MAE
CHENG	FAAT	TING GARY

Last name	First name	Middle name/initials
CHEONG	RENEE	CONSTANCE YUE KEW
CHEVRON-TIBERGHIEN	CATHERINE	MARIE
CHILDS	GLENNA	JOAN
CHIN CHOY	RAYMOND	DIEGO
CHIN CHOY	ROSALIND	STELLA
CHITOLIE	ELTON	MC KENNA WILLIAM
CHMIEL	ISAAC	
CHONG	HUI	XIAN
CHOW	JANE	MING-JEN
CHRISTENSEN	GARY	LEE
CHRISTIANSEN	KIMBERLY	ANNE
CHU SIMPSON	DENISE	ANN
CHUNG	ANDREA	WAI HEI
CHUNG	MERRICK	WAI LIK
CLAPP	ALICIA	RATHBURN
CLEAVE	ROGER	CAMERON
CLEVENGER	GENE	WARDLOW
COAD	EDWARD	JOHN
COBBAN	ANNE	MARIE
COCHRANE	GREGORY	JAMES
COCHRANE	LAURA	ELIZABETH
COCIVERA	TODD	MAGINNIS
COCKRELL	ALLYN	REZA
COCKX	KRISTA	DAWN
COENRAADS	ROBBERT	GEERT
COGELS	CHARLINE	MARIE
COGNARD	CECILE	YOLANDE CHRISTIANE
COLE	EUGENE	
COLLINS	ALLISON	ARDEN PAISLEY
COLLINS	KRISTEN	JEANNE
COLLINS	NICHOLAS	CLARK
COLTON	EMILY	CATHERINE
CONRAD	KATE	REBECCA
CONRADI	JAN	
COOK	ROSALIND	FAYE
COOKE	MONICA	KIRSTIN
COOKE	NICHOLAS	JAMES
COOPER	ELIZABETH	PATRICIA
COOPER	REBECCA	DAWN
COQUEREL	CATHERINE	ROSE
CORMIER	DIANE	LINDA
CORNELIUS	HARRY	HAMILTON
CORNELL	NATALIA	DJANYNE RIBEIRO
CORREA	CARLOS	MIGUEL DE MIRANDA
CORRIAS	PILAR	SOPHIA
COX	PHILIP	SIMON
COX	SUSAN	LESLEY
CRABBE	BEATRICE	FRANCOISE
CRACCO	INES	NATHALIE
CRAEN	YVES	JEAN MARIE
CRANE	BARBARA	ANN
CRAVEN	SUSAN	NEVA
CRAWFORD	LAUREN	SKYE
CROTHERS	ELIZABETH	CREIGHTON
CROTTA	ELEONORA	ERVINA
CROW	STEPHEN	JOHN
CUNNINGHAM	DYLAN	THOMAS
CURRIE	LINDA	ELLEN SHARON
CURRIE	ROBERTA	CALDWELL
CYBUL	ALEX	GABRIEL
DALEY	ROSE	EILEEN
DALIN	JEREMIE	
DALRYMPLE-HAY	JENNIFER	PHYLLIS ROBERTA
DALY JR	GEORGE	ROBERT
DANIEL	JAMES	ANTHONY
DANIELS	PHILLIP	RICHARD
DANN	CHERYL	ELIZABETH
DAOUD	NADYA	SOAAD
DARLINGTON	NICOLE	
D'AVAUCOURT	CHARLOTTE	ANNE M C DE VITRY
DAVID	ALON	BEN
DAVIS	ROGER	WILLARD
DAWALIBI	ADNAN	NOFAL
DE ARAUJO	JAIME	BAKER PESSOA

Last name	First name	Middle name/initials
DE ARAUJO	SOFIA	BAKER PESSOA
DE BIEVRE	JETTEKE	NANCY
DE CHEZELLES	ANNE-C	LE SELLIER
DE CRISTOFARO	SONIA	ELIZABETH
DE GROW	SETH	COLIN
DE HEUG	YVES	JACQUES
DE LA DURANTAYE	JUDE	
DE MAREDSOUS	BEATRICE	MARIE THERESE G. DESCLEE
DE VISSER	SIEMAN	FRANS
DEAN	SANDEE	DIANE
DEDA	DARLENE	GALE
DEL ROSSO	LEO	JAMES
DELANTY	BARBARA	MICHI
DELBOSC	ALEXA	REYNOLDS
DELISLE	BETH	HODGES
DELMARTER	CLAYTON	DOUGLAS
DELVAUX	ALEXIA	MARIANNE
DEMARET	MICHELE	
DEN TANDT	INGRID	MICHELE
DENIS	SANDRA	JEAN
DERAEDT	MARC	ROGER DANIEL
DERR	TONY	OUITALIO
DEVINE	ZACHARY	LANGDON
DICK	MARIE-CAROLINE	
DICKSON	JOHN	MATTHEW
DIEBSCHLAG	LINDA	FRAN
DILLON	KIRK	LAWRENCE
DITTMAR	FRANK	JOHN
DJEU	GLORIA	LI FONG
DOBIAS	JOSEPH	ALAN
DOCKRAY	DIXIE	ANN
DODD	DEBRA	RACHEL HOROWITZ
DODD	LISA	GILLIAN HOROWITZ
DOMMASCHK	NOAH	ROBERT
DONNELLY	MICHAEL	WADE
DONNER	GAVIN	JOEL
DOOLEY	ANNE	GERTRUDE
DOWNING	MARC	LEONARD
DOWNING	THOR	LORENZ
DRAGER	JANINA	
DRAKE	JACKSON	JOHN
DRURY	SUSAN	REMINGTON
DU SAUTOY	NANN	
DUBETS	PATRICIA	LEIINAALA
DUCHARME	FRANCINE	MONIQUE
DUFOUR	YVONNE	MADELEINE
DUMETT	CLEMENT	WALLACE
DUNBAR	KAREN	ANN
DUTOIT	ALLEN	HENRY
DUWORS	CAROLINE	ANNE
DWEK	JONATHON	DESIRE
EAGEN	JONATHON	THOMAS
EASTEP	NEIL	ROBERT
EBNER	BIANCA	THERESA
ECKERT	CHRISTINA	
EDELSON	LILLY	BAYLA FORREST
EDMUNDS	ANTON	EDSEL
EHRMANN	ELISABETH	
EINHORN	NOYA	
EISEL	FELIX	
EL TORGOMAN	LILA	
ELDARWISH	SANI	
ELIAS	DOROTHY	MARY
ELLIS	BARBARA	SOPHIA
ELLIS	CODY	ROBERT
ELLIS	MARY	ELIZABETH
ENGEL	NATASHA	
ENGLISH	REBEKAH	
ENGLISH	ROBERT	BRADLEY
EPSTEIN	CATHERINE	ROSE
ESHLEMAN	JENNIFER	MELISSA
ESPINOSA	ADRIANA	MELIDA
ESSENBURG	LARRY	DALE
ESTEVE	PATRICK	RAMON

Last name	First name	Middle name/initials
ESTILL	JAMES	ANDREW
ETHANS	RENEE	CHRISTINE
ETUE	MICHAEL	THOMAS
EULER	FINN	LASZLO
EVANS	KATHARINE	ANNE
EVANS	PATRICIA	MARIE
EYLES	JENNIFER	CHRISTINE
FAHLMAN	ZACHARY	RAYMOND ROBERT EYTEL
FALCONER	FELICITY	ANNE
FARIS	SUZANNE	RUTH
FELIX	STANLEY	
FELLER-ENDICOTT	RODNEY	BRIAN
FENDER	CALVIN	BRENT
FEN-HUA WEN	MARIE-EVE	
FERGUSON	DONNA	LILIAN
FERGUSON	JOHN	ALAN
FERGUSON	KATHERINE	JANET
FERRACANI	MATHILDE	CAMILLE
FILIAULT	DONAT	TELESPHORE
FISCHEL	ROBERT	JOHN
FISER	MARTIN	
FISHER	BRENT	WASHBURN
FISHER	MICHELLE	YVONNE
FLORES	FRANCISCO	
FLYE	JOHN	GREENING
FLYNN	BARRY	KEATS
FOELLER	JOHANNES	ROBIN
FOLCH-RAMIREZ	ROBERTO	JOSE
FONG	CHOONG	SIAN
FONTAINE	WILLIAM	HENRY
FOODY	JUDITH	ELAINE
FORD-JONES	ELIZABETH	LEE
FORSTER	M	MARLENE
FORSYTH	CAROL	ANN
FORTIN	JEAN	MATHIEU
FOX	MICHAEL	ALAN
FRANCO	JANITZIN	
FRANCO	MICHAEL	FERNANDO MOREIRA
FRANCO	YVETTE	MARIE
FRANKEL	DANIEL	HAIM
FRANKLIN	KAREN	JEANNE
FRASER	HAMISH	DAVID
FRASER	LISA	SHERYL
FRATER	STEPHEN	CRAIG
FREED	AARON	CHRISTOPHER
FREEDMAN	SHARON	JUDY
FREEMAN	BRIAN	ANDREW
FREEMAN	LENA	JANINE
FREI	EVA	CHRISTINA
FREIIN VON THIELMANN	ANDREA	KAMINKA VICTORIA
FREIMAN	BENJAMIN	CHARLES
FREITAG	LENORA	DELINA
FRIEDMAN	JOSEPH	ALAN
FRITH	VICTORIA	
FROESCHL	MARKUS	JOHANN
FROMOWITZ	MARLI	JOY
FROVARP	JACQUELINE	MARIE
FRYE	SARAH	ELIZABETH
FUCHS	CLAUDIA	INGRID
FUEGLISTALER	SILAS	URS
GAILITS	EDWIN	AUGUSTUS
GAILY	CAROLE	ANN
GAILY	MARGARET	EMILY
GAILY	TERRY	DEAN
GAINER	CHANTELLE	NICOLE
GANCAS	ROD	MICHAEL
GARDNER	BRYAN	FRED
GARRETT	RONALD	PAUL
GARVIN	MARIE	ALEXANDRA
GAUDET	EUGENE	EDWARD
GAUDETTE	LINDSAY	JAYE
GAUDION	EMILE	
GAULT	ROSEANNE	MARY
GEBHARDT	WINIFRED	ANNE

Last name	First name	Middle name/initials
GEHRIGER	PATRICK	
GEORGE	EMILY	CHRISTINE
GERBER	PAUL	ADAM
GERSON	SHARON	
GEVAERT	YVONNE	ADRONIE
GEX	KRISTINE	K MORGENTHALER
GHENT	NATALE	CLARA
GHENZER	GREGORY	DAVID
GHERARDI	CARL	CHRISTIAN
GILBOA	AMIT	
GILLIAM	HOLLY	DUBOIS
GLINSKI	IRENA	
GOLDIS	ORIYA	
GOLDSTEIN	DARLENE	RENEE
GOLKE	ALEX	THEODOR HEFNER
GOLZ	BARBARA	JOHANNA SEYFFARTH
GONZALES	EMILY	KRISTIANNE
GOODENBOUR	JAY	PATRICK
GOODFELLOW	JOEL	GREGORY
GOODFIELD	CINDI	JILL
GOODIN	ROBERT	EDWARD
GORDON	HEATHER	EILEEN
GORDON	MARK	ALLEN
GOUDIE	CYNTHIA	JEAN
GOULDIE	THOMAS	ARTHUR
GRANT	CHARLES	DUNCAN
GRANT	RANDI	LYNN
GRAVEL	SUZANNE	
GRAY	MICHELE	IRENE
GRAY	VALERIE	ANNE
GREER	SIMON	GARNET
GREGOIRE	CLAUDE	ROLAND
GREGORY	MARGARET	NAN
GRIBI	PAUL	MARTIN
GRIEVE	ELIZABETH	SYNDEN MCWILLIAMS
GROSSMANN	ROBERT	
GRULLON	ALEXANDRA	MARIA
GUARDACOSTA	GARY	ANGELO
GUINNESS	RORY	BENJAMIN
GUO	NAI	KANG
GUTTMANN	RONALD	DAVID
HAEDERLE	ANDREAS	GOTTTFRIED
HAFFTER	CAMILLE	CY CORSIN
HAGA	JENNIFER	ANN
HAINING	MARK	
HALL	ISAAC	IAIN
HAMILTON	JAMES	DAVID
HAMILTON	MARK	RICHARD
HANCOCK	JACOB	WILLIAM MC LENDON
HANNOTIN	GERARD	
HANSON	KARA	LEE
HARRIS	YVETTE	LENNEI
HARRISON	CHRISTINA	MARY
HARRYVAN	ROBERT	PAUL
HART	CRYSTAL	GEORGINA
HART	PATRICIA	ANN
HARVEY	CATHERINE	ANN
HARWIN	REBECCA	CLAIRE
HASHEM	RAWAN	JAWAD
HASSARD	JEAN	ALEXANDRA
HAVERS	JOAN	DEBORAH
HAY	CLAUDETTE	MARIE
HAYASE	NATSUHO	NANCY
HEAP	JAMES	L.
HECHT	SUSAN	
HEETHAAR	DORINE	CHRISTINE
HELANDER	MICHAEL	DAVID
HEMME	TIM	
HENSEL	SEBASTIAN	CLEMENS
HENSEN	JOSHUA	BENJAMIN
HERBERT	RACHEL	
HERMANN	PETER	FRANZ
HERNANDEZ	ERIK-GILLES	
HESCH	JON	MARTIN

Last name	First name	Middle name/initials
HESS	ADAM	
HESS	FLURIN	
HEYMANN	LAURA	MARIE VICTORIA
HHSUI	WEN-CHI	
HICKLEY	FIONA	CAROLINE SUSAN
HIGGINS	DAVID	LISTER
HIGGISON	DENNIS	J.
HILL	ARTHUR	BERNARD
HILL	EMMA	SHANNON PEACHEY
HILLMAN	ANNA	CAROLA
HINKLEY	MALLORY	KATHLEEN
HIS	ALICE	CHUNG YI
HITCHBORN	ALAN	DOUGLAS
HITCHBORN	DEBORA	DENISE BEHLE
HITCHCOCK	JOHN	RAYMOND
HITCHCOCK	PAMELA	JEWETT
HITCHINGS	LESA	MAE
HMOOD	HAMMAD	ADIL
HO	JAMES	
HO	JEREMY	RUI YANG
HOBDELL	JOHN	ROBERT
HODGES	KATHRYN	VITTORIA
HODGSON	VIVIAN	JANE
HOERLER	DORIS	BRECHBUEHL
HOESS	JOSEPH	JAMES
HOFFMANN	KATIE	NIKITA
HOLLOWELL	ANNA	ELIZABETH
HOOD	PAMELA	LEE
HORN	JAMES	CHRISTIAN
HOSER	ALBERT	
HOSS	ROI	
HOWARTH	TARA	MAXINE
HOYLES	JOSEPH	THOMAS
HSU	ERIC	C.
HSU	YU	CHIN
HUANG	CATHERINE	
HUANG	GORDON	KUO-LUN
HUEBSCH	GRETA	LOTTA
HUGHES	MARGUERITE	
HUNT	MARGUERITE-ANNE	MARIE
HUNT	NORMA	CHANDRA
HUTCHINS	JUDITH	JOY
HUTTON	ROBERT	JAMES BRUCE
IJNTEMA	PATRICK	
IMOUKHUEDE	DENIESE	EBAHIRI
INDOLESE	DEBORAH	MARIA
IOANNIDIS	MARIA	
IRON	MICHAEL	ARIE
IRWIN	SAMUEL	DYLAN
ISELIN	KENNETH	
ITO	HARUKA	
IVANICK	JODY	LEE
JACKMAN	TARON	LESLIE
JACOBS	EDWARD	DECKER
JAGGER	SUZANNE	JEANNE
JAGO	SRAAH	LOUISE
JAHNER	JOANNE	PAULETTE
JAMES	MELVIN	PHILIP
JAMES	ROBERT	HENRY
JAMES	SEAN	MITCHEL
JANKA	INGEBORG	MARGARETE
JANSICK	MICHAEL	EUGENE
JANSSEN	LAURINE	MARIETTE
JANSSENS	JEFFREY	ELIOTT
JENKS	JOHN	STUART
JEPSON-TURNER	CLEMENTINE	ROSE
JESKE	ROSEMARIE	
JOHNS	SHAD	BECKETT
JOHNSON	CANDACE	SUZANNE
JOHNSON	CORNELIA	BURKE
JOHNSON	EMILY	RUTH ELIZABETH
JURGGOVSKY	TAMARA	ANITA
KALIN	BEATRICE	ADELHEID
KALINA	GENEVIEVE	

Last name	First name	Middle name/initials
KALINA	JERKO	
KAM	TERESA	YING-LUM WONG
KANAFANI	MOHAMMAD	HILAL
KANAKIYA	NIRAV	PRADEEPKUMAR
KANE	LEONARD	ROBERT
KANG	UN	JOO
KANOO	NABELL	KHALID
KANSOU	GHASSAN	
KAO	CORY	ALAN
KARAPLIS	PANTELIS	DEMETRIUS
KARR	TERESA	CHRISTINE
KASK	JANET	DORIS
KAUFFMAN	JEREMY	MALCOLM
KAUR	SONIAJIT	
KAWAI	KEN	
KAWAI	REIKO	
KEE	BRITTANY	MARIE
KEELER	DAVID	ALLEN
KEELING	STEPHEN	LOUIS
KEITH-FERRIS	JEANNE	MARGARET
KELLEY	IAN	BRICE
KELLY	SUSAN	PILAR
KENNY-TROUGHTON	HELEN	CATHERINES
KENT	MCCLEARY	NOELLE
KENT	MICHELLE	RENEE
KENTON-SMITH	JESSE	CHRISTOPHER
KERAI	RASHILA	
KERELUK	GEORGE	JOSEPH
KEUKER-SAMPLE	JEFFREY	COLIN
KHADRA	OMAR	YUSEF ABU
KHAMA	KAEDI	SEKGOMA
KHOORY	ESSA	
KIKUCHI	HARUMI	
KIM	BRIAN	SEONG
KIM	HYUN	A.
KIM	KEBIN	HYUNG
KIM	RICHARD	
KIM	YONG	IL
KIMP	MARK	WAYNE
KING	MICHAEL	SETH
KINGSBURY	OLIVIA	JANE
KIRCHHOFER	CAROL	
KIRK	MARY	VEDA
KIRSH	RICHARD	STEPHEN
KITISAKKUL	CHRIS	
KIWANUKA	MUSISI	EDDIN
KLASSEN	TAMARA	LEIGH
KLEIN	JEAN	DANIEL
KLEINER	MARK	STEPHEN
KLEINSTEUBER	KENT	DEE
KLEYN	MICHIEL	FLORIAN EUGENE
KLINE	JULIE	ANNE
KLOOSTERHUIS	PATRICIA	THEODAORA
KOBAYASHI	HIDEKI	MICHAEL
KOBAYASHI	TAKESHI	JAMES
KODAKKADAN	IRFAN	AHAMED
KODALI	SITARAMAMMA	
KODAMA	HIROKO	
KOELLIKER-HAGMANN	LISA	CHRISTIANE
KOH	KARRIN	
KOHLER	VICTORIA	CAROLINE KATHLEEN
KOLB	CLAUDIA	CATHERINE
KONZAK	MELINA	ESTHER
KOOPMANS	CATHERINE	JANE
KOPP	LEO	
KORESAWA	LISA	
KORMAN	STEVEN	ERIC
KORUPP	STEPHAN	WILLFRIED
KROIS	ERIK	WILLEM
KROVINOVIC	ZDRAVKO	
KRUMSCHEID	CHRISTOPHER	ERIC
KUBLER	MARK	CHRISTIAN
KULKARNI	SHEETAL	MITIN
KULKARNI	SHRUTI	NITIN

Last name	First name	Middle name/initials
KUNZLER	ANNA	SABINE
KUO	YU-CHIA	DAVID
KURTZWEG	VANESSA	DAWN
KUSSMANN	JAMES	KENNETH
KUTZ	DANIEL	SCOTT
LABRESH	JASON	JAMES
LACHICA	CEAN	KAI AGENA
LACK	ARLENE	SHEILA
LACROIX	DENIS	J.
LAECHELE	PETER	FREDERICK
LAGIER-HOYT	CARMEN	ELENA
LAI	CHRISTINE	MELODY
LAI	JUSTINA	CINDY
LAKE	DEBORAH	
LAM	DENNIS	SAIHONG
LAM	LAWRENCE	SI-CHUNG
LAMBIN	WENDY	JENNIFER
LAMMIMAN	CURTIS	RAY
LANDRETH-SMITH	JOANNA	LESLEY
LANGER	JULIA	INGRID
LANSDELL	ANNA	LEIGH
LANSDELL	KYLE	CALEB
LARGUIER	GERARD	DANY
LARTIGUE	OLIVIER	CHARLES
LAUBER	DONNA	GERTRUDE
LAUGHTON	BRUCE	AUSTIN
LEASURE	MICHAEL	DAVID
LEBEDYK	BETH	SUZANNE
LECOMTE	CAROLE	MARINA
LEE	ALLEN	
LEE	AMY	KAM PING
LEE	ANDREW	JOHN
LEE	ANITA	
LEE	BRITTA	MAILYNNE
LEE	CHOONGIL	
LEE	DANIEL	JUNGHYUN
LEE	HANNA	NAM
LEE	IN	WOEN
LEE	JENIFFER	TJI YOUNG
LEE	KUN	HUNG
LEE	MONA	
LEE	TRACEY	
LEE	WILFRED	
LEHMANN	DANIEL	JURG
LEIREN	BJORN	DAG
LENCE	BARBARA	JEAN
LEONARD	REBECCA	LLYN
LEUNG	CINCI	WUN SIEN
LEVENSON	MICHAEL	LEE
LEVERE	MARY	CATHERINE
LI	CINDY	SHANTONG
LI	LINGNA	
LIANG	LAUREN	IBING
LIANG	LAUREN	IBING
LIECHTENSTEIN	ANGELA	GISELA
LIEDL	SARAH	RITA
LIM	DEREK	ZWINGLI
LIN	YU-JU	
LIND	GARY	MICHAEL
LINDNER	MARSHALL	TODD
LINDZON	GILLIAN	MICHELLE
LISTER	PATIENCE	MARTHA
LIU	JINNY	MING
LIU	JULIE	WING HANG
LIU	STANFORD	JAMES
LIU	TENG	HSIANG
LIZOTTE	CHARLES	JEAN
LO	JUSTIN	TING-WEI
LO	LISA	YING
LOFFLER	MAXIMILIAN	LEE
LOFSVOLD	LAUREL	ANN
LOMMERSE	PATRICIA	LEE
LONGHI	BRENDA	LEE
LOPEZ	SEBASTIAN	KARL-FRIEDRICH

Last name	First name	Middle name/initials
LOUIZOS	ALEXANDRA	EMMA
LOVATELLI	CRISTOFORO	GAETANI
LOWE-HODGES	TERESA	MARIE
LOWES	TIFFANY	ANTONIA
LOWREY	SOPHIE	CAROLINE
LUBIN	JONATHON	MICHAEL
LUETHI	DEBORAH	YAEL
LYNCH	TRACEY	LEE-ANN
LYSAGHT	TERENCE	NEIL
MA	MEI	TI
MAC MILLAN	JANET	LYN
MAC NAUGHTON	JIMMY	NORMAN
MACALALAD	VANESSA	KAYE SUYAT
MACKENZIE	JOHN	DAVID
MACKENZIE	SARAH	ELIZABETH
MACKERACHER	DONALD	MATHESON
MACKEY	PATRICK	FRANCIS
MACLEAN	VICTORIA	QUINNELL
MAEDER	YAEL	JOHN
MAHLAB	KENNETH	FRANK
MAHLAB	ROBIN	
MAHON	IAN	ROBERT
MAHTANI	JAI	ASHOK
MAIER	MONA	VICTORIA
MAITLAND	ANNABEL	REAVELY
MALINOFF	LINDA	
MALONEY	PAUL	WHITING
MANES	DEVIN	NYE
MANRIQUE	CAMILA	RODRIGUEZ
MANZONI	MARINO	PETER
MARBET	OLIVER	STEVEN
MARKS	SARA	DIAMOND
MAROUN	MARTIN	
MARPOZAN	FELICIA	
MARPOZAN	SORIN	NICOLAE
MARSHALL	CHRISTINE	
MARTI	ELIZABETH	
MARTIN	RICHIE	DEAN
MARTINEAU	SONIA	GUYLAINE
MARTINEZ	MARIANELA	
MARTINI	MARY	
MARUSIC	NADA	
MARZOLF	JOSEPH	RICHARD
MASON	CAROLYN	MASON
MATSUDA	HIROYUKI	
MATTEAU	ANDREE	
MATTHEWS	HOLLY	ELLENA MADELINE
MATTHEWS	LUKAS	ANSON
MATUTE	SONIA	GONZALEZ
MAUZ	VILJA	ROSALIA THERESIA
MAXEY	JOSHUA	JAMES
MAYBA	JOHN	NICHOLAS
MAYHEW	RUPERT	ALEXIS EDWARD
MAYNARD	ANDRE	
MBAMBA	NIHAL	ABDULLAH
MC ALLISTER	PAIGE	PEET
MC MECKAN	TINA	RENNA
MCANERNEY	MARSHALL	FRANCIS
MCATHEY	MARY	SHANNON
MCCALL	SAMUEL	JAMES
MCCOLEMAN-AU	MEGAN	LORRAINE
MCCOY	ERIC	FRANK
MCCRACKEN	WENDY	LEE
MCGEE	MARY	LEE
MCGREGOR	HEATHER	ELIZABETH
MCINTOSH	ANNA	MARIA
MCKEE	MARYA	
MCKENNEY	KEVIN	MICHAEL
MCKNIGHT	WENDY	JILL PATRICIA
MCMULLEN	LESLIE	HERSTONE
MCPHAIL	AMY	MARGARET
MCPHAIL	DIANE	MARIE
MCPHAIL	TIMOTHY	JAMES
MCSWEENEY	ELLEN	MARION

Last name	First name	Middle name/initials
MEARS	EMILY	SPEERS
MEEHAN	CALEIGH	
MEGIS	JEAN-PAUL	
MEHTA	ADITYA	SACHIN
MEI	FENG	CHAN
MEIER	ANAT	DEBORAH
MEISLER-YEHUDA	MICHAL	
MELIS	VINCENT	ALAIN
MESHIEA	DORETTA	JO
MEYER	MARTIN	LUCAS
MICHAUD	LOUISE	HELENE
MIDDLETON	JENNIFER	VOZOFF
MILANI	DEBORAH	JULIE
MILETO	ALAN	DENEB RICE
MILLAR	DAVID	BRUCE
MILLAR	HANNAH	JADE
MILLER	ALAN	
MILLER	CARLA	RAE
MILLER	ERIC	JON
MILLER	HENRY	LOUIS
MILLER	JULIA	KATHERINE
MILLMAN	CYNTHIA	ANN DUBBLE
MILNE	CLAIRE	BARBARA
MIRPURI	AVINASH	JACKIE
MISCHKE	CINDY	SUE
MISSIG	ROBERT	LOWELL
MITCHARD	STEPHEN	GARRET
MODIZ	RAYMOND	FRANK
MODY	LISA	JANE
MOGERMAN	OM	
MOHAMMED	IDRIS	MAJIDADI
MOLINARI	JOSEPH	SANTO
MONDIA	ALBERT	PAUL
MONTGOMERY	JEFF	
MOORE	CATHERINE	FAYE
MORAN	EDWARD	JOHN
MORAR	ALEXANDRU	
MORD	MATTHEW	FRANCIS
MORF	CAROLYN	CATHERINE
MORGAN	DIANE	KAY
MORGAN	MARILYN	REVELL
MORRIS	CRAIG	PAUL
MORRIS	JERAMIAH	JOY
MORTON	ELLI	PENNYROYAL
MOSER	MARKUS	LUDWIG
MOSS	JEFFREY	LEE
MOSTER	KATHLEEN	ELIZABETH
MOUNTFORD	THOMAS	SIMON
MOUSA	FAJAR	MOUSA S.
MROCZEK	YOKO	MICHELLE
MUECKE-DAVIS	CAROL	ELIZABETH
MUELLER	ASTRID	ELLEN
MUMMA	DIANA	LOUISE
MUNSON	JAMES	EDWARD BRADBURY
MURCK	BARBARA	WINIFRED
MURPHY	KATHLEEN	MAVOURNEEN
MURPHY	PATRICK	MICHAEL
MURRAY	CAROLANN	MARGO
MURRAY	DAVID	ALEXANDER BRUCE
MUZAYYIN	NADIM	BRIAN
MYRAM	KRISTIN	MARIE
NAKAMURA	BEVERLY	JANE
NAKAMURA	GLEN	TAKESHI
NELSON	RANDI	MARCEL
NELUMBU	HAITANGE	LINEEKELA
NEVILLE	HENRY	THOMAS GILBERT
NG	JUDY	CARMEN
NICHOLS	KENNETH	NOLAN
NICKELL	MELVIN	JAMES
NIELSEN	BECKY	JEAN
NIEMIETZ	ERIC	KLAUS
NIEWEG	ANNETTE	LEONORE
NISBET	LAURA	ELIZABETH MCDIARMID
NISHIKAWA	KUNIHIKO	

Last name	First name	Middle name/initials
NISKI	JOSEPH	ANTHONY
NORDMANN	CLAUDIA	CAROL WOLKERSON
NORMINGTON	JULIA	FRANCES HELEN
NSOULI	ATEF	ATEF
NYSSENS	WILLIAM	LAWRENCE
OATLEY	HANNAH	KATHLEEN JENKINS
OBERWELLAND	HUGO	LOUIS
OCONNOR	AMINTA	MARIA
OER	ELIZABETH	GWINN
OLCOTT	JOHN	KENNEDY
O'LEARY	JUDITH	MARY
OLIJNYK	ROMAN	WALTER
OLSON	LEONARD	LAVERN
O'NEILL	LORI	PATRICIA
ONSRUD	TIMOTHY	MARK
O'REGAN	KIERRA	
OREN	ANN	
ORLIKOWSKI	ISABEL	
O'SHAUGHNESSY	EDWARD	PAUL RUSSELL
OSORIO	JEFFREY	ALAN
OTT	SUZANNE	ELIZABETH
OVERMANN	PETER	FRIEDRICH
OWENSBY	DWAIN	ALAN
OZBURN	GLENN	SEIJI
PACILLA	LENNEA	JULIA
PAGE	TERRY	EDWIN
PAGE	TREVOR	THRIFT
PAGNAMENTA	VIVIAN	DE LOURDES RODRIGUEZ
PAINCHAUD	JEAN	MARC JOSEPH
PALAZZO	MARY	CATHERINE
PALMER	JOHN	RICHARD
PANE	KIMBERLY	CLARE
PAPADIMITRIOU	CONSTANTINE	D.
PAPILLON	ANDRE	LOUIS
PAPPI	EDITH	MARIA
PARADIS	KARINA	EVE MARIE
PARIZEK	MIROSLAV	
PARK	REBECCA	ELIZABETH
PATTERSON	DONALD	SCOTT
PATTISON-WILLIAMS	NAOMI	JANE HANDA
PAULING	GREGORY	RUSSELL
PECK	MARK	ALVAR
PEK	SHERI	XUEQI
PELLIZZARI	GIULIA	
PELLY	ALICE	MARY
PENDERGAST JR	THOMAS	MICHAEL
PENG	JEFFREY	PAOCHANG
PERKINS	FREDERICK	MICHAEL
PERKINS	JOAN	CAROLINE
PERRY	JEAN	OLIN
PETERICH	MARIO	LUCA GIUSTI
PETERS	BARRY	JAMES NELSON
PETERS	CLAIRE	ANN
PETRETTA	ROBERT	ALEXANDER
PFISTER	CHARLOTTE	GAIL
PHANG	REBECCA	YUN-TING
PHO	JULIA	HUU
PHRIPP	TERI	RUTH
PICHE	PIERRE	ANDRE
PICHLER	PEGGY	ANN
PICKERING	REBECCA	CLAIRE
PIDGEON JR	WALTER	THOMAS
PILKINGTON	REBECCA	CHRISTINE
PINCH	GERALD	DOUGLAS
PISANO	ROBERT	ARTHUR
PITTMAN	SHIRLEY	ANNE
PIZZIOLO	RODOLFO	ALEXANDER
PIZZOLATO	PERRY	MICHAEL
PLAICE	ALEJANDRA	LUCIA
PLENNERT	WALTER	LAWRENCE
POLKOWSKI	ANDREW	JAN
PONTESILLI	MARTINA	
PONTING	DAVID	
PONTING	IRIS	VERA

Last name	First name	Middle name/initials
POOL	PIERS	ANTHONY
POPE	MARY	ANN
PORTER	KENNETH	WILKINSON
POSESORSKI	ALISA	ANN
POURNARA	TARRYN	D.
PRATOMO	OCTAVIANA	MELANIE
PRATT	PATRICE	EILEEN
PRENNINGER	KELLEY	KATHLEEN
PRICHARD	CLARE	CORINNA
PRIESTLEY	DAVID	THOMAS DETTMER
PRINCE	LOUISA	RAQUEL
PRINZING	ISABEL	PATRICIA
PUNTENEY	JOHN	RICHARD
PYLE JR	ROBERT	KENNETH
QUINNELL	JAMES	WINSTON
QUITTER	JOHN	HAROLD ALEXANDER
QURAINI	NAJAH	YOSEF
RACH	DANIEL	JAMES
RAFFERTY	KETHRYN	THERESA
RAFFRE	LIAT	RACHEL
RAINE	BARBARA	HELEN
RAMBO	ALWEN	
RAMSAHAI	JOEL	
RANSOME	REBEKAH	LYNN
RAPPAPORT	SIMON	
RATHGEB	EDITH	OLGA RUEGG
RATTAN	KAMAL	KUMAR
RAUSH	LINDA	CHRISTINE
RE	PAMELA	ANN
READING	ELINOR	LOUISE
REED	NAOMI	SARAH
REES	PAMELA	JOAN
REGENASS	MARK	GUSTAV
REIBSTEIN	JANET	ALESE
REICHMAN	ESTHER	
REIFER	CHRISTINA	ELISABETH
REIMNITZ	ELISABETH	ANNA MARIA
REINHARDT	MARY	ANN
REISS	DAVID	
REISS	PALLAS	ATHENE
REMPEL	KIMBERLY	SUZANNE
RENAUD	NICOLE	JACQUELINE
RENDER	RACHAEL	DEBORAH
RENGGANA	ERLAMGGA	ACKU KULA
REUVEKAMP	ALEXANDER	EDGAR
REVKIN	CHARLES	ORAY
REVKIN	LINDA	JOYCE
REY	JOSEPH	LOUIS
REYNOLDS	FRITZ	FLOHR
RICH	JAMES	STEVEN
RILEY	KEVIN	CHRISTOPHER
ROBB	KATHERINE	ANN
ROBBINS	SANDRA	LYNN
ROBERTS	ALEXANDRA	FAY
ROBERTS	CHRISTINA	JOAN
ROBERTS	GORDON	CRAIG
ROBERTS	PHILIPPA	JANE
ROBERTS	SAM	
ROBERTSON	TAGEN	MICHELLE
ROBINSON	KELLY	BETH
ROBINSON	LORIE	KURTZ
RODGER	PAUL	JONATHON
ROLFSEN	AMY	LOU BRIGITT
ROLLET	PHILIPPE	HERVE
ROLLET	STEPHANIE	ANNICK
ROSE	MICHAEL	ALEXANDER
ROSEBUSH	SUSANNA	
ROSENTHAL	LESLIE	JUDITH
ROSSMAN	PETER	STEPHEN
ROTH	LYLE	ROBERT
ROUXEL	ANNECHRISTINE	
ROWEN	ANNE	THERESA
ROY	PEARLINE	
ROYLANCE	SUSAN	REED

Last name	First name	Middle name/initials
RUBES	JONATHON	MARK
RUDDOCK	WILLIAM	DONALD JEFFREY
RUMPF	DANIEL	HERMANN
RUSSO	REMO	NUNZIO
RUTH	AMY	
RUTH	KATHLEEN	ANNE SOLAN
RUTH	THOMAS	JEAN
RUTLEDGE	CYDNE	KAY
RYAN	JESSICA	LEE
RYAN	VIRGINIA	MARY
RYERSON	LORI	
RZASA	KONRAD	MACIEJ
SADIKIN	R	INDIANO DHARMAKARYA
SAID	HANAN	
SALINAS	SHARI	REGINA
SANCHEZ	ELISA	OLIVA
SANDBERG	EMILY	JOHANNA
SANDOVAL	REYNARD	GLENN
SANDS	CAREN	AMY
SARIN	MADHU	
SARKAR	SUMEDHA	
SARKER	MANISHA	
SARKISSIAN	CHRISTINE	
SARRADO	ALICIA	PHILLIPPA MARIE
SAU	BANDANA	
SAUNDERS	ROBERTA	ANN
SAUTTER	TIMOTHEE	PHILIPPE
SAVAGE	LORNA	ANNE
SAVAGE	MICHAEL	RICHARD
SCASSERRA	ANGELO	
SCHAAL	KATHARINA	MARGARETE
SCHABAS	PAUL	BARKER
SCHADE	MARKUS	CORNELUS
SCHAFFHAUSER	MARKUS	PAUL
SCHARF	PETER	WALTER
SCHILCHER	LINDA	S.
SCHJELDERUP	BEVERLY	JO
SCHLEPP	VAUGHAN	ROYDON
SCHMID	ALICE	ANDREA
SCHMITZ-LEUFFEN	SVEN	LOTHAR
SCHNAIDER	BENJAMIN	
SCHNEEBERGER	FRANK	HANS
SCHOLL	KARL	NIKOLAUS PAUL
SCHOLL	MARCUS	PAUL NIKOLAUS
SCHREIBER	JULIAN	DANIEL
SCOTT	CYNTHIA	ELAINE
SCOTT	LISA	ANN
SEBASTIAN	LOU	ANN
SEE	ANDRIS	AN GE
SEGUIN	YVAN	PAUL
SEITZ	SUSAN	ELISABETH
SELINGER	FLORENCE	MARY
SELINGER	FLORENCE	MARY
SELVAGE	BARBARA	BAUGHER
SEMELMAN	GRANT	LOREN WELLS
SEMERCI	CLAUDIA	BARRIOS
SERBUS	JEFFREY	SCOTT
SEVACK	EVE	
SEWELL	EMMA	ELIZABETH
SHABSOVE	ALAN	BRUCE
SHABSOVE	ERIC	HOWARD
SHABSOVE	STUART	MARK
SHAHARIW	KATHERINE	
SHAMIR	NETTA	
SHAPIRO	MARIKA	NOEMI
SHAPS	MADELEINE	IRENE
SHARPINGTON-RECNY	ELIZABETH	L. C. E.
SHAW	REBECCA	DAWN
SHAW	REBECCA	JEAN
SHEEHAN	VINCENT	JAMES
SHEFET	JOSEPH	CHANON
SHEFET	MIRIAM	
SHEHADEH	MARWAN	ANTHONY
SHEN	GUORONG	

Last name	First name	Middle name/initials
SHERK	ADAM	NEVILLE
SHI	WEIGNO	
SHIELDS	ADAM	JONATHON
SHIELDS	IRENE	EMILIA
SHIH	WEI-CHIANG	
SHIMIZU	YOHEI	
SHIRASAKI	KIMBERLY	ERI
SHIVES	VALERIE	MARIE CHRISTIAN
SHOWMAN	DINAH	JEANNE
SHPILSKY	SIMONA	EMELY
SHUFF	TIMOTHY	MALCOLM
SHULIST	DIANA	MARIE
SHUM CHAN	OLIVIA	YUET-SHANG
SIGRIST	MHAIRI	KIRSTIN
SILVER	CAREN	ADA
SILVERSTEIN	MARK	SAMUEL
SIMON	ALEXANDER	GEROLD ALBERT
SIMON	ANNA	ELSA CAROLINA
SIMPSON	BONNIE	JEAN
SISWOJO	AMANDA	EKARAITH S.
SIVERS	CHRISTINA	LYNN
SKOPYK	VICKI	JO
SKRENTNY	BARNABAS	A.
SLAWSON	DANA	MARIE
SMILEY	NORALYN	JANE
SMITH	EMILY	RACHEL OVEREND
SMITH	JARED	ANDREW
SMITH	JOHN	ALLAN
SMITH	KENNETH	DAVID
SMITH	SHERRI	LYNN
SMITH	TIA	MARIE
SNEDDEN	MICHAEL	SCOTT
SNIPPER-HIGSON	KALEN	JOSHUA
SOLEM	JENNIFER	ANN
SOMMERAUER SIDIALI	BARBARA	NELLY
SONIK	MARK	DANIAL
SONNTAG	ANGELA	GERTRUDIS
SORRENTINO	LISA	KINLEY
SOUTH	LINDA	OLIVER
SPENCER	JOHN	WESLEY
SPENCER	PATRICIA	ANN
SPORN	JUDITH	SHARON
ST PIERRE	ANTHONY	SHERWOOD
STAFFORD	MARIAN	AGNES
STANWAY	LINDA	
STAVRINIDES	ANNA	KATERINA
STEBBING	PETER	
STEIN	LEONARD	MILTON
STEIN	MARIA	
STELLER	PATRICIA	ANN
STELLER	RICHARD	PETER
STEPHENS	MARY	ANNE
STEPHENSON	JAMES	BLACKWOOD
STEVENS	JAMES	OTTIS
STEWART	JENNIFER	MORGAN
STEWART	VENUSIA	MARFIANTY
STEYNOR	ELIZABETH	ANGELA
STIMSON	JOEL	ELLIOTT
STOHLER	REMO	FABIO
STORK	PHILIP	ALEXANDER
STRASKY	TRACY	LEE
STRATTON	ANNA	ELEANOR
STRICKLAND	JAMES	AUGUST
STROM	RYAN	KEITH
STRUIJK	THOMAS	VINCENT
STUART WEINER	JANET	LEILA
STUKEL	THERESE	ANNE
STUTT	JULIE	MARGARET
SUESS	ERIKA	LEE
SULIMANI	MOSHE	
SULLIVAN	AMY	VANCE
SUMMERLIN	NICHOLAS	MAXMILIAN
SUN	KEVIN	WEI YUNG
SUN	LEI	SUNNY

Last name	First name	Middle name/initials
SUN	VICKY	WAI KI
SUPPLE	MAIREAD	CLARE
SURENDRA	SHRAVAN	
SURPHLIS	NANCY	ELIZABETH
SUSSE	ELEONORE	BARRIERE
SUTTON	RICHARD	STUART
SWEETLAND	JOHN	PAUL
SYAMSUDIN	AUDY	
SZETO	KAREN	SHIU-LING CHOI
SZREDNI	NATHAN	AVRAM
SZU	PRISCILLA	
TABATA	YOSHIKAZU	
TAEUBER	DONNA	LEE DICKSON
TAJIRI	MICHELE	YUKO
TAKAHASHI	SANAE	
TAKAMATSU	ISAMU	
TAKEDA	REIKO	
TAM	SAMANTHA	LOK-MAN
TAMANAHA	KAZUKO	
TAN	MIN-GUEN	
TANG	ANDREW	YIU-CHUNG
TAO	YUEQUN	
TAYLOR	BARBARA	JOY
TAYLOR	DYLAN	ARTHUR
TAYLOR	LEAH	WENDY
TAYLOR	LISA	
TAYLOR	PAMELA	LYNN
TELLER	STEPHEN	JAMES
TELMOOSE	DANIEL	JEAN-PAUL
TEOLIS	CORTLEIGH	ANN
TEOLIS	JOHN	LAWRENCE
TEOLIS	MARY	BETH
THAISS	MARK	JAHAN
THAKUR	LIANE	BETH
THEUX	ALEXANDER	ROBERT LOWEN
THIBEAULT	RODRICK	MARC
THIELEMAN	ARTHUR	RAYMOND
THIESSEN	BETH	ANN
THIESSEN	JUANITA	JANE
THIJM	DAAN	LODEWIJK ALBERDINGK
THOMAS	CHRISTINE	MARIE
THOMAS	JENNIFER	MEGAN
THOMAS	MARLENE	KAY
THOMPSON	CHRISTOPHER	JAMES
THOMPSON	DARCY	JILL
THOMPSON	DOROTHY	CARRINGTON
THOMSON	KENNETH	STEPHEN
THORN	JULIE	ANNE YIP
TILL	SIMON	ANDREW
TIMMONS	ANGELA	CATHERINE
TING	KANG	
TOEPFER	SUSAN	MC LEAN
TORESCO	ROBERT	DOMINIC
TORGERSON	VALERIE	RENEE
TOVAR	ARTHUR	
TOWART	ELIZABETH	M.
TOZER	MICHELE	RAE
TRAUTMANN	GEORGE	TERRY
TRITTON	GARY	JOHN
TRUEMAN	REBECCA	JO
TRUONG	TUYEN	PATRICK
TSAI	ALEX	KUO-JENG
TSAI	JASON	T.
TSAI	MING	TA
TSE	JOANNA	HOI-LAM
TSENG	ANGELA	LIN-CHI
TURCOTTE	PIERRE	
TURLETSKY	ELLEN	BETTE
TURNER	JUSTIN	DEVON
ULMER	MONTANA	TIARA
ULMER	RYDER	RAD
ULRICH	LOUIE	MARTIN
URBISTONDO-OTEGUI	SANTIAGO	
VAARTJES	JOHANNES	WILLEM

Last name	First name	Middle name/initials
VALERIO	DARIA	GIANINA
VAN DEN ABEELE	EMILE	KAREL
VAN DEN BERGHE	LAURENT	PHILIPPE C.M.
VAN DER STEEN	ELENA	JOHANNA
VAN DER VOORT	RICHARD	ANTHONY
VAN DER WAL	SEAN	GORDON
VAN HOUTEN	DAPHNE	MADELON
VAN NISPEN	MARC	JOACHIM ALEXANDER
VAN PASSEL	HILDE	ANNA AUGUSTA
VAN ZANTEN	MARK	HAROLD VELDHUIJZEN
VAN ZEIJL-VAN STOLK	MARGARET	ALEXANDRA
VANCE	LINDA	LANE
VANDAMME	EMILIA	AUDREY CONSTANCE A.
VATIS	KARIN	
VAUGHAN	AVIVA	ESTHER
VAUGHAN	DON	WILLAN
VAUGHAN	PATRICIA	RAE
VERBIEST	KIERAN	GIJS
VERDIN	VIVECA	LYNN
VERGARA	ROSANNA	
VEYSSET	MAXIME	JUNIOR
VIDI	PAOLABERTA	CORTELLI
VIENS	CHRISTINE	KATHY
VILLAR	MONICA	TRACEY ANNE
VISSCHER	DEBRA	JOANNE
VLAK	GERARD	JOHAN
VLAK	MARIA	GABRIELLA
VON BERGEN	DANIEL	OSCAR
VON BERGEN	SCOT	FREDERICK
VON MEYENFELDT	WENDY	JO
VON WISSEL	BRITTA	KATHRIN
VRACIN	ANN	LOUISE
WAGMAN	ROBERT	DAVID
WAGNER	KIM	LORRAINE
WAI	YUEN	YEE
WALKER	CONNIE	COLLEEN CATHERINE
WALLACE	CHELSEY	NICOLE
WALLENIUS	SHIRLEY	JEAN
WALLETTE	ANDREA	NICOLE
WALLIS	MAYBELLE	ALICE
WALLIS	MICHAEL	EDWARD
WANG	GEORGE	CHE-CHING
WANG	HELEN	
WANG	JOY	
WANG	JUN	
WANG	KEVIN	
WANG	PING	
WANG	SAMSON	CHI YUAN
WANG	SAN-SAN	
WARREN	CAROLYN	PENELOPE
WASSERMAN	JACK	MARTIN LEWARNE
WASYLIK	JOHANNA	ELIZABETH
WASYLIK	NICHOLAS	CHARLES
WATHNE	DAVID	FRANK HUEY
WEBB	JENNIFER	LYNNE
WEBER	BARBARA	GABRIELA
WEBER	WALTER	PAUL
WECHSLER	ESTELLE	
WECHSLER	SAMUEL	
WEEDON-MACDONALD	SARA	ALICIA
WEEKS	CASEY	BRUCE
WELCH	FLORENCE	LEONTINE MARY
WELLNER	CATHRYN	JOYCE
WELLS	EMMA	KAREN
WELTZ	LORI	SUE
WEN	JASON	JEAR
WERNICK	JANE	
WESTERHOF	CLAUDETTE	ANTOINETTE
WESTERHOF	RAVEN	ALINDE
WESTRA	BOUKE	JORRID
WETTACH	MARK	
WHEELER	SANDRA	JUNE
WHITE	CATHERINE	ELIZABETH HAMBLIN
WHITE	EDYTHE	JEANINE

Last name	First name	Middle name/initials
WHITE	MATTHEW	BARLOW
WHITE	PAMELA	JOHNSON
WICKERSON	AINSLEY	ANN
WIDMER	KILIAN	BING
WIJAYA	HENDRA	
WIJAYA	SUSIANTI	SETIO
WILKINSON	MARGOT	MAE
WILL	GAYLE	ALBERT
WILLARD	ROSS	DAVID
WILLIAMS	GRACE	ELAINE
WILLIAMS	HUGH	EVAN
WILLIAMS	JANE	ELIZABETH
WILLIAMS	ROY	GEORGE
WILLIAMS	SELINA	JANE
WILSON	BARBARA	LEILANI
WILSON	CAROL	DOWNS DRAKE
WILSON	REBECCA	JEAN
WILTSHIRE	ELISABETH	LOUISE
WITTE	WILLIAM	JOHN
WOLCH	BARBARA	SUSAN
WOLF	NANCY	JEAN
WOLTER	KATHERINE	ELIZABETH
WOLTERS	PAUL	ANDREAS
WRIGHT	RICHARD	DELANO
WRIGHT	VIRGINIA	DENISE
WU	LIN	
WU	MAX	CHIH-HSIANG
YAFFE	ALAN	MARC
YAMAMOTO	YOKO	MARIE
YAMASHITA	REO	DANIEL
YANG	CARL	
YANG	HAE	CHUNG
YANG	JERI	
YANG	SHU	FANG
YANG	STEVE	WIYI
YAP	SU	JEN
YAVIN	IRIS	YAEL
YEATES	JAMIESON	CHARLES
YEH	FRANKLIN	CHUNG
YENSON	ELIZABETH	
YEO	ELAINE	
YEO	TIFFANY	YU LING
YIP	BONNIE	
YOO	ANN	
YOUDELL	CHRISTOPHER	ALLAN
YOUNG	ELIZABETH	GORDON
YOUNG-JOHNSON	KATHLEEN	ROBERTA
YU	PEI	LIAN
YUAN	YI	
YUE	EDWIN	KEIN HING
YUN	JERALD	JIN
ZANDBERGS	ALDIS	IMANTS
ZANEN-VITOLO	LAURA	MARIE
ZAPPE	HANS	PAUL
ZENG	WEI	HONG
ZHU	CHENG	
ZIESENISS	CHRISTOPHER	GEROME
ZILBERG	ALEXANDR	FIDGERALD
ZIMMERMAN	PHILIP	BERNARD
ZIN	EMIL	HYUNBAE
ZIRBEL	ALEXA	KATHERINE
ZOCKOLL	JAMES	FRANCIS
ZOGG	MARY	ELLEN
ZOHAR	SHLOMIT	ZAARUR
ZULFACAR	ROXANA	
ZWIERS	HENK	JAN

Dated: October 25, 2017.

Gladys Perez-Hernandez,

Manager, Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2017-23885 Filed 11-1-17; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Funding Availability: Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs (VA), Veterans Health Administration (VHA), VA Homeless Providers Grant and Per Diem (GPD) Program.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: VA is announcing the availability of per diem funds to eligible entities to provide transitional housing beds under VA's Homeless Providers GPD Program models. VA expects to fund 1,500 beds with this NOFA for applicants who will use one or a combination of the following housing models: Bridge Housing, Low Demand, Hospital-to-Housing, Clinical Treatment, and Service-Intensive Transitional Housing and Service Centers.

DATES: An original signed and dated application for assistance (plus two completed collated copies) for VA's Homeless Providers GPD Program and associated documents must be received by the GPD Program Office by 4:00 p.m. Eastern Standard Time February 28, 2018 (see application requirements below).

ADDRESSES: Grant applications must be submitted to the following address: VA Homeless Providers GPD Program Office, 10770 N. 46th Street, Suite C–200, Tampa, Florida 33617.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery L. Quarles, Director, VA Homeless Providers GPD Program, Department of Veterans Affairs, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617; (toll-free) 1– (877) 332–0334.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Description

This NOFA announces the availability of per diem funding to 501(c)(3) and 501(c)(19) non-profit organizations, State and Local governments, and Indian Tribal governments to provide a minimum of five transitional housing beds. No more than 40 beds per model, per medical center, per each applicant's Employer Identification Number (EIN) will be allowed under this NOFA. Applicants must apply for funding using one or more of these models, and a separate application is required for each model. Applicants agree to meet the applicable requirements of 38 CFR part 61. In addition, all applications for these housing models need to demonstrate low barriers to accessing service as well as policies and procedures to work with Veterans who relapse.

Housing Models Descriptions

Bridge Housing

Targeted Population—Homeless Veterans who have been offered and have accepted a permanent housing intervention (*e.g.,* Supportive Services for Veteran Families (SSVF), Department of Housing and Urban Development-VA Supportive Housing (HUD–VASH), Housing Coalition/ Continuum of Care (CoC)), but are not able to immediately enter the permanent housing. Other permanent housing may also be identified (*e.g.,* purchase of a home, or an apartment lease). Applicants should review the availability of the community's permanent housing prior to applying under this model so as to avoid not being able to move Veterans to permanent housing as quickly as possible.

Model Overview—Bridge housing is intended to be a short-term stay in transitional housing for Veterans with pre-identified permanent housing destinations.

Characteristics & Standards—Goals in the Individual Service Plan should be short-term with the focus on the move to permanent housing, rather than the completion of treatment goals. Veterans are expected to receive case management and support, which should be coordinated with the HUD–VASH, SSVF, or other available community-based programs. Grantees will assist Veterans with accessing services as needed/requested by the Veteran and must make available to participants a menu of available services.

Length of Stay (LOS) will be individually determined based on need, but in general, is not expected to exceed 90 days.

Admission Criteria—Veterans must have been offered and accepted a permanent housing intervention prior to admission or within the first 14 days of admission.

Required Minimum Performance Metrics/Targets—Discharge to permanent housing is 70 percent. Negative Exits target is less than 23 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements, or leaving the program without consulting staff.

Low Demand

Targeted Population—Chronically homeless Veterans who suffer from mental-health or substance-use problems, or who struggle with maintaining sobriety; and Veterans with multiple treatment failures who may have never received treatment services, or may have been unsuccessful in traditional housing programs. These Veterans may have not yet fully committed to sobriety and treatment.

Model Overview—Low-Demand housing uses a low-demand/harm-reduction model to better accommodate chronically homeless Veterans, and Veterans who were unsuccessful in traditional treatment settings. Programming does not require sobriety or compliance with mental health treatment as a condition of admission or continued stay. Overall, demands are kept to a minimum; however, services are available as needed. The goal is to establish permanent housing in the community, while providing for the safety of staff and residents.

Characteristics & Standards—Project is small in size (typically 20 beds or less); Services must include case management, substance-use, and mental-health treatment; and referrals for benefits are made available as Veterans engage;

Must provide the participant an orientation that sets the expectations of performance for the participant; Must have 24/7, on-site staffing at the same location as the location of the program participant. (Use of resident managers is not allowed);

Must have a method to monitor participant and guests' comings and goings;

Must have a system in place for the management of the introduction of contraband;

Must be willing to retain Veterans who commit minor infractions of rules and who cannot and/or will not stop drinking and/or using legal or illegal substances;

Must be committed to keeping the Veterans housed, staying continuously engaged with each Veteran and provide services as needed;

Must have procedures to ensure safety of staff and residents, and the grantee agency must participate in bi-monthly calls and an annual fidelity assessment process as established by VA.

Required Minimum Performance Metrics/Targets—Discharge to permanent housing is 50 percent and

negative exit target is less than 23 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements, or leaving the program without consulting staff.

Hospital-to-Housing

Targeted Population—Homeless Veterans identified and evaluated in emergency departments and inpatient care settings for suitability for direct transfer to a designated GPD Program for transitional housing and supportive care.

Model Overview—Respite care is a medical model to address the housing and recuperative care needs of homeless Veterans who have been hospitalized.

Characteristics & Standards—Housing sites are expected to be in close proximity to the referring medical center so that ongoing clinical care, including specialty care, can continue to be provided;

Have a post-discharge care plan as pre-requisite to program placement that addresses ongoing physical, mental health, substance use disorder, and social work needs as well as care management plans to transition the Veteran to permanent housing upon clinical stabilization;

The VA Homeless Patient Aligned Care Team (H–PACT), or other appropriate care unit, will facilitate and coordinate the ongoing care needs upon transition;

A Memorandum of Understanding must be in place with the local medical center that details participation in the Hospital-to-Home (H2H) program. Included in this should be a detailing of acceptance criteria for Veterans being referred from local facility emergency departments and inpatient wards, a detailing of how follow-up care with the medical center is organized, and a commitment to engaging enrolled Veterans in permanent housing as part of program objectives.

Admission Criteria—Individual must be functional, be able to perform independent Activities of Daily Living (ADL), not require acute detox, have no apparent psychosis, and have a post discharge plan coordinating care with the medical center (*e.g.,* H–PACT Team, Mental Health, Substance Abuse, etc.).

Required Minimum Performance Metrics/Targets—Discharge to permanent housing is 65 percent and negative exit target is less than 23 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements, or leaving the program without consulting staff.

Clinical Treatment

Targeted Population—Homeless Veterans with a specific diagnosis related to a substance-use disorder and/or mental-health diagnosis; Veteran actively chooses to engage in clinical services.

Model Overview—Clinically focused treatment provided in conjunction with services effective in helping homeless Veterans secure permanent housing and increase income through benefits and/or employment.

Characteristics & Standards—Although the programming and services have a strong clinical focus, permanent housing and increased income are a required outcome of the program. Treatment programs must incorporate strategies to increase income and housing attainment services;

Individualized assessment, services, and treatment plan which are tailored to achieve optimal results in a time efficient manner and are consistent with sound clinical practice;

Program stays are to be individualized based upon the individual service plan for the Veteran (not program driven);

Staff are to be licensed and/or credentialed to perform the substance-use disorder (SUD)/mental health (MH) services provided as directed by State and Local law, treatment services must be provided by the applicant or through contract arrangement (VA staff cannot not be the treatment provider for this model); and

Veterans are offered a variety of treatment service modalities (*e.g.,* individual and group counseling/therapy, family support groups/family therapy, and psychoeducation).

Required Minimum Performance Metrics/Targets—Discharge to permanent housing is 65 percent; employment of individuals at discharge is 50 percent; and negative exit target is less than 23 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements, or leaving the program without consulting staff.

Service-Intensive Transitional Housing

Targeted Population—Homeless Veterans who choose a supportive transitional housing environment providing services prior to entering permanent housing.

Model Overview—Provides transitional housing and a milieu of services that facilitate individual stabilization and movement to permanent housing as rapidly as clinically appropriate.

Characteristics & Standards—Scope of services should incorporate tactics to increase the Veteran's income through employment and/or benefits and obtaining permanent housing. Services provided and strategies used by the applicant will vary based on the individualized needs of the Veteran and resources available in the community. Applicant specifies the staffing levels and range of services to be provided.

Required Minimum Performance Metrics/Targets—Discharge to permanent housing is 65 percent; employment of individuals at discharge is 50 percent; and negative exit target is less than 23 percent.

Service Centers

Targeted Population—Homeless Veterans who are seeking assistance with obtaining housing, employment, medical care, or benefits.

Model Overview—Provides services and information to engage and aid homeless Veterans obtain housing and services.

Characteristics & Standards—Scope of services should incorporate tactics to engage and aid the Veteran. Services provided and strategies used by the applicant will vary based on the individualized needs of the Veteran and resources available in the community. Applicant specifies the staffing levels and range of services to be provided.

Eligibility Information: To be eligible, an applicant must be a 501(c)(3) or 501(c)(19) non-profit agency, State or local government agency or recognized Indian Tribal Government (38 U.S.C. 2011, 2012).

Transition in Place (TIP) grantees do not need to respond to this NOFA as their awards have established time limits and will be addressed under separate NOFAs.

Authority: Funding applied for under this NOFA is authorized by 38 U.S.C. 2011, 2012.

Award Information

Overview

This NOFA announces the availability of per diem funding to eligible entities; 501(c)(3) and 501(c)(19) non-profit organizations, State and Local governments, and Indian Tribal governments. A minimum of five transitional housing beds and no more than 40 beds per model, per medical center, per each applicant's Employer Identification Number (EIN) will be allowed under this NOFA.

VA expects to fund approximately 1,500 beds with this NOFA. (See additional budget information in this

NOFA for calculation of bed days of care). Applicants applying for more than one model at the same VAMC should take into account that VA will only award up to two applications per medical center, per applicant EIN.

Cost Sharing or Matching: None.

Funding Period: Funding awarded under this NOFA will be for a period of 1 year with a 1-year option for renewal, beginning on October 1, 2018, and ending on September 30, 2019.

Payment: Per diem will be paid in a method that is in accordance with VA and other Federal fiscal requirements. The per diem payment calculation may be found at 38 CFR 61.33. Awardees will be subject to requirements of this NOFA, GPD regulations, 2 CFR 200, and other Federal grant requirements. A full copy of the regulations governing the GPD Program is available at the GPD Web site at: *https://www.va.gov/HOMELESS/GPD.asp*

Funding Priorities: VA has established the following funding priorities based on a gap analysis of existing and anticipated VA transitional housing needs within Continuums of Care (COC) nationwide. Applicants must identify and link their application to a specific COC. VA will then place that application into the correct funding priority. Applicants who fail to identify a COC will be placed in the last funding priority.

Funding Priority 1. VA expects to fund approximately 300 beds in the first funding priority. VA will place in the first funding priority those applications that identify the location of services to be provided are in the following COCs: AK–500 Anchorage; AK–501 Alaska Balance of State; CA–501 San Francisco; CA–502 Oakland/Alameda; CA–503 Sacramento; CA–600 Los Angeles; WA–500 Seattle/King. Applications will then be ranked within the funding priority. The highest ranking applications in funding priority one will be selected for funding first until approximately 300 beds have been selected. Those applications not selected will fall to the third funding priority.

Funding Priority 2. VA expects to fund approximately 200 beds in the second funding priority. VA will place in the second funding priority those applications that identify the location of services to be provided are in the following COCs: AZ–502 Phoenix/Mesa/Maricopa; CA–606 Long Beach; HI–501 Honolulu; LA–503 New Orleans; MD–505 Baltimore; OR–501 Portland-Gresham-Multnomah; and TX–600 Dallas City and County/Irving. Applications will then be ranked within the funding priority. The highest ranking, applications in funding priority two will be selected for funding until approximately 200 beds have been selected. Those applications not selected will fall to the third funding priority.

Funding Priority 3. VA expects to fund approximately 1,000 beds in the third funding priority. VA will place in the third funding priority those applications not selected in funding priorities one and two as well as those applications that identify the location of services to be provided are in any of the United States COCs. Applications will then be ranked within the funding priority. The highest ranking, applications in funding priority three will be selected for funding until approximately 1,000 beds have been selected or funding is expended whichever comes first.

Application Review Information

A. *Criteria for Grants:* Rating criteria may be found at 38 CFR 61.13 & 61.32.

B. *Review and Selection Process:* Review and selection process may be found at 38 CFR 61.13, 61.32.

Allocation of Funds: Funding will be awarded under this NOFA depending on funding availability and subject to program authorization. Funding will be for a period beginning on October 1, 2018, and ending on September 30, 2019, with a 1-year option for renewal based on funding availability, the recipient meeting performance goals, and the results of a VA inspection.

Funding Actions: Conditionally selected applicants will be asked to submit additional information under 38 CFR 61.32(c). Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for the grant award within the specified time frame VA may non-select the applicant and use the funding for another applicant. Should an applicant submitting multiple applications not have all its applications funded, VA may negotiate bed numbers with the applicant at this time for those applications that were conditionally selected and incorporate that number into the grant agreement. Upon signature of the grant agreement by the Secretary or designated representative, final selection will be completed and the grant funds will be obligated for the funding period.

Grant Award Period: Applicants that are finally selected may expect the award to begin approximately on October 1, 2018, and end on September 30, 2019, with one option to renew for another year. VA will make an initial award for the first year of operation. The application is submitted with a one-year budget. Continuation funding is not guaranteed. Factors to be considered in awarding continuation grants will include satisfactory performance, demonstrated capacity to manage the grant, compliance with grant requirements, agency priorities, and the availability of appropriated funds. VA reserves the right to adjust the amount of a grant or elect not to continue funding for subsequent years.

Funding Restrictions: No part of an award under this NOFA may be used to facilitate capital improvements or to purchase vans or real property. Questions regarding acceptability should be directed to VA's National GPD Program Office at the number listed in contact information. Applicants may not receive funding to replace funds provided by any Federal, state, or local Government agency or program to assist homeless persons.

Flexibility of Beds: For those applicants that are successfully funded for multiple models under this NOFA, VA will allow, without a change of scope, a flex of beds between the applicant's models at the same VAMC. This flex will be up to five (5) beds or 15 percent of the total awarded bed limit per medical center, whichever is greater. Successful applicants who seek a greater number of flex beds than what is allowed must receive prior written approval from the National GPD Program Office.

Cost Sharing or Matching: None.

Application and Submission Information

Address to Obtain Grant Application: Download the standard forms directly from VA's Grant and Per Diem Program Web page at: *http://www.va.gov/homeless/GPD.asp.* The additional documents that must also be included with the application are listed below in the Content and Form of Application section of this NOFA. Questions should be referred to the GPD Program Office at (toll-free) 1 (877) 332–0334.

Content and Form of Application: The Department is seeking to refocus programs and resources to better serve the homeless Veteran population. Therefore, applicants should note that a separate application for each housing model will be required. Each will be scored separately.

Applicants should review their relationships with VAMCs and group their projects by medical center, selecting those models that are best suited. If your agency is unclear on what application, or the number of applications, to submit, contact the GPD National Program Office for clarification prior to submission of any application

to ensure it is submitting the correct format.

Applicants should use a normal business format, single-spaced lines, typed, single sided pages, in Arial 12 font. Applicants should write out the question first followed by the respective response. The narrative outline should be labeled with the same titles and in the same order as this NOFA. Applicants should simply binder clip the application; do not staple, spiral bind, or fasten the application. Do not include brochures or other information not requested. The application consists of two parts. The first part will consist of Standard Forms and the second part will be provided by applicants and consist of supporting documentation, project narratives, and tables/spreadsheets in a standard business format.

Applicants should ensure that they include all required documents in their application, carefully follow the format, and provide the information requested and described below. Submission of an incorrect, incomplete, or incorrectly formatted application package will result in the application being rejected before being ranked.

Application Documentation Required

1. Standard Forms (approximately 9 pages):

(a) SF 424 Application for Federal Assistance.

(b) SF 424 A Non-Construction Budget.

(c) SF 424 B Non-Construction Assurances.

2. Eligibility to Receive VA Assistance: (approximately 3 pages).

Nonprofit Organizations must provide documentation of accounting system certification and evidence of private nonprofit status. This must be accomplished by:

(a) Providing certification on letterhead stationery from a Certified Public Accountant or Public Accountant that the organization has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or that the organization has designated a qualified entity to maintain a functioning accounting system. If such an entity is used, their name and address must be included in the certification letter; and

(b) Providing evidence of their status as a nonprofit organization by submitting a copy of their IRS ruling providing tax-exempt status under the IRS Code of 1986, as amended.

3. *Documentation of being actively registered in the System for Award Management (SAM)* (approximately 1 page)*:* Provide a printed copy of your agency's active registration in SAM to include the Data Universal Numbering System (DUNS), the number which corresponds to the information provided on the Application for Federal Assistance (SF424) and current Commercial and Government Entity (CAGE) code. Additionally, provide the complete legal business address that corresponds to the address registered with SAM, including the USPS five-digit zip code plus the four-digit extension code.

4. State/Local Government.

Applicants who are state or local governments must provide a copy of any comments or recommendations by approved state and (area wide) clearinghouses pursuant to Executive Order 12372.

5. Project Summary (approximately 3 pages): Provide the following:

(a) The name of the closest VA Medical Center;

(b) Name and number of the Continuum of Care (COC) of where the project application will be located _____.

(c) Description of the number of beds your agency is requesting per diem and the housing model to be provided at the VA facility identified in question 5(a):

Number of Beds: _____

Housing Model: (*i.e.*, Bridge Housing, Low Demand, Hospital to Home, Clinical Treatment, Service-Intensive Transitional Housing.)

or

Number of Service Center Visits (annually): _____

(d) Whether your agency is submitting additional applications to provide other housing models or a service center at the facility referenced in question 5(a). (yes/no)

If yes, identify the model and the number of beds to be provided under that model;

(e) Location of housing and services provided under this application:

Address: _____

City: _____

State: _____

Zip Code + 4 digit extension: _____

County the site is located in: _____

Additional Counties served by the project: _____

Congressional District: _____

(f) Under this application and model, describe how the facility participant living space will be configured. Include the square footage of the room or bay, the number of beds in that square footage and if the beds will be bunked (*i.e.,* Single Room Occupancy, 100 square feet, no bunk beds; Open Bay, 900 square feet, 12 beds, 4 sets of bunk beds; Apartment(s), 1500 square feet, 1,2, or 3 bedroom(s) no bunk beds):

(g) Whether this project serving men, women, or both genders;

(h) Description of any additional populations or types of housing being served/provided at this location (*i.e.,* children, women, permanent housing, contract care). If none, so state.

6. Contact Information (approximately 4 pages): Where correspondence can be sent to the Executive Director/President/CEO.

(a) Please provide the following:

Agency Name: _____

Physical Address of Administrative Office: (no P.O. Boxes) _____

City: _____

State: _____

Zip + 4 digit extension: _____

County: _____

Congressional District: _____

Telephone number: _____

Alternate Mailing Address: (If you would prefer regular mail be sent to a P.O. Box). _____

City: _____

State: _____

Zip: _____

(b) Name and title of Executive Director/President/CEO (phone, fax, and email address);

(c) Name and title of another management level employee, (phone, fax, and email address) who can sign commitments for the agency;

(d) A complete listing of your agency's officers of the Board of Directors and their address, phone, fax, and email addresses.

7. Project Abstract: On not more than one page provide a brief abstract of the project to include: Project design, supportive services committed to the project, types of assistance provided, and any special program provisions.

8. Detailed Project Plan: This is the portion of the application that describes your program. VA Reviewers will focus on how the project plan addresses the areas of outreach, project plan, model specific questions, ability, need, and coordination in relation to your selected model. Please note there are some questions that only apply to specific models (Bridge, Clinical Treatment, Low Demand, Hospital-to-Housing), Applicants applying for these models must include responses to these questions in their application.

VA expects applicants awarded under this NOFA will meet the VA performance metrics for the selected model. With those metrics in mind, please include in your agency's

responses to the following sections your agency strategies to meet or exceed VA's national metric targets.

(a) Outreach—In approximately 5 pages, describe how your agency outreach plan is tailored to the specific model chosen and seeks to provide for services Veterans living in places not ordinarily meant for human habitation (*e.g.,* streets, parks abandon buildings, automobiles and emergency shelters) by answering the following:

1. Outreach—Describe your agency's outreach plan and frequency of your selected Veteran population(s) living in places not ordinarily meant for human habitation (*e.g.,* streets, parks abandon buildings, automobiles) and emergency shelters.

2. Outreach—Identify where your organization will target and tailor its outreach efforts to identify appropriate Veterans for this program.

3. Outreach—Describe your agency's involvement in the COC's Coordinated Assessment/Entry efforts. How does the plan fit into the COC's plan to end homelessness?

(b) Project Plan—VA wishes to provide the most appropriate housing based on the needs of the individual Veteran. Be sure to answer these questions based on the specific model chosen for this application. In approximately 25 pages, provide the following:

1. Project Plan—Specifically list the supportive services, frequency of occurrence and who will provide them and how they will help Veteran participants achieve residential stability, increase skill levels and or income, and increase self-determination (*i.e.,* case management, frequency of individual/groups, employment services). Use a table or spreadsheet for this section (See Example 1).

Example 1:

Supportive service	Frequency of offering (daily, weekly, etc.)	Job title and credential required for the individual providing services	This service supports the achievement of residential stability, increase skill and income, or self-determination
Case management	Weekly	Case Manager—LCSW	Residential stability. Increased Skills and Income.
Finance Planning Group	Bi-Weekly	Life Skills Educator, BA/BS	Residential stability. Increased Skills and Income.

2. Project Plan—VA places emphasis on lowering barriers to admissions; describe the specific process and admission criteria for deciding which Veterans are appropriate for admission.

3. Project Plan—Address whether you plan on serving a mixed gender population or individuals with children.

4. Project Plan—Provide a listing and explanation of any gender-specific services.

5. Project Plan—How will the safety security and privacy of participants be ensured?

6. Project Plan—How, when, and by whom will participants' progress toward meeting their individual goals be monitored, evaluated, and documented?

7. Project Plan—Provide your agency's Individual Service Plan (ISP) methodology and the core items to be addressed in the plan.

8. Project Plan—How will permanent affordable housing be identified in the ISP and made known to participants who plan on leaving the supportive housing?

9. Project Plan—Will your agency provide follow-up services? If yes, describe those services, how often they will occur, and the duration of the follow-up.

10. Project Plan—Describe how Veteran participants will have a voice and aid in operating and maintaining the housing (*i.e.,* volunteer time, paid positions, community governance meetings, peer support).

11. Project Plan—Describe your agency's responsibilities, as well as any sponsors or contractors' responsibilities in operating and maintaining the housing (*i.e.,* sub-recipients).

12. Project Plan—Describe program policies regarding a clean and sober environment. Include in the description how participant relapse will be handled and how these policies will affect the admission and discharge criteria.

13. Project Plan—Provide and describe the type and implementation of the medication control system that will be used in this project (*e.g.,* Medication Management, Medication Monitoring, or individual storage). For reference, applicants may review these requirements at *http://www.va.gov/homeless/gpd.asp* 2018 Notice of Funding and Documents—Medication Requirements.

14. Project Plan—Describe program polices regarding participant agreements, including any leases and subleases if used.

15. Project Plan—Describe program polices regarding extracurricular fees.

16. Project Plan—If co-located with other models, populations, or with other non-grant and per diem projects, how will differences in program rules and policies be handled (see example 2)?

Example 2:

Your agency has permanent housing, bridge housing, and low demand housing. These all serve different populations and require different levels of policy to properly function. How will this be accomplished?

17. Project Plan—Describe how in your chosen model you will aid Veterans who seek increased income or benefits.

18. Project Plan—Address how your agency will facilitate the provision of nutritional meals for the Veterans. Be sure to describe how Veterans with little or no income will be assisted.

19. Project Plan—VA places great emphasis on placing Veterans in the most appropriate housing situation as rapidly as possible. Applicants will provide a time line describing program admission to program exit for individuals in the program and the specific services including follow up that supports housing stabilization. Include evidence of coordination of transition services with which your agency expects to have for Veterans.

20. Project Plan—Describe how you will facilitate transportation of the Veteran participants with and without income to appointments, employment, and supportive services.

(c) Model Specific Questions:

Applicants should only respond to the following questions as they apply for the model selected in this application.

1. Bridge Housing Model—The availability of permanent housing options are key to the this model. Describe how your bridge housing is coordinated with permanent housing resources as part of a Housing First plan for homeless Veterans. Be sure to describe the referral process, how care will be coordinated while in GPD and ensure a housing outcome is achieved in an efficient manner. Include background on the amount of available permanent housing in the area you propose to serve.

2. Clinical Treatment Model—Describe how you will ensure homeless Veterans will be offered available permanent housing resources prior to entering treatment resources.

3. Clinical Treatment Model—Describe how you will ensure permanent housing and employment/income improvements will occur and lead to successful outcomes.

4. Low Demand Model—How will your agency manage a safe environment

if a Veteran returns to the project impaired?

5. Low Demand Model—Will your safe environment include a sober lounge or safe room?

6. Low Demand Model—What approaches will be used to keep the Veterans engaged in services?

7. Hospital-to-Housing—Describe the medical evaluation process for identifying potential candidates for the program, the staff involved in that process, the evaluation criteria, and the roles of each individual.

8. Service Centers—The success of service centers is predicated upon the engagement of the homeless Veteran community. Describe how your agency will engage and influence homeless Veterans in how they it will address their housing, physical, medical, and mental health needs.

(d) Ability—In approximately 5 pages, describe your agency's experience regarding your selected population.

1. Ability—Provide a table or spreadsheet of the staffing plan for this project. Do not include resumes.

Example 3:

Job title	Brief (1–2) sentence description of responsibilities	Educational level	Hours per week allocated to GPD project	Amount of annual salary allocated to the GPD project ($)
Case manager	Responsible for working with the Veteran to develop and monitors an individual service plan (ISP), adjusts plans as needed. Co-ordinates with other community agencies to support.	BSW	30	$35,250

2. Ability—Describe your agency's previous experience assessing and providing for the housing needs of homeless Veterans under your chosen model.

3. Ability—Describe your agency's previous experience assessing and providing supportive services to homeless Veterans under your chosen model.

4. Ability—Describe your agency's previous experience in assessing supportive service resources and entitlement benefits.

5. Ability—Describe your agency's previous experience with evaluating the progress of both individual participants and overall program effectiveness through using quality and performance data to make changes. Provide documentation of meeting past performance goals.

6. Ability—Is your agency licensed to provide clinical services? If yes, describe your licensure.

(e) Need—In approximately 5 pages, describe using reliable data from survey of homes population or other reports or data-gathering mechanisms, the substantial unmet needs particularly among your targeted Veteran population and those needs of the general homeless population. Also, describe why your agency chose this model of transitional housing? Include in your response how your agency determined the number of beds needed; or, for service centers, include how your agency determined the anticipated level of participation. How does this project model meet a need for the community and fit with the community's strategy to end homeless in the community?

(f) Coordination—In approximately 5 pages, describe and provide evidence of your agency's involvement in the homeless Veteran continuum.

1. Coordination—Provide documented evidence your agency is part of an ongoing community-wide planning process.

2. Coordination—How is your process designed to share information on available resources and reduce duplication among programs that serve homeless Veterans (*i.e.,* letter of support from your local continuum of care)?

3. Coordination—How is your agency part of an ongoing community-wide planning process that is designed to share information on available resources and reduce duplication among programs that serve homeless Veterans?

4. Coordination—How has your agency coordinated GPD services with other programs offered in the Continuum(s) of Care (CoC) they currently serve?

5. Coordination—Provide documented evidence that your agency consulted directly with the closest VAMC Director regarding coordination of services for project participants; and provide your plan to assure access to health care, case management, and other care services.

(g) Additional Application Requirements—

1. Memorandum of Understanding (MOU) Hospital-to-Housing Documentation—A MOU between the local medical center and the applicant must be provided demonstrating the local medical center's detailed participation in the Hospital-to-Housing program. Included in this should be a detailing of acceptance criteria for Veterans being referred from local facility emergency departments and inpatient wards, a detailing of how follow-up care with the medical center is organized, and a commitment to engaging enrolled Veterans in permanent housing as part of the program.

2. Awardees will be required to support their request for payments with adequate fiscal documentation as to project income and expenses. Awardee agencies that have a negotiated Indirect Cost Agreement (IDC) must provide a copy of the IDC with this application if they wish to charge indirect costs to the grant. Without this document, only the de minimis rate would be allowed for indirect costs. All other costs will be considered only if they are direct costs.

Submission Dates and Times: An original signed, dated, completed application (plus two completed collated copies) and all required associated documents must be received in the GPD Program Office, VA Homeless Providers GPD Program Office, 10770 N. 46th Street, Suite C–200, Tampa, FL 33617; by 4:00 p.m. February 28, 2018.

In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat any application that is received after the deadline as ineligible for consideration. Applicants should take this firm deadline into account and make early submission of their material to avoid any risk of loss of eligibility because of unanticipated delays or other delivery-related problems. For applications physically delivered (*e.g.,* in person, or via United States Postal Service, FedEx, United Parcel Service, or any other type of courier), the VA GPD Program Office staff will accept the application and date stamp it immediately at the time of arrival. This is the date and time that will determine if the deadline is met for those types of delivery.

Applications must be received by the application deadline. Applications must arrive as a complete package to include VA collaborative partner materials (see application requirements). Materials arriving separately will not be included in the application package for consideration and may result in the

application being rejected or not funded.

DO NOT fax or email the application as applications received via these means will be ineligible for consideration.

Award Notice: Although subject to change, the GPD Program Office expects to announce grant awards in July, 2018. The initial announcement will be made via news release which will be posted on VA's National GPD Program Web site at *www.va.gov/homeless/gpd.asp.* Following the initial announcement, the GPD Office will mail notification letters to the grant recipients. Applicants who are not selected will be mailed a declination letter within two weeks of the initial announcement.

Administrative and National Policy: It is important to be aware that VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless Veterans and outcomes associated with the services provided in grant and per diem-funded programs. Applicants should be aware of the following:

All awardees that are selected in response to this NOFA must meet the requirements of the current edition of the Life Safety Code of the National Fire Protection Association as it relates to their specific facility. Applicants should note that all facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code. Applicants should consider this when submitting their grant applications, as no additional funds will be made available for capital improvements under this NOFA.

Each program receiving funding will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless Veterans in the program.

Monitoring will include, at a minimum, a quarterly review of each per diem program's progress toward meeting VA's performance metrics, helping Veterans attain housing stability, adequate income support, and self-sufficiency as identified in each per diem application. Monitoring may also include a review of the agency's income and expenses as they relate to this project to ensure payment is accurate.

Each funded program will participate in VA's national program monitoring and evaluation as these procedures will be used to determine successful accomplishment of housing, employment, and self-sufficiency outcomes for each per diem-funded program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on October 30, 2017, for publication.

Dated: October 30, 2017.

Michael Shores,

Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017–23906 Filed 11–1–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 82 Thursday,
No. 211 November 2, 2017

Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 232, et al.
FAST Act Modernization and Simplification of Regulation S–K; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 249, 270, 274 and 275

[Release No. 33–10425; 34–81851; IA–4791; IC–32858; File No. S7–08–17]

RIN 3235–AM02

FAST Act Modernization and Simplification of Regulation S–K

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments based on the recommendations made in the staff's Report on Modernization and Simplification of Regulation S–K, as required by Section 72003 of the Fixing America's Surface Transportation Act. The proposed amendments are intended to modernize and simplify certain disclosure requirements in Regulation S–K, and related rules and forms, in a manner that reduces the costs and burdens on registrants while continuing to provide all material information to investors. The amendments are also intended to improve the readability and navigability of disclosure documents and discourage repetition and disclosure of immaterial information. To provide for a consistent set of rules to govern incorporation by reference and hyperlinking, we are also proposing parallel amendments to several rules and forms applicable to investment companies and investment advisers, including proposed amendments that would require certain investment company filings to be submitted in HyperText Markup Language (''HTML'') format.

DATES: Comments should be received by January 2, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment forms (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–08–17 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–08–17. This file number should be included in the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Shehzad Niazi, Daniel Morris, or Angie Kim, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430; Michael C. Pawluk or J. Matthew DeLesDernier, Investment Company Rulemaking Office, Division of Investment Management, at (202) 551–6792; U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend Items 10, 102, 202, 303, 401, 405, 407, 501, 503, 512, 601, and 1100 of Regulation S–K under the Securities Act of 1933 (the ''Securities Act'') and the Securities Exchange Act of 1934 (the ''Exchange Act''); Rules 405, 411, and 491 of Regulation C under the Securities Act; Rules 11, 102, 105, 303, and 406 of Regulation S–T under the Securities Act and Exchange Act; Forms S–1, S–3, S–6, S–11, N–14, S–4, F–1, F–3, F–4, F–7, F–8, F–10, F–80, SF–1, and SF–3 under the Securities Act; Rules 12b–13, 12b–23, 14a–101 (Schedule 14A), and 16a–3 under the Exchange Act; Forms 3, 4, 5, 8–A, 10, 20–F, 40–F, 8–K, 10–Q, 10–K, and 10–D under the Exchange Act; Rule 0–4 under the Investment Company Act of 1940 (the ''Investment Company Act''); Forms N–1A, N–2, N–3, N–4, N–5, and N–6 under the Investment Company Act and Securities Act; Form N–CSR under the Investment Company Act and Exchange Act; and Rule 0–6 under the Investment Advisers Act of 1940 (''Investment Advisers Act''). The Commission is also proposing to add new Item 105 to Regulation S–K and to remove Rule 12b–32 under the Exchange Act and Rules 8b–23, 8b–24, and 8b–32 under the Investment Company Act.

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I. Introduction

A. Background

We are proposing amendments to modernize and simplify certain disclosure requirements in Regulation S–K and related rules and forms to implement Section 72003 of the Fixing America's Surface Transportation Act (the ''FAST Act'').[1] As required by Section 72003(c) of the FAST Act, the staff published its Report on Modernization and Simplification of Regulation S–K (the ''FAST Act Report'') on November 23, 2016.[2] Consistent with Section 72003, the FAST Act Report provided ''specific and detailed recommendations on modernizing and simplifying the requirements in Regulation S–K in a manner that reduces the costs and burdens on companies while still providing all material information'' and ''[recommendations] on ways to improve the readability and navigability of disclosure and to discourage repetition and the disclosure of immaterial information.'' [3] Also consistent with Section 72003, the FAST Act Report reflected consultations with the Investor Advisory Committee (''IAC'') and the Advisory Committee on Small and Emerging Companies.

This release proposes amendments based on the recommendations in the FAST Act Report. The proposed amendments largely implement these recommendations, as required by Section 72003(d) of the FAST Act. However, in some cases, and as discussed in more detail below, we have chosen to alter or supplement the staff's previously recommended approach based on our consideration of the issues and the statutory mandate.[4] This release reflects perspectives developed during the staff's broader review of the Commission's disclosure regime. As part of that effort, the staff requested public input on how the disclosure system could be improved,[5] and the Commission issued a concept release on the business and financial disclosure requirements in Regulation S-K (the ''Concept Release'').[6]

In developing the proposed amendments, we considered the comment letters we received on the Concept Release; [7] the prior staff study of Regulation S–K (the ''S–K Study'') mandated by the Jumpstart Our Business Startups Act (the ''JOBS Act''); [8] the Commission's request for comment on the requirements relating to management, security holders, and corporate governance matters in Subpart 400 of Regulation S-K (the ''Regulation S-K Subpart 400 Release''); [9] and the FAST Act Report.[10] Throughout this release, we discuss these comments as further context for the proposed amendments.[11] The proposed amendments also reflect the Commission's experience with Regulation S-K arising from the Division of Corporation Finance's disclosure review program.

In this release, we focus on amendments to implement Section 72003(d) of the FAST Act. Accordingly, we are not at this time proposing amendments that extend substantially

[1] Public Law No. 114–94, Sec. 72003, 129 Stat. 1312 (2015).

[2] *Report on Modernization and Simplification of Regulation S–K* (Nov. 23, 2016), *available at https://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf.*

[3] *See* FAST Act § 72003(c).

[4] The FAST Act Report presented recommendations for the Commission's consideration. The FAST Act Report also noted that many of the recommendations in the report were necessarily preliminary in nature and that ongoing outreach and study would be necessary in connection with any rulemaking to implement the recommendations. *See* FAST Act Report, *supra* note 2, at n.15.

[5] Comment letters related to this request are available at *https://www.sec.gov/spotlight/disclosure-effectiveness.shtml.* We refer to these letters throughout as ''Disclosure Effectiveness'' letters.

[6] *See Business and Financial Disclosure Required by Regulation S–K,* Release No. 33–10064 (Apr. 13, 2016) [81 FR 23916 (Apr. 22, 2016)].

[7] Comment letters related to this request are available at *https://www.sec.gov/comments/s7-06-16/s70616.htm.*

[8] Public Law No. 112–106, Sec. 108, 126 Stat. 306 (2012). *See also* Rule 12b–2 under the Exchange Act [17 CFR 240.12b–2] and Rule 405 under the Securities Act [17 CFR 230.405]. Section 108 of the JOBS Act required the Commission to comprehensively evaluate its disclosure requirements to determine how they could be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with these requirements for emerging growth companies (''EGCs''). The resulting recommendations are in the staff's Report on Review of Disclosure Requirements in Regulation S–K, *available at https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.*

In connection with the S–K Study, we received public comments on regulatory initiatives to be undertaken in response to the JOBS Act. *See Comments on SEC Regulatory Initiatives Under the JOBS Act: Title I—Review of Regulation S–K, available at http://www.sec.gov/comments/jobs-title-i/reviewreg-sk/reviewreg-sk.shtml.*

[9] *Request for Comment on Subpart 400 of Regulation S–K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters,* Release No. 33–10198 (Aug. 25, 2016) [81 FR 59927 (Aug. 31, 2016)]. Comment letters related to this request are available at *https://www.sec.gov/comments/s7-18-16/s71816.htm.* We refer to these letters throughout as ''Subpart 400'' letters.

[10] Comment letters related to the FAST Act Report are available at *https://www.sec.gov/comments/fast/fast.htm.*

After the FAST Act Report was published, the staff updated the IAC on the recommendations included in the report at its December 8, 2016 meeting. *See Minutes of the IAC Meeting on December 8, 2016* available at *https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac120816-minutes.htm.* The staff did not discuss with the IAC or the ACSEC potential modifications to those recommendations as reflected in this release.

[11] Unless otherwise indicated, comment letters cited in this release are to the Concept Release.

beyond the staff's recommendations in the FAST Act Report.[12] We are continuing to consider potential additional changes to our disclosure regime in connection with recent proposing releases and requests for comment.[13] In addition, we are proposing parallel amendments to several rules and forms applicable to investment companies and investment advisers to provide for a consistent set of rules governing incorporation by reference and hyperlinking, including proposed amendments that would require certain investment company filings to be submitted in HTML format.[14]

B. Overview of the Proposed Amendments

We are proposing amendments to several individual rules that would update, streamline, or otherwise improve our well-established and robust disclosure framework. These include proposed changes to:

- Description of Property (Item 102);
- Management's Discussion and Analysis (Item 303);
- Directors, Executive Officers, Promoters, and Control Persons (Item 401);
- Compliance with Section 16(a) of the Exchange Act [15] (Item 405);
- Outside Front Cover Page of the Prospectus (Item 501(b)); [16]
- Risk Factors (Item 503(c));
- Plan of Distribution (Item 508); [17]
- Material Contracts (Item 601(b)(10)); and
- Various rules related to incorporation by reference.

Other proposed amendments would update some of our rules to account for developments since their adoption or last amendment. These include proposed changes to Corporate Governance (Item 407), Outside Front Cover Page of the Prospectus (Item 501(b)(10)), and Undertakings (Item 512). Some of the proposed amendments would simplify disclosure or the disclosure process. These include proposed changes to Management's Discussion and Analysis (Item 303(a)) that would allow for flexibility in discussing historical periods and the addition of new subparagraphs to Exhibits (Item 601) to permit omission of portions of exhibits that do not contain material information.

Some of our proposed amendments would require additional disclosure or incorporation of new technology. These include proposed changes to:

- Outside Front Cover Page of the Prospectus (Item 501(b)(4));
- Description of Registrant's Securities (Item 601(b)(4));
- Subsidiaries of the Registrant (Item 601(b)(21)(i)); and
- Various regulations and forms to require all of the information on the cover pages of some Exchange Act forms to be tagged in Inline XBRL format.

We discuss the proposed amendments generally in the order that each Item appears in Regulation S–K; however, we have consolidated the discussion of the rules and item requirements related to incorporation by reference. We have also consolidated our discussion of rules requiring the incorporation of new technology.

II. Proposed Amendments

A. Description of Property (Item 102)

Item 102 requires disclosure of the location and general character of the principal plants, mines, and other materially important physical properties of the registrant and its subsidiaries.[18] Instruction 1 to Item 102 states that registrants must disclose such information as reasonably will inform investors as to the suitability, adequacy, productive capacity, and extent of utilization of the facilities by the registrant.[19] Instruction 2 provides that, in determining whether properties are material to an understanding of the registrant's business taken as a whole, registrants should take into account both quantitative and qualitative factors.[20]

Currently, Item 102 specifies disclosure of ''principal'' plants, mines, and other ''materially important'' physical properties. The staff has observed, however, that the item may elicit disclosure that is not material.[21] For example, some registrants—such as those in the services or information technology industry—may not have material physical properties, and accordingly, these registrants tend to disclose information about their corporate headquarters, office space, and other facilities in response to this item. To address this concern, in the FAST Act Report, the staff recommended that the Commission consider revising Item 102 to require a description of property only to the extent that physical properties are material to the registrant's business.[22]

Similarly, several commenters stated that Item 102 is not relevant to all registrants or can result in immaterial disclosure.[23] Two of these commenters

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[12] As discussed in relevant sections below, some of the proposed amendments in this release would apply to Form 20–F or Form 40–F. Form 20–F is the combined registration statement and annual report form for foreign private issuers under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act. Form 40–F is the registration statement and annual report used by eligible Canadian issuers under the Multijurisdictional Disclosure System. While Section 72003 of the FAST Act is focused on Regulation S–K, we are proposing to make corresponding changes to the disclosure requirements applicable to foreign private issuers where Forms 20–F and 40–F include provisions that are substantially similar to those found in Regulation S–K.

[13] *See Request for Comment on Possible Changes to Industry Guide 3 (Statistical Disclosure by Bank Holding Companies),* Release No. 33–10321 (Mar. 1, 2017) [82 FR 12757 (Mar. 7, 2017)]; Concept Release, *supra* note 6; Regulation S–K Subpart 400 Release, *supra* note 9; *Disclosure Update and Simplification,* Release No. 33–10110 (Jul. 13, 2016) [81 FR 51607 (Aug. 4, 2016)] (the ''Disclosure Update and Simplification Proposing Release''); *Amendments to Smaller Reporting Company Definition,* Release No. 33–10107 (Jun. 27, 2016) [81 FR 43130 (Jul. 1, 2016)]; and *Modernization of Property Disclosures for Mining Registrants,* Release No. 33–10098 (Jun. 16, 2016) [81 FR 41651 (Jun. 27, 2016)] (the ''Modernization for Mining Registrants Proposing Release'').

[14] The Commission has adopted requirements for exhibit hyperlinks and HTML format for operating companies. *See Exhibit Hyperlinks and HTML Format,* Release No. 33–10322 (Mar. 1, 2017) [82 FR 14130 (Mar. 17, 2017)] (''Exhibit Hyperlinks Adopting Release'') (adopting amendments to require registrants to hyperlink to each exhibit listed in the exhibit index and, to enable the inclusion of hyperlinks, requiring registrants to submit all such filings in HTML format). Non-accelerated filers and smaller reporting companies (''SRCs'') may continue to file in American Standard Code for Information Interchange (''ASCII'') until September 1, 2018 and are therefore not required to include exhibit hyperlinks until that date.

[15] 15 U.S.C. 78a *et seq.*

[16] *See* proposed amendments to Item 501(b)(1), (b)(3) and (b)(4).

[17] Our proposals would amend Rule 405 and Rule 491.

[18] Item 102 of Regulation S–K [17 CFR 229.102].

[19] Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required. *See* Instruction 1 to Item 102 of Regulation S–K.

[20] Disclosure specific to the mining, oil and gas, and real estate industries is outside the scope of this release. Instructions 3, 5, and 7 apply to the mining industry. The Commission has separately proposed revisions to the property disclosure requirements for mining registrants. *See Modernization for Mining Registrants Proposing Release, supra* note 13. Instructions 4, 6, and 8 apply to the oil and gas industry. The Commission considered disclosure specific to the oil and gas industry in 2008. *See Modernization of Oil and Gas Reporting,* Release No. 33–8995 (Dec. 31, 2008) [74 FR 2158 (Jan. 14, 2009)]. Instruction 9 applies to the real estate industry.

[21] *See* FAST Act Report, *supra* note 2, at Recommendation B.1. *See also* Concept Release, *supra* note 6, at Section IV.A.6.b and SEC Staff's *Report of the Task Force on Disclosure Simplification* (Mar. 5, 1996) *available at https://www.sec.gov/news/studies/smpl.htm.*

[22] FAST Act Report, *supra* note 2, at Recommendation B.1.

[23] *See, e.g.,* Letters from Ernst & Young (Sept. 11, 2012) [S–K Study letter] (''Ernst & Young 1''); U.S. Chamber of Commerce (July 29, 2014) [Disclosure Effectiveness letter] (''Chamber 1''); Society of Corporate Secretaries and Governance Professionals (Sept.10, 2014) [Disclosure Effectiveness letter] (''Society of Corporate Secretaries''); Shearman &

noted that, if material to a registrant's business, Item 303, Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A''),[24] would require a discussion of the importance of a property or facility and, in these instances, Item 102 may result in duplicative disclosure.[25]

A number of commenters also supported revising Item 102 to be more principles-based or require disclosure only when property is material.[26] One of these commenters asserted that the lack of a materiality overlay in Instruction 2 to Item 102 results in immaterial disclosure.[27] Another commenter noted different triggers for disclosure in Item 102, such as the item's reference to ''materially important'' physical properties and ''major'' encumbrance.[28] This commenter suggested harmonizing these and similarly varied formulations to lessen ambiguity in their application.[29]

A few commenters, however, suggested retaining this item in its current form,[30] with one commenter noting the importance of this disclosure for mining companies.[31] Additionally, two commenters recommended expanding the item to include additional disclosure.[32] One of these commenters recommended disclosure of risks resulting from the potential lack of availability and rising cost of properties.[33] The other commenter recommended property disclosure specific to the manufacturing industry, including manufacturing locations that promote and retain jobs within the United States. This commenter stated that enhanced disclosures would inform investors about the benefits of manufacturing in the United States.[34]

Consistent with several commenters' suggestions and the staff's recommendation in the FAST Act report, we are proposing to revise Item 102 to emphasize materiality. While the FAST Act Report recommended amending Item 102 to require disclosure only to the extent physical properties are material to the registrant's business, our proposals would require this disclosure to the extent material to the registrant. Our proposal is intended to encompass properties that are material to the registrant, which would include those properties that are material to the registrant's business.[35] We are also proposing to clarify that the disclosure required under Item 102 should focus on physical properties that are material to the registrant and may be provided on a collective basis, if appropriate.

As suggested by one commenter, we are also proposing to harmonize the various non-industry-specific triggers for disclosure in Item 102.[36] For example, we are proposing to replace the references to ''major'' encumbrances and ''materially important'' physical properties in Item 102 with references to a materiality threshold. By using a consistent materiality threshold, we intend to facilitate application of the proposed amendments. In light of the particular significance of this disclosure for registrants in the mining, real estate, and oil and gas industries, we are not proposing to modify any of the instructions of Item 102 specific to those industries in this release.[37]

In the FAST Act Report, the staff also recommended that the Commission consider combining the description of material physical properties with the description of business in Item 101(c) of Regulation S–K.[38] A number of commenters on the Concept Release also recommended incorporating Item 102 into the broader description of business disclosure requirements in Item 101.[39] Several of these commenters recommended revising Item 101 to require broad disclosure of a registrant's resources or assets, whether physical or otherwise, that are critical to a registrant's business.[40] One of these commenters stated that the specific requirements of Item 102 are obsolete, but that a description of physical properties in Item 101 would remain relevant to certain types of registrants.[41]

We have considered the recommendations of the staff and commenters but are not proposing to combine Item 102 and Item 101. We believe that any effort to combine these items should follow a broader evaluation of how the disclosure should address material core assets, whether physical or otherwise, including material resources such as human capital or intellectual property. Such a broader inquiry was not included in the FAST Act Report and is therefore outside the scope of this release.

Request for Comment

1. Should we revise Item 102 to clarify that a description of property is required only to the extent that physical properties are material to the registrant and may be provided on a collective basis, if appropriate, as proposed? Under what circumstances is the flexibility to provide property disclosure on a collective basis useful (*e.g.,* information about the percentage of material properties within and outside the United States)?

2. Should we harmonize non-industry-specific disclosure thresholds by replacing them with a materiality threshold as proposed?

3. The S–K Study recommended that, for businesses that have material properties, disclosure requirements

Sterling LLP (Nov. 26, 2014) [Disclosure Effectiveness letter] (''Shearman 1'') (stating that disclosure of physical properties does not, in most cases, provide investors meaningful information, particularly for registrants not engaged in manufacturing); Allstate Insurance Company (July 1, 2016) (''Allstate''); Fenwick West LLP (Aug. 1, 2016) (''Fenwick''); U.S. Chamber of Commerce (July 20, 2016) (''Chamber 2''); Corporate Governance Coalition for Investor Value (July 20, 2016) (''CGCIV''); Securities Industry and Financial Markets Association (July 21, 2016) (''SIFMA''); Ernst & Young (July 21, 2016) (''Ernst &Young 3''); and Davis Polk & Wardwell LLP (July 22, 2016) (''Davis Polk 1'').

[24] 17 CFR 229.303.

[25] *See* Letters from Chamber 1 and Society of Corporate Secretaries.

[26] *See, e.g.,* Letters from Allstate; National Association of Real Estate Investment Trusts (July 21, 2016); Fenwick; Davis Polk 1; FedEx Corporation (July 21, 2016) (''FedEx''); Chamber 2; and CGCIV (both the Chamber 2 and CGCIV letters recommended eliminating this disclosure requirement except to the extent property disclosure is material or is necessary to make other disclosures not misleading and stated that, if this disclosure requirement is retained, it should not be expanded and the Commission should clarify that for registrants who do not have material physical properties, disclosure about their corporate headquarters, office space, and other facilities is optional, not required).

[27] *See* Letter from Fenwick.

[28] *See* Letter from American Bar Association (Mar. 6, 2015) [Disclosure Effectiveness letter] (''ABA'').

[29] *Id.*

[30] *See, e.g.,* Letters from US SIF: The Forum for Sustainable and Responsible Investment (Sept., 18, 2014) [Disclosure Effectiveness letter] (''US SIF 1''); US SIF: The Forum for Sustainable and Responsible Investment (July 14, 2016) (''US SIF 2''); Elise J. Bean (July 6, 2016) (''E. Bean''); and CFA Institute (Oct. 6, 2016) (''CFA Institute'').

[31] *See* Letter from US SIF 2.

[32] *See* Letters from Stephen P. Percoco (July 24, 2016) (''S. Percoco'') and Sen. Feinstein, et al. (Feb. 27, 2017) (''Sen. Feinstein, et al.'').

[33] *See* Letter from S. Percoco.

[34] *See* Letter from Sen. Feinstein, et al.

[35] We believe this approach is clearer and does not inadvertently omit disclosures that would be material to the registrant, but not its ongoing business, for example properties that had value that was material to the registrant but that were no longer important to its operations.

[36] *See* Letter from ABA.

[37] For example, Instruction 3 of Item 102 refers to ''major significance'' and is specific to the mining industry. The Modernization for Mining Registrants Proposing Release proposes to eliminate this instruction. *See supra* note 13.

[38] Item 101(c) of Regulation S–K [17 CFR 229.101(c)]. *See* FAST Act Report, *supra* note 2, at Recommendation B.1.

[39] *See, e.g.,* Letters from Ernst & Young 3; SIFMA; New York State Society of Certified Public Accountants (July 19, 2016) (''NYSSCPA''); Davis Polk 1; General Motors Company (Sept. 30, 2016) (''General Motors''); and Financial Executives International (Oct. 3, 2016) (''Financial Executives International'').

[40] *See* Letters from Ernst & Young 3; Davis Polk 1; General Motors; and Financial Executives International.

[41] *See* Letter from Davis Polk 1.

could be refocused on material facts about those properties that would inform investors about the significance of the property to the business, including uncertainties in connection with these properties.[42] Should Item 102 require additional disclosure about material properties, including uncertainties such as information about properties that are located near designated areas where natural disasters are more likely to occur? If so, what should be required and why? Would this elicit more meaningful disclosure or would this duplicate disclosure in MD&A?

B. Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303)[43]

1. Year-to-Year Comparisons (Instruction 1 to Item 303(a))

Item 303(a) requires registrants to discuss their financial condition, changes in financial condition, and results of operations.[44] Instruction 1 to Item 303(a) states that the discussion and analysis shall be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. This instruction also provides that, generally, the discussion shall cover the three-year period covered by the financial statements and either use year-to-year comparisons or any other formats that in the registrant's judgment would enhance a reader's understanding. The instruction states that reference to the five-year selected financial data may be necessary where trend information is relevant.

In the FAST Act Report, the staff recommended that we consider revising Item 303(a) to clarify that a registrant need only provide a period-to-period comparison for the two most recent fiscal years covered by the financial statements and may hyperlink to the prior year's annual report for the earlier of the year-to-year comparisons.[45] Many commenters on the Concept Release recommended modifying Item 303 to reduce duplicative disclosure, although these commenters recommended simply eliminating the earlier of the year-to-year comparisons.[46] A number of these commenters stated that this discussion is readily available in a registrant's prior year annual report on EDGAR.[47] Two of these commenters stated that repetition of the earlier of the year-to-year comparisons could distract investors from new, material information and result in confusion.[48] A few of these commenters recommended requiring the earlier of the year-to-year comparisons only if there is a significant trend that is discernible through a multiple year-to-year comparison[49] or if prior results have been restated.[50]

Some of the commenters who suggested eliminating the earlier of the year-to-year comparisons recommended allowing registrants to hyperlink to the filing with the earlier of the year-to-year comparisons.[51] One commenter opposed a requirement to hyperlink to the prior filing, stating that EDGAR is sufficiently user-friendly for investors to readily obtain the relevant report.[52] Another commenter, however, disagreed with eliminating the requirement to include the earlier of the year-to-year comparisons stating that this would require investors to look for the information elsewhere.[53]

We are proposing to amend Item 303 to eliminate discussion of the earliest year in some situations.[54] Under the amendments we propose today, when financial statements included in a filing cover three years, discussion about the earliest year would not be required if (i) that discussion is not material to an understanding of the registrant's financial condition, changes in financial condition, and results of operations, and (ii) the registrant has filed its prior year Form 10–K[55] on EDGAR containing MD&A of the earliest of the three years included in the financial statements of the current filing. By allowing registrants to eliminate MD&A disclosure about the earliest year in these situations, our proposals are intended to discourage repetition of disclosure that is no longer material, which we believe would further our mandate under the FAST Act to modernize and simplify Regulation S–K in a manner that reduces costs and burdens on companies while still providing all material information.

Our proposed amendments to Item 303(a) are consistent with our existing interpretive guidance on MD&A. In the 2003 MD&A Interpretive Release, the Commission stated that, in preparing MD&A, companies should evaluate issues presented in previous periods and consider reducing or omitting discussion of those that may no longer be material or helpful, or revise discussions where a revision would make the continuing relevance of an issue more apparent.[56] The Commission

[42] *See* S–K Study at pp. 99–100 (recommending that ''[f]or businesses that do have properties that are material, disclosure requirements could be refocused on material facts about those properties that would inform investors about the significance of the property to the business and any trends or uncertainties in connection with that property, rather than requiring a list of locations, capacity and ownership. Changes in the way that businesses operate may also make other disclosures relevant that are not expressly addressed under current requirements. For example, requirements could be more specific as to additional disclosure that would be necessary where a business relies heavily on intellectual property owned by a third party or relies on service agreements with third parties to perform necessary business functions.'').

[43] After consideration of the staff's recommendation C.2. in the FAST Act Report, we are not, proposing to eliminate or revise the table of contractual obligations. *See* FAST Act Report, *supra* note 2, at n.15. *See also* letter from Jack Ciesielski (Dec. 12, 2016) [FAST Act Letter] (opposing the staff's recommendation to delete or revise the table of contractual obligations).

[44] Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[45] *See* FAST Act Report, *supra* note 2, at Recommendation C.1.

[46] *See, e.g.,* Letters from Ernst & Young 1 (stating that the existing requirements in Item 303 should be sufficient to result in a comprehensive discussion of a three-year trend without a year-to-year comparison); Chamber 1; Society of Corporate Secretaries (also stating that the existing requirements in Item 303 are sufficient to elicit a discussion of trends over the relevant three-year period, if such a trend exists and is material); IBM Corporation (Aug. 7, 2014) [Disclosure Effectiveness letter]; Arthur J. Radin (May 29, 2015) [Disclosure Effectiveness letter] (''A. Radin 1''); Arthur J. Radin (July 5, 2016) (''A. Radin 2''); UnitedHealth Group Inc. (July 21, 2016) (''United Health''); SIFMA; Ernst & Young (Nov. 20, 2015) [Disclosure Effectiveness letter] (''Ernst &Young 2''); Ernst & Young 3; PNC Financial Services Group (July 21, 2016) (''PNC''); Investment Program Association (July 21, 2016) (''Investment Program Association''); Prologis Inc. (July 21, 2016) (''Prologis''); Allstate; Davis Polk 1; S. Percoco; Fenwick; NYSSCPA; Institute of Management Accountants; Chamber 2; FedEx; CGCIV; Northrop Grumman Corporation (Sept. 27, 2016); General Motors; and Financial Executives International.

[47] *See, e.g.,* Letters from A. Radin 1 and A. Radin 2; Ernst &Young 3; PNC; Prologis; Allstate; Fenwick; NYSSCPA; Chamber 2; FedEx; CGCIV; Investment Program Association; General Motors; and Financial Executives International.

[48] *See* Letters from Chamber 1; Chamber 2; and CGCIV.

[49] *See* Letters from SIFMA and PNC.

[50] *See* Letter from S. Percoco.

[51] *See, e.g.,* Letters from United Health; Investment Program Association; Allstate; and General Motors.

[52] *See* Letter from Fenwick.

[53] *See* Letters from CFA Institute (Nov. 12, 2014 [Disclosure Effectiveness letter] and Oct. 6, 2016).

[54] Our proposed amendments to Item 303(a)(3) would not affect SRCs, as SRCs may limit their disclosure to the two-year period covered by their financial statements. *See* Instruction 1 to Item 303(a) of Regulation S–K. *See also* Rule 12b–2 under the Exchange Act and Rule 405 under the Securities Act.

Similarly, our proposed amendments would not affect EGCs that provide two years of audited financial statements. EGCs are only required to provide two years of audited financial statements in an initial public offering of common equity securities and may limit their MD&A to only those audited periods presented in the financial statements. Public Law 112–106, Sec. 102(b)–(c), 126 Stat. 306 (2012). *See also* Instruction 1 to Item 303(a) of Regulation S–K.

[55] 17 CFR 249.310.

[56] *See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operation,* Release No.

also encouraged companies and management to take a ''fresh look'' at MD&A with a view to enhancing its quality.[57] The Commission observed that the effectiveness of MD&A decreases with the accumulation of unnecessary detail or duplicative or uninformative disclosure that obscures material information.[58] In furtherance of this prior interpretive guidance, our proposals are intended to encourage companies to re-evaluate disclosures in their prior year MD&A and take a ''fresh look'' to determine whether such disclosure remains material.

To this end, we are not proposing the staff's recommendation in the FAST Act Report to hyperlink to the prior year's annual report for the earlier of the year-to-year comparison. We believe that encouraging companies to take a ''fresh look'' at their prior year MD&A to determine whether it remains material and eliminating disclosure of the earliest of the three years when specified conditions are met, rather than hyperlinking to disclosure that may no longer be material, would more effectively achieve our FAST Act mandate to reduce the costs and burdens on companies while continuing to provide all material information.[59]

Our proposals would also eliminate the reference to five-year selected financial data in Instruction 1 to Item 303(a). Instruction 1 provides that, where trend information is relevant, reference to the five-year selected financial data in Item 301 may be necessary. Because disclosure requirements for liquidity, capital resources, and results of operations already require trend disclosure,[60] we are proposing to simplify Instruction 1 by eliminating the reference to trend information. This proposed amendment is intended to eliminate duplication and is not intended to discourage registrants from providing trend disclosure in MD&A.

We are also proposing to simplify Instruction 1 to Item 303(a) to emphasize that registrants may use any presentation that, in the registrant's judgment, would enhance a reader's understanding. Instruction 1 currently specifies that the discussion cover the three-year period covered by the financial statements and use year-to-year comparisons or any other format that, in the registrant's judgment, would enhance a reader's understanding. Although the staff has observed that almost all registrants provide year-to-year comparisons,[61] we believe that registrants may, in some cases, determine that a narrative discussion for some or all of the years in the three-year period is a more appropriate format. For instance, in a situation where some information about the earliest year in a three-year period is needed because it remains material to an understanding of the registrant's financial condition, a registrant may decide that narrative disclosure about the earliest year and a year-to-year comparison for the two most recent years in the three-year period is appropriate. The proposed amendments underscore our intent to allow registrants to tailor the presentation of their disclosure to reflect their varying circumstances, provided that registrants continue to disclose the information required by Item 303.[62]

Request for Comment

4. Should we revise Item 303 as proposed?

5. Should we expand the proposal, with similar conditions, to other forms such as Form S-1[63] or Form 8–K?[64]

6. Instead of allowing registrants to eliminate the earliest of the three years of MD&A in some situations, should we retain the earliest year requirement and instead amend Item 303 to allow registrants to hyperlink to the prior year's annual report for that disclosure in lieu of repeating the disclosure in the current year's report?

7. Should we include additional conditions on allowing registrants to exclude the earliest of the three years or provide guidance on when a discussion of the earliest of the three years would be material to an understanding of the registrant's financial condition, changes in financial condition, and results of operations? For example, should we not allow registrants to exclude discussion of the earliest year if there has been a material change to either of the two earlier years due to a restatement or a retrospective adoption of a new accounting principle?

8. Should we revise Instruction 1 to Item 303(a) as proposed to eliminate the reference to year-to-year comparisons? Would eliminating that reference encourage registrants to use a different presentation? Alternatively, should we retain the references to year-to-year comparisons and revise the instruction to identify specific alternatives to year-to-year comparisons? If so, what alternatives should we include?

9. Should we eliminate the reference to five-year selected financial data in Instruction 1 to Item 303(a) as proposed? Would there be a significant impact on the total mix of information available? Would eliminating this reference discourage registrants from providing trend disclosure in their MD&A?

2. Application to Foreign Private Issuers

The disclosure requirements for Item 5 of Form 20–F[65] (Operating and Financial Review and Prospects) are substantively comparable to the MD&A requirements under Item 303 of Regulation S–K.[66] To maintain a consistent approach to MD&A for domestic registrants and foreign private issuers, we are proposing changes to Form 20–F that conform to our proposed amendments to Instruction 1 to Item 303(a). Accordingly, our proposals would amend the instructions to Item 5 of Form 20–F to provide that, when financial statements included in a filing cover three years, discussion about the earliest year would not be required if (i) that discussion is not material to an understanding of the registrant's financial condition, changes in financial condition, and results of operations and (ii) the registrant has filed its prior year Form 20–F on EDGAR containing Item 5 disclosure of the earliest of the three years included in the financial statements of the current filing. Similar to our proposals for Item 303, we are proposing to amend the instructions to Item 5 of Form 20–F to emphasize that registrants may use any presentation that, in the registrant's judgment, would enhance a reader's understanding.

We are not proposing similar changes to Form 40–F.[67] Form 40–F generally permits Canadian issuers to use Canadian disclosure documents to satisfy the Commission's registration and disclosure requirements. As a result, the MD&A contained in Form

33–8350 (Dec. 19, 2003) [68 FR 75056 (Dec. 29, 2003)] (''2003 MD&A Interpretive Release'').

[57] *Id.*

[58] *Id. See also Basic, Inc.,* v. *Levinson,* 485 U.S. 224 (1998) at 231 quoting *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976) at 448–449.

[59] We also are mindful that a number of registrants with segments or different lines of business may present their MD&A by segment or line of business. In these instances, numerous hyperlinks in MD&A may fragment readability.

[60] *See* Item 303(a)(1), 303(a)(2)(ii) and 303(a)(3)(ii) of Regulation S–K [17 CFR 229.303(a)(1), (a)(2)(ii), (a)(3)(ii)].

[61] *See* Concept Release, *supra* note 6, at n.350 and accompanying text.

[62] *See* 2003 *MD&A Interpretive Release, supra* note 53.

[63] 17 CFR 239.11.

[64] 17 CFR 249.308.

[65] 17 CFR 249.220f.

[66] When the Commission revised the wording of Item 5 of Form 20–F in 1999, the adopting release noted that the requirements correspond with Item 303 of Regulation S–K. *See International Disclosure Standards,* Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900 (Oct. 5, 1999)], at 53904.

[67] 17 CFR 249.240f.

40–F is largely prepared in accordance with Canadian disclosure standards.

Request for Comment

10. Should we make corresponding changes to the instructions to Item 5 in Form 20–F as proposed? Why or why not? Are there any unique considerations with respect to foreign private issuers in this context?

11. Should we include additional conditions on allowing registrants to exclude the earliest of the three years or provide guidance on when a discussion of the earliest of the three years would be material to an understanding of the registrant's financial condition, changes in financial condition, and results of operations when providing Item 5 disclosure on Form 20–F? For example, should we not allow registrants to exclude discussion of the earliest year if there has been a material change to either of the two earlier years due to a restatement or a retrospective adoption of a new accounting principle?

12. Should we make corresponding changes to Form 40–F? Why or why not?

13. Would the proposed amendments conflict with home-country requirements in some jurisdictions? If so, please explain.

C. Management, Security Holders and Corporate Governance

1. Directors, Executive Officers, Promoters, and Control Persons (Item 401)

Item 401 [68] requires disclosure of identifying and background information about a registrant's directors, executive officers, and significant employees.[69] The information required by Item 401 must be included in several of the Commission's disclosure forms, including Part III of an annual report on Form 10–K. General Instruction G of Form 10–K allows Part III disclosure to be incorporated into the Form 10–K by reference to the registrant's definitive proxy or information statement.[70]

As an alternative to incorporating all of the Part III disclosure by reference to a definitive proxy or information statement, Instruction 3 to Item 401(b) allows disclosure of information about executive officers required under Item 401 to be included in Part I of Form 10–K. If a registrant elects to follow this instruction, it is not required to repeat that information in its definitive proxy or information statement.

This instruction was introduced in 1978, when the executive officer and director disclosure requirements were moved from separate parts of Form 10–K into what was then Item 3 of Regulation S–K.[71] The instruction was intended to allow registrants to continue the practice of disclosing information about their executives in Form 10–K while incorporating disclosure about directors and other matters by reference to their definitive proxy or information statement.[72]

As the staff observed in the FAST Act Report, the instruction's location may cause confusion because it is included under paragraph (b), despite the fact that other paragraphs of Item 401 also require disclosure about executive officers.[73] Although Instruction 3 refers to ''this Item'' (rather than to paragraph (b) narrowly), the staff issued interpretive guidance stating that disclosure of the business experience of executive officers pursuant to Item 401(e) need not be duplicated in proxy statements if it is already presented in Part I of Form 10-K.[74]

To eliminate any confusion arising from the current location of the instruction, we are proposing to clarify the instruction by moving it from Item 401(b) and making it a general instruction to Item 401. The amended instruction is intended to clarify its application to any disclosure about executive officers required by Item 401. We are also proposing to revise the required caption for the disclosure if it is included in Part I of Form 10–K to reflect a ''plain English'' approach. The required caption would be ''Information about our Executive Officers'' instead of ''Executive officers of the registrant.''

Request for Comment

14. Should we amend Instruction 3 to Item 401(b) as proposed?

15. The proposed instruction would apply to all of the disclosure about executive officers required by Item 401. Should we limit this instruction to only certain paragraphs of Item 401, such as paragraphs (b) and (e) but exclude paragraph (f)? [75]

16. Where a registrant relies on General Instruction G to forward incorporate by reference to its definitive proxy or information statement, is there other Part III disclosure about executive officers that we should specify need not be duplicated in the proxy or information statement if it is already presented in Part I of Form 10–K? For example, should we specify that disclosure about transactions with executive officers pursuant to Item 404 does not need to be duplicated in the proxy or information statement if it is already disclosed in Part I of Form 10–K?

17. Instead of clarifying how Instruction 3 to Item 401(b) applies, should we require disclosure about executive officers to be included in a registrant's Form 10–K filing, so that it is easier to locate? [76] Alternatively, should we require all Item 401 disclosure to be included in a registrant's proxy or information statement instead of its Form 10–K if the registrant is required to file a proxy or information statement? [77]

2. Compliance With Section 16(a) of the Exchange Act (Item 405)

Section 16(a) of the Exchange Act requires officers, directors, and specified types of security holders to report their beneficial ownership of a registrant's equity securities using forms

[68] 17 CFR 229.401.

[69] Item 401 of Regulation S–K [17 CFR 229.401] was adopted in 1982 as part of the Commission's integrated disclosure initiative, although similar requirements can be traced back to Schedule A of the Securities Act. *See Adoption of Integrated Disclosure System,* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)] (the ''Integrated Disclosure System Adopting Release''). *See also* Securities Act, Schedule A, Paragraph 4 [15 U.S.C. 77aa(4)].

[70] General Instruction G.3 allows the information required by Item 401, along with other items required by Part III of Form 10–K, to be incorporated by reference from the registrant's proxy statement if it is filed with the Commission within 120 days after the end of the fiscal year covered by the Form 10–K.

[71] *See Uniform and Integrated Reporting Requirements,* Release No. 33–5949 (July 28, 1978) [43 FR 34402 (Aug. 3, 1978)].

[72] *Id.* At the time, Part I of Form 10–K required disclosure regarding executive officers of the registrant and Part II required disclosure about directors. Registrants could exclude the Part II information if it would be included in the registrant's proxy statement.

[73] FAST Act Report, *supra* note 2, at Recommendation D.1.

[74] *See* Regulation S–K Compliance and Disclosure Interpretation 116.02, *available at https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm* (last updated July 26, 2016). General Instruction G to Form 10–K also refers generally to the ''information regarding executive officers required by Item 401'' when discussing the accommodation provided in Instruction 3 to Item 401(b).

[75] Item 401(b) (Identification of executive officers); Item 401(e) (Business experience) and Item 401(f) (Involvement in certain legal proceedings).

[76] *See* Letter from Davis Polk (Oct. 31, 2016) [Subpart 400 letter] (''Davis Polk 2'') (stating that requiring disclosure about executive officers in Form 10–K would make it easier to find and would be more appropriate because shareholders ''are not generally asked to vote on matters related to a registrant's executive officers other than with respect to executive compensation, and that information is provided in the proxy statement'').

[77] *See* Letter from Ernst & Young LLP (Nov. 30, 2016) [Subpart 400 letter] (recommending that all Item 401 disclosure be required in a registrant's proxy or information statement because splitting that disclosure is ''not conducive to investors assessing the diversity and complementary mix of experience of the board in conjunction with that of executive officers'').

prescribed by the Commission.[78] Item 405[79] requires registrants to disclose each reporting person[80] who failed to file on a timely basis Section 16 reports during the most recent fiscal year or prior fiscal years.[81] The disclosure is required under the caption ''Section 16(a) Beneficial Ownership Reporting Compliance.'' Rule 16a–3(e) requires reporting persons to furnish a duplicate of those Section 16 reports to the registrant.[82] Item 405(a) states that registrants shall provide the required disclosure based solely on a review of such furnished reports and any written representation provided by such persons that no Form 5 is required.[83]

In the FAST Act Report, the staff recommended that we consider eliminating the delivery requirement in Rule 16a–3(e) and revising Item 405 to permit registrants to rely only on (i) a review of Section 16 reports submitted on EDGAR and (ii) any written representation that no Form 5 is required, when determining whether there are any Section 16 delinquencies that must be disclosed pursuant to Item 405.[84] Reporting persons have been required to file their Section 16 reports electronically on EDGAR since 2003.[85] The Commission has stated that ''[b]y reviewing Section 16 reports posted on EDGAR, an issuer is readily able to evaluate their timeliness'' [86] and ''issuers also may consult EDGAR to obtain notice of new filings.'' [87]

Consistent with the staff's recommendations, we are proposing to amend Item 405 to focus on a review of Section 16 reports available on EDGAR rather than reports furnished to the registrant. We are also proposing to eliminate the requirement in Rule 16a–3(e) that reporting persons furnish Section 16 reports to the registrant. We believe that a shift to reliance on electronically filed Section 16 reports, while retaining the written representation in Item 405(b)(1), would modernize and simplify compliance with Item 405 while still providing all material information.

In the FAST Act Report, the staff recommended that the Commission consider adding an instruction that permits a registrant to rely on the information in the Section 16 reports submitted on EDGAR unless it knows, or has reason to believe, that the information is not complete or accurate or that a report or an amendment should have been filed but was not.[88] While there is a similar instruction in Item 403 of Regulation S–K with respect to the contents of Section 13(d) and 13(g) statements filed with the Commission,[89] we have concerns that, if implemented, this recommendation could lead to uncertainty about when a registrant has a reporting obligation because of the difficulty ascertaining when a registrant may have knowledge of delinquencies or a reason to believe that delinquencies have occurred. Therefore, at this time, we are not proposing to expand reporting under Item 405 in this manner.

We are, however, proposing to change the language of Item 405 to clarify that registrants may rely on Section 16 reports filed on EDGAR but are not required to limit their inquiry to those filings. Item 405 currently states that the registrant ''shall'' make its disclosure ''based solely upon'' the Section 16 reports that are furnished to it pursuant to Rule 16a–3(e) and any written representation from a reporting person that no Form 5 is required. This language could be read to suggest that registrants may not rely on information outside of the Section 16 reports furnished to the registrant pursuant to Rule 16a–3(e). As proposed, Item 405(b) would state that registrants ''may'' rely only on the Section 16 reports and the written representation. Therefore, if a registrant was aware that information in a Section 16 report submitted on EDGAR was not complete or accurate, or that a reporting person failed to file a required report, it could provide appropriate disclosure pursuant to Item 405. We are also soliciting comment on the benefits and challenges of the proposed approach and how it may affect compliance with Section 16(a) reporting obligations.

The staff's final recommendation for revising Item 405 was to eliminate the use of the ''Section 16(a) Beneficial Ownership Reporting Compliance'' heading when the registrant does not have Section 16(a) delinquencies to report.[90] The staff has observed that some registrants have included this heading to disclose that they have nothing to report pursuant to Item 405.[91] To reduce unnecessary disclosure and improve the ability to search a registrant's filings for disclosure of Section 16(a) reporting delinquencies, we are proposing to add an instruction to Item 405 that encourages registrants to exclude the heading if they have no delinquencies to report. We are also proposing to change the heading to ''Delinquent Section 16(a) Reports'' to more precisely describe the required disclosure and to further encourage registrants to exclude the heading if they do not have delinquencies to report.

We are also proposing to eliminate the checkbox on the cover page of Form 10–K relating to Item 405 disclosures and the related instruction in Item 10 of Form 10–K.[92] Currently, registrants are required to check a box on the cover page of Form 10–K to indicate that disclosure pursuant to Item 405 is not contained in the Form 10–K and will not be contained, to the best of the registrant's knowledge, in any definitive proxy or information statement that is incorporated by reference.[93] This checkbox was included in Form 10–K to

[78] *See* Form 3, Form 4, and Form 5.

[79] 17 CFR 229.405.

[80] Item 405(a)(1) of Regulation S–K [17 CFR 229.405(a)(1)] defines a ''reporting person'' as ''each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to Section 12 of the Exchange Act, or any other person subject to Section 16 of the Exchange Act with respect to the registrant because of the requirements of Section 30 of the Investment Company Act.''

[81] Item 405 was initially proposed in 1988 in an attempt to reduce the high delinquency rate for Section 16 reports. *See Ownership Reports and Trading by Officers, Directors and Principal Stockholders,* Release No. 34–26333 (Dec. 2, 1988) [53 FR 49997 (Dec. 13, 1988)] and *Ownership Reports and Trading by Officers, Directors and Principal Security Holders,* Release No. 34–27148 (Aug. 18, 1989) [54 FR 35667 (Aug. 29, 1989)] (re-proposing Item 405 in response to comments on the 1988 proposing release).

[82] *See* 17 CFR 240.16a–3(e).

[83] *See* 17 CFR 229.405(a) and (b)(1).

[84] FAST Act Report, *supra* note 2, at Recommendation D.2.

[85] *See Mandated Electronic Filing and Web Site Posting for Forms 3, 4 and 5,* Release No. 33–8230 (May 7, 2003) [68 FR 25788 (May 13, 2003)] (the ''Section 16 Mandatory Electronic Filing Release''). In addition, all registrants who maintain a corporate website are required to post any Section 16 reports relating to the equity securities of the registrant on such website pursuant to Rule 16a–3(k) of the Exchange Act [17 CFR 240.16a–3(k)], and many registrants satisfy this requirement by providing hyperlinks directly to the electronic filings once they are made on EDGAR. The Commission has noted that any concerns a registrant may have about obtaining an electronic copy of the filing from a Section 16 reporting person in order to satisfy the web posting requirement ''would not arise for issuers that rely on a hyperlink (for example, to EDGAR) instead of, or in addition to, direct website posting.'' *Id.* at 25790.

[86] *See Ownership Reports and Trading by Officers, Directors and Principal Security Holders,* Release 33–8600 (Aug. 3, 2005) [70 FR 46080 (Aug. 9, 2005)], at 46086.

[87] *Section 16 Mandatory Electronic Filing Release, supra* note 85, at 25790.

[88] FAST Act Report, *supra* note 2, at n.55.

[89] *See* Instruction 3 to Item 403 [17 CFR 229.403].

[90] *See* FAST Act Report, *supra* note 2, at Recommendation D.3.

[91] Rule 12b–13 [17 CFR 240.12b–13] states that, unless expressly provided otherwise, if any item is inapplicable or the answer thereto is negative, an appropriate statement to that effect shall be made. Item 405, however, only requires the use of this heading when responsive disclosure is included. *See* Item 405(a)(1).

[92] 17 CFR 229.10.

[93] *See* 17 CFR 249.310.

assist the Commission and security holders in identifying registrants that were disclosing delinquent filings by insiders.[94] The related instruction in Item 10 of Form 10–K is also intended to facilitate the Form's processing and review.[95] We believe that the proposed amendments would lessen the need for this checkbox by reducing the unnecessary use of the heading and thereby facilitating document searches. Moreover, the checkbox may have limited use, because most registrants defer their Item 405 disclosure to their definitive proxy or information statement pursuant to General Instruction G of Form 10-K.[96]

Request for Comment

18. Would allowing registrants to rely on Section 16 reports filed on EDGAR instead of reports furnished to them reduce the burden of complying with Item 405 while preserving their ability to disclose delinquencies? What effect, if any, would the proposed approach have on compliance with the Section 16(a) reporting requirements? Should we continue to require Section 16 reporting persons to furnish reports to registrants, or should we require them to provide notice to the registrant when the reporting person files a report on EDGAR?

19. Should we, instead of permitting, require a registrant to disclose delinquencies under Item 405 if it knows, or has reason to believe, that there is a delinquency that is not reflected on EDGAR? Why or why not?

20. Should we revise the ''Section 16(a) Beneficial Ownership Reporting Compliance'' heading as proposed? Is there an alternative heading that would be more appropriate?

21. Should we continue to include a checkbox on Form 10–K, or include a checkbox on Schedule 14A [97] or Schedule 14C, to indicate when the disclosure required by Item 405 is included in a filing? If so, what benefits would it provide compared to our proposed approach of encouraging registrants to exclude the proposed ''Delinquent Section 16(a) Reports'' heading if they do not have delinquencies to report?

3. Corporate Governance (Item 407)

Several disclosure requirements related to corporate governance are consolidated in Item 407.[98] In the FAST Act Report, the staff recommended updating a reference to an outdated auditing standard in Item 407(d)(3)(i)(B) and revising Item 407(e)(5) to clarify that EGCs are not required to provide a compensation committee report.[99] We are proposing amendments to implement both of these recommendations.

a. Audit Committee Discussions With Independent Auditor (Item 407(d)(3)(i)(B))

Under existing Item 407(d)(3)(i)(B), when a registrant files a proxy or information statement relating to an annual or special meeting of security holders at which directors are elected or written consents are provided in lieu of a meeting, a registrant's audit committee must state whether it has discussed with the independent auditor the matters required by AU section 380, *Communication with Audit Committees* (''AU sec. 380'').[100] AU sec. 380 was part of the interim standards previously adopted by the Public Company Accounting Oversight Board (''PCAOB'') on April 16, 2003.[101] As noted in the Commission's concept release on audit committee disclosures (the ''Audit Committee Concept Release''), the reference to AU sec. 380 is outdated, because it was superseded by PCAOB Auditing Standard No. 16, *Communications with Audit Committees* (''AS 16'').[102] Furthermore, on March 31, 2015, the PCAOB formally reorganized its auditing standards resulting in the codification of AS 16 as Auditing Standard No. 1301, *Communications with Audit Committees* (''AS 1301'').[103]

Commenters on the Audit Committee Concept Release that addressed this issue generally supported updating the AU sec. 380 reference.[104] Commenters differed on how best to update this reference, as AS 1301 is not the only requirement addressing communications between an auditor and the audit committee. Specifically, both the Commission and PCAOB have other rules and standards that require matters to be communicated to a company's audit committee.[105] Accordingly, several commenters suggested aligning the disclosure requirements with the communication requirements specific to the standards and rules of the PCAOB,[106] while others suggested a more encompassing requirement that would refer to all audit committee communications with the independent auditors required by not only the PCAOB but also the Commission.[107]

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[94] *See Ownership Reports and Trading by Officers, Directors and Principal Security Holders,* Release No. 34–28869 [56 FR 7242 (Feb. 21, 1991)] (''Ownership Reports and Trading Release''), at Section VI.B.

[95] The Instruction to Item 10 specifies that checking the box on the cover page to indicate that Item 405 disclosure of delinquent Form 3, 4, or 5 filers is not contained is intended to facilitate Form processing and review. The instruction also states that failure to provide such indication will not create liability for violation of the federal securities laws and that the space should be checked only if there is no disclosure in the Form of reporting person delinquencies in response to Item 405 and if the registrant, at the time of filing the Form 10–K, has reviewed the information necessary to ascertain, and has determined that, Item 405 disclosure is not expected to be contained in Part III of the Form 10–K or incorporated by reference.

[96] *See Ownership Reports and Trading Release* at 7260 (''If at the time of filing the Form 10–K the registrant does not yet know whether such disclosure will be contained in the proxy or information statement or the Form 10–K amendment containing the Part III information, the box should not be checked. If the box is not checked, this will not be taken as a statement that there will be Item 405 disclosure of delinquent filers, but rather that the registrant may not have the requisite knowledge at the time the Form 10–K is filed.''). The proposed approach would also have the advantage of allowing for this disclosure to be located with a simple text search whether it is included in the registrant's annual report or its definitive proxy or information statement.

[97] 17 CFR 240.14a–101.

[98] 17 CFR 229.407. Item 407 was adopted in 2006 to consolidate various corporate governance requirements under a single disclosure item. *See Executive Compensation and Related Person Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158 (Sept. 8, 2006)].

[99] *See* FAST Act Report, *supra* note 2, at Recommendations D.4 and D.5.

[100] *See* Instruction 3 to Item 407(d) of Regulation S–K.

[101] *See PCAOB Release No. 2003–006* (Apr. 16, 2003). AU sec. 380 required an auditor to discuss various matters related to the conduct of an audit with those who have responsibility for oversight of the financial reporting process.

[102] *See Possible Revisions to Audit Committee Disclosures,* Release No. 33–9862 (July 1, 2015) [80 FR 38995 (July 8, 2015)], at 39003.

[103] *See* PCAOB Release No. 2015–02 (Mar. 31, 2015). The PCAOB completed a reorganization of its auditing standards into a topical structure and a single, integrated numbering system (the ''Reorganization''). The Commission approved the Reorganization on September 17, 2015. *See Order Granting Approval of Proposed Rules to Implement the Reorganization of PCAOB Auditing Standards and Related Changes to PCAOB Rules and Attestation, Quality Control, and Ethics and Independence Standards,* Release No. 34–75935 (Sept. 17, 2015) [80 FR 57263 (Sept. 22, 2015)].

[104] Comments on the Audit Committee Concept Release are available at *https://www.sec.gov/comments/s7–13–15/s71315.shtml.* We refer to these letters throughout as ''Audit Committee'' letters.

[105] *See, e.g.,* Appendix B to AS 1301; Section 10A(k) of the Exchange Act [15 U.S.C. § 78j–1(k)]; Rule 2–07 of Regulation S–X [17 CFR 210.2–07]; and Rule 10A–3 [17 CFR 240.10A–3].

[106] *See, e.g.,* Letters from AngloGold Ashanti Limited (Sept. 7, 2015) [Audit Committee letter]; Deloitte & Touche LLP (Sept. 2, 2015) [Audit Committee letter]; National Association of State Boards of Accountancy (Sept. 3, 2015) [Audit Committee letter]; and James H. Edwards (Sept. 8, 2015) [Audit Committee letter].

[107] *See, e.g.,* Letters from AT&T Inc. (Sept. 8, 2015) [Audit Committee letter]; Federal Regulation of Securities, Law and Accounting, and Corporate Governance Committees of the American Bar Association (Feb. 9, 2016) [Audit Committee letter]; and The Home Depot, Inc. (Sept. 17, 2015) [Audit Committee letter]. One commenter on the Regulation S–K Subpart 400 Release also

After consideration of the comments we have received and the recommendation of the staff in the FAST Act Report, we are proposing to update the reference to AU sec. 380 by referring more broadly to the applicable requirements of the PCAOB and the Commission. We believe such an approach would accommodate future changes to audit committee communication requirements.

Request for Comment

22. Should we amend Item 407(d)(3)(i)(B) to refer to the ''applicable requirements of the PCAOB and the Commission rules'' as proposed? Is there a better reference or additional guidance that we should provide to facilitate audit committee compliance and investor understanding of this requirement?

b. Compensation Committee Report (Item 407(e)(5))

Item 407(e)(5) requires a registrant's compensation committee to state whether it has reviewed and discussed the Compensation Discussion and Analysis (''CD&A'') required by Item 402(b).[108] Based on this review and discussion, Item 407(e)(5) requires that the compensation committee state whether it recommended to the board of directors that the CD&A be included in the registrant's annual report, proxy statement or information statement. As recommended by the staff, we are proposing to amend Item 407 to explicitly exclude EGCs from the Item 407(e)(5) requirement, because they are not subject to a requirement to include a CD&A in their public disclosures.[109] Specifically, we are proposing to add a reference to EGCs in Item 407(g) instead of amending Item 407(e)(5). Item 407(g) currently excludes SRCs from Item 407(e)(5), among other provisions of Item 407.

Request for Comment

23. Instead of amending Item 407(g) as proposed, should we amend Item 407(e)(5)?

D. Registration Statement and Prospectus Provisions

1. Outside Front Cover Page of the Prospectus (Item 501(b))

Item 501 [110] includes disclosure requirements related to the forepart of the registration statement and the outside front cover page of the prospectus. In the FAST Act Report, the staff made several recommendations to streamline the requirements and to provide registrants with greater flexibility in designing a cover page tailored to their business and the particular offering.[111] The proposed amendments discussed below would implement these recommendations.

a. Name (Item 501(b)(1))

Item 501(b)(1) requires disclosure of a registrant's name, including an English translation of the name of foreign registrants. The instruction to Item 501(b)(1) states that if a registrant's name is the same as that of a ''well known'' company, or if the name leads to a misleading inference about the registrant's line of business, the registrant must include information to eliminate any possible confusion with the other company. If disclosure is insufficient to eliminate the confusion, the registrant may be required to change its name. An exception, however, is available when the registrant is an ''established company,'' the character of the registrant's business has changed, and the ''investing public is generally aware of the change and the character of [the registrant's] current business.''

The policy reflected in Item 501(b)(1) with regards to misleading company names was first articulated in 1969 in response to an increase in the number of registrants using names that the staff considered to be misleading.[112] Although we continue to believe that a registrant's name could mislead investors, the staff's experience administering this provision suggests that these situations can typically be addressed with clarifying disclosure. The Commission and the staff may be able to address situations in which the registrant's name is either confusingly similar or misleading in connection with any public interest finding necessary to declare the filing effective.[113] Accordingly, we are proposing to streamline the instruction to Item 501(b)(1) by eliminating the portion that discusses when a name change may be required and the exception to that requirement.

Request for Comment

24. Should we eliminate the language about a registrant's being required to change its name in the instruction to Item 501(b)(1) as proposed, or should we retain the current version of the instruction? Are there situations where disclosure would not be sufficient to eliminate misleading inferences about the company or its line of business?

b. Offering Price of the Securities (Item 501(b)(3))

Item 501(b)(3) requires disclosure of the price of the securities being offered, the underwriter's discounts and commissions, and the net proceeds that the registrant and any selling security holders will receive.[114] The disclosure must be provided on an aggregate and per share basis, but registrants may present the required information in any format that fits the design of the cover page and is clear, easily read, and not misleading.

Although in many cases the disclosure required by Item 501(b)(3) will be straightforward, Instruction 2 states that ''[i]f it is impracticable to state the price to the public, explain the method by which the price is to be determined.'' [115] In the FAST Act Report, the staff recommended providing registrants with greater flexibility in explaining the method by which the price is to be determined when it is impracticable to state the price on the cover page.[116]

We are proposing to amend Instruction 2 to explicitly allow registrants to include a clear statement that the offering price will be determined by a particular method or formula that is more fully explained in the prospectus. Under the proposed instruction, registrants would be required to accompany that statement with a cross-reference to the offering price method or formula disclosure, including a page number that is

recommended updating Item 407(d) to refer to AS 16. *See* Letter from Davis Polk 2.

[108] 17 CFR 229.402(b).

[109] *See* Item 402(l) of Regulation S–K.

[110] 17 CFR 229.501.

[111] FAST Act Report, *supra* note 2, at Recommendations E.1–5.

[112] At the time, the Commission noted that registrants were using words such as ''nuclear,'' ''missile,'' ''space,'' ''nucleonics,'' and ''electronics'' in their names when they were not engaged in activity normally associated with those words, or were engaged to a limited extent. *See Guide for Preparation and Filing of Registration Statements; Misleading Names of Registrants,* Release No. 33–4959 (Apr. 16, 1969) [34 FR 6575 (Apr. 17, 1969)]. This policy was contained in Guide 53 of the Commission's Guides for Preparation and Filing of Registration Statements before being moved into Item 501 in 1982. *See Integrated Disclosure System Adopting Release, supra* note 69; *Rescission of Guides and Redesignation of Industry Guides,* Release No. 33–6384 (Mar. 3, 1982) [47 FR 11476 (Mar. 16, 1982)].

[113] 15 U.S.C. 77h.

[114] 17 CFR 229.501(b)(3). Item 501(b)(3) also includes specific disclosure requirements for offerings being made on a minimum/maximum basis.

[115] The instruction also provides that if the securities are to be offered at the market price, or if the offering price is to be determined by a formula relating to the market price, indicate the market and market price of the securities as of the latest practicable date. We are not proposing any change to this portion of the instruction.

[116] *See* FAST Act Report, *supra* note 2, at Recommendation E.2.

highlighted by prominent type or in another manner.[117]

Request for Comment

25. As proposed, Item 501(b)(3) would allow registrants to choose to include a cross-reference to the explanation of the method in which the offering price will be determined when it is impracticable to state the price method or formula to the public on the cover page. Should we instead retain the requirement to present the explanation on the prospectus cover page? Why or why not?

26. Should we amend Instruction 2 to Item 501(b)(3) to require the cross-reference to be accompanied by a hyperlink? Item 501(b)(5) currently requires on the prospectus cover page a cross-reference to the risk factors section. Should we similarly amend Item 501(b)(5) to also require a hyperlink?

c. Market for the Securities (Item 501(b)(4))

Item 501(b)(4) requires a registrant to name the national securities exchanges that list the securities being offered and to disclose the trading symbols for those securities. A ''national securities exchange'' is a securities exchange that has registered with the Commission under Section 6 of the Exchange Act.[118] Under Item 501(b)(4), registrants are not required to name markets that are not a ''national securities exchange.''

Consistent with the staff's recommendation in the FAST Act Report,[119] we believe that information about markets that are not a ''national securities exchange'' could be important to investors and should be disclosed on the prospectus cover page. Accordingly, we are proposing to amend Item 501(b)(4) to require disclosure of the principal United States market or markets for the securities being offered and the corresponding trading symbols.[120]

Also consistent with the staff's recommendation,[121] we are limiting disclosure of markets that are not national securities exchanges to those principal United States markets where the registrant, through the engagement of a registered broker-dealer, has actively sought and achieved quotation. We agree with the staff that a registrant cannot always control whether its securities are quoted on an over-the-counter market and should not be burdened with making that determination.

Request for Comment

27. Should we expand the disclosure required by Item 501(b)(4) to include markets other than national securities exchanges as proposed? Would expanding the disclosure requirement make it difficult for registrants to determine which United States markets to disclose?

28. Should we limit the disclosure requirement to those principal United States markets where the registrant has actively sought and achieved quotation through the engagement of a registered broker-dealer as proposed? Should there be any other limitations on the markets the registrant would be required to disclose?

29. Should a domestic or foreign registrant be required to identify principal foreign markets where the registrant, through the engagement of a registered broker-dealer, has actively sought and achieved quotation for the class of security being offered?

30. If a registrant discloses another trading market elsewhere in its registration statement, should Item 501(b)(4) require disclosure of that market on the cover page, even if it is not a national securities exchange and even if the registrant did not actively seek quotation through the engagement of a registered broker-dealer? For example, Item 201(a) of Regulation S–K [122] requires disclosure of the principal United States market or markets in which each class of the registrant's common equity is traded.

31. Should we provide additional guidance on when a market other than a national securities exchange must be disclosed or when a registrant would be considered to have actively sought quotation through the engagement of a registered broker-dealer?

d. Prospectus ''Subject to Completion'' Legend (Item 501(b)(10))

Item 501(b)(10) requires a registrant that is using a preliminary prospectus to include a legend advising readers that the information will be amended or completed. The legend also must include a statement that the prospectus is not an offer to sell or a solicitation of an offer to buy securities in any state where the offer or sale is not permitted. The latter statement was introduced in 1958 to harmonize the legend with what was required by state securities administrators at the time.[123]

The legend requirement has remained mostly unchanged since 1958, even after the National Securities Markets Improvement Act (''NSMIA'') allowed for preemption of state blue sky laws in many offerings.[124] Consistent with the staff's recommendations in the FAST Act Report,[125] we are proposing to amend Item 501(b)(10) to permit registrants to exclude from the prospectus the portion of the legend relating to state law for offerings that are not prohibited by state blue sky law. This change would allow for a more tailored prospectus cover page in recognition of the changes to securities law brought by NSMIA.

Also consistent with the staff's recommendations,[126] we are proposing to streamline Item 501(b) by combining paragraphs (b)(10) and (11) without substantive change. Thus, our proposed amendments to paragraph (b)(10) would also require the ''subject to completion'' legend to be included if a registrant relies on Rule 430A [127] to omit pricing information and the prospectus is used after the effectiveness of the registration statement but before the public offering price is determined. Correspondingly, we are proposing to delete paragraph (b)(11).

Request for Comment

32. Should we allow registrants the discretion to exclude the portion of the legend required by Item 501(b)(10) that relates to state law prohibitions on offers or sales when it would not apply, as proposed?

2. Risk Factors (Item 503(c))

Item 503(c) requires disclosure of the most significant factors that make the

[117] This cross-reference would be similar to the cross-reference that is required for risk factor disclosure pursuant to Item 501(b)(5) of Regulation S–K [17 CFR 229.501(b)(5)]. In the FAST Act Report, the staff recommended the Commission consider amending Instruction 2 to Item 501(b)(3) to require the cross-reference to the offering price method or formula to be accompanied by a hyperlink. Because the cross-reference to risk factors required under Item 501(b)(5) does not currently require a hyperlink, we are not proposing to require a hyperlink for the disclosure called for by Item 501(b)(3).

[118] *See* Section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

[119] *See* FAST Act Report, *supra* note 2, at Recommendation E.3.

[120] Our proposed changes to Item 501(b)(4) align with our proposals to amend Item 201(a) [17 CFR 229.201(a)] in the Disclosure Update and Simplification Proposing Release. *See Disclosure Update and Simplification Proposing Release supra* note 13, at 51688.

[121] *See* FAST Act Report, *supra* note 2, at Recommendation E.3.

[122] Item 201(a) of Regulation S–K.

[123] *See Amendment of Rules 134 and 433,* Release No. 33–3885 (Jan. 7, 1958) [23 FR 184 (Jan. 10, 1958)]. This requirement was originally in Rule 433, a predecessor to the current requirement.

[124] Public Law No. 104–290, 110 Stat. 3416 (1996).

[125] *See* FAST Act Report, *supra* note 2, at Recommendation E.4.

[126] *See id.,* at Recommendation E.5.

[127] 17 CFR 230.430A.

offering speculative or risky.[128] The item specifies that the discussion should be concise and organized logically. Although the requirement is principles-based, it includes the following specific examples as factors that may make an offering speculative or risky:

- A registrant's lack of an operating history,
- a registrant's lack of profitable operations in recent periods,
- a registrant's financial position,
- a registrant's business or proposed business, or
- the lack of a market for a registrant's common equity securities or securities convertible into or exercisable for common equity securities.[129]

The item directs registrants to explain how each risk affects the issuer or the securities being offered. Additionally, the item discourages disclosure of risks that could apply to any issuer or offering.

Risk factor disclosure was initially called for only in the offering context.[130] Accordingly, when Item 503(c) was adopted in 1982 as part of the integrated disclosure system, it was included with other offering-related disclosure requirements in Subpart 500 of Regulation S-K.[131] In 2005, risk factor disclosure requirements were extended to periodic reports and registration statements on Form 10.[132]

As recommended by the staff in the FAST Act Report, we are proposing to relocate Item 503(c) from Subpart 500 to Subpart 100 to reflect the application of risk factor disclosure requirements to registration statements on Form 10[133] and periodic reports.[134] Subpart 100 covers a broad category of business information and is not limited to offering-related disclosure. Accordingly, our proposed amendments would move Item 503(c)'s requirement for risk factor disclosure to new Item 105.[135]

Additionally, our proposed amendments would eliminate the risk factor examples that are currently enumerated in Item 503(c). Although not addressed in the FAST Act Report, we solicited comment in the Concept Release on whether we should retain or eliminate the examples and whether we should revise our requirements to include additional or different examples.

A number of commenters recommended retaining and revising the examples in Item 503(c).[136] Several of these commenters supported a revision to specify examples of risk factors that are generic and therefore should not be disclosed.[137] For example, one of these commenters recommended that the Commission prohibit disclosure of generalized risks that affect all registrants or all registrants in a particular industry, the risk of stock volatility, organizational structure risks, and summaries of applicable regulation.[138] Two commenters recommended revising the examples to include risk factors applicable to well-established Exchange Act registrants,[139] while another two supported expanding the list of examples.[140] One of the commenters that recommended expanding the list of examples pointed to guidelines produced by the investor community as a source of additional examples.[141]

A few commenters recommended eliminating the examples in Item 503(c).[142] One of these commenters supported eliminating the examples so as to emphasize the principles-based nature of the disclosure requirement and to focus registrants on their own risk identification process.[143] Another of these commenters expressed a view that the examples were outdated and only helpful when the requirement to disclose risk factors was first introduced.[144]

As part of our mandate under the FAST Act to modernize and simplify our disclosure requirements while still providing all material information, we are proposing to eliminate these examples. These examples may not apply to all registrants and may not correspond to the material risks of any particular registrant. In addition, the inclusion of these examples could suggest that a registrant must address each one in its risk factor disclosures, regardless of the significance to its business. Finally, several commenters suggested expanding the list of examples or revising them to specify examples of generic risks that should not be disclosed. We are concerned that inclusion of examples could anchor or skew the registrant's risk analysis in the direction of the examples.[145] We believe that eliminating the examples would encourage registrants to focus on their own risk identification processes.

Request for Comment

33. Should we move the requirement to provide risk factor disclosure in Item 503(c) to a new Item 105 as proposed? Why or why not?

34. Should we relocate Item 503(c)'s requirements to another subsection of Regulation S–K? If so, which subsection and why?

35. Should we eliminate the risk factor examples as proposed, or do they provide useful guidance to registrants? Instead of eliminating the examples, should we provide different or

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[128] 17 CFR 229.503(c).

[129] These factors were derived from previous stop order proceedings under Section 8(d) of the Securities Act where the Commission suspended the effectiveness of previously filed registration statements due, in part, to inadequate disclosure about speculative aspects of the registrant's business. *See Guides for Preparation and Filing of Registration Statements,* Release No. 33–4936 (Dec. 9, 1968) [33 FR 18617 (Dec. 17, 1968)] (citing In the Matter of Doman Helicopters, Inc., 41 S.E.C. 431 (Mar. 27, 1963); In the Matter of Universal Camera Corp., 19 S.E.C. 648 (June 28, 1945)).

[130] *See Guides for Preparation and Filing of Registration Statements,* Release No. 33–4666 (Feb. 7, 1964) [29 FR 2490 (Feb. 15, 1964)] and *Guides for Preparation and Filing of Registration Statements,* Release No. 33–4936 (Dec. 9, 1968) [33 FR 18617 (Dec. 17, 1968)].

[131] *See Integrated Disclosure System Adopting Release, supra* note 69.

[132] *See Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] (''Securities Offering Reform Adopting Release'').

[133] 17 CFR 249.210.

[134] *See* FAST Act Report, *supra* note 2, at Recommendation E.6. Additionally, the proposed amendments would use the term ''registrant'' instead of ''issuer.'' Use of and reference to ''registrant'' instead of ''issuer'' is intended to better reflect the application of risk factor disclosure outside of the offering context. The term ''registrant'' is defined under both the Exchange Act and Securities Act. *See* Rule 12b–2 [17 CFR 240.12b–2] and Rule 405 [17 CFR 230.405].

[135] *See* proposed Item 105. Consistent with this change, we are also proposing amendments to several Commission forms that require risk factor disclosure and reference Item 503(c). These proposed amendments would revise references to Item 503 to specify new Item 105. A number of forms that require risk factor disclosure do not reference Item 503(c). Our proposed amendments do not include revisions to these forms. For example, Forms 10–Q and 20–F require risk factor disclosure but do not reference Item 503(c).

[136] *See, e.g.,* Letters from Center for Audit Quality (July 21, 2016) (''CAQ''); California Public Employees' Retirement System (July 21, 2016) (''CalPERS''); PricewaterhouseCoopers LLP (July 21, 2016) (''PWC''); Edison Electric Institute and American Gas Association (July 21, 2016) (''Edison Electric and AGA''); Investment Program Association; Davis Polk 1; National Investor Relations Institute (Aug. 4, 2016) (''NIRI''); Shearman & Sterling (Aug. 31, 2016) (''Shearman 2''); NYSSCPA.

[137] *See, e.g.,* Letters from Edison Electric and AGA; Investment Program Association; Davis Polk 1; NIRI; and Shearman 2.

[138] *See* Letter from Investment Program Association.

[139] *See* Letters from CAQ and PWC.

[140] *See* Letters from CalPERS and NYSSCPA.

[141] *See* Letter from CalPERS (referring to several sets of guidelines such as the Principles for Responsible Investment and those issued by the International Corporate Governance Network, among others).

[142] *See* Letters from Chris Barnard (June 23, 2016) (''Barnard''); Fenwick; and SIFMA (stating that the five examples are not ''cutting edge'' and ''could be eliminated,'' but that most registrants recognize that Item 503(c) is focused on principles-based disclosure of the most significant factors that make the offering speculative or risky).

[143] *See* Letter from Barnard.

[144] *See* Letter from Fenwick.

[145] *See infra* note 349 and accompanying text.

additional examples that would be more helpful to registrants? If so, what examples would be most helpful?

3. Plan of Distribution (Item 508)

Item 508 requires disclosure about the plan of distribution for securities in an offering, including information about underwriters.[146] Paragraph (a) requires disclosure about the principal underwriters and underwriters that have a material relationship with the registrant, while paragraph (h) requires disclosure of the discounts and commissions to be allowed or paid to dealers. If a dealer is paid any additional discounts or commissions for acting as a ''sub-underwriter,'' paragraph (h) allows the registrant to include a general statement to that effect without giving the additional amounts to be sold.

''Sub-underwriter'' is not a defined term, and its application may be unclear. ''Principal underwriter,'' however, is defined in Regulation C as ''an underwriter in privity of contract with the issuer of the securities as to which he is an underwriter.'' [147] Consistent with the staff's recommendation in the FAST Act Report,[148] and in light of the definition of ''principal underwriter'' and the disclosure required by Item 508(a), we are proposing to amend Rule 405 [149] to define the term ''sub-underwriter'' as a dealer that is participating as an underwriter in an offering by committing to purchase securities from a principal underwriter for the securities but is not itself in privity of contract with the issuer of the securities.[150]

Request for Comment

36. Should we amend Rule 405 to define ''sub-underwriter'' as proposed? Should we define the term differently? For example, is the concept of ''privity of contract'' sufficiently clear?

4. Undertakings (Item 512)

Item 512 [151] provides undertakings that a registrant must include in Part II of its registration statement, depending on the type of offering. In the FAST Act Report, the staff recommended that the Commission consider eliminating undertakings that are duplicative of other rules or that have become unnecessary due to developments since their adoption. We are proposing the following amendments to implement the staff's recommendations.

Item 512(c) sets forth undertakings that a registrant must include if it registers a warrant or rights offering to existing security holders and the securities not purchased by those security holders will be reoffered to the public.[152] The undertaking requires a registrant, after the expiration of the subscription period, to supplement the prospectus to disclose the results of the subscription offer and the terms of any subsequent reoffer to the public. If any public reoffer is made on terms different from the offer to existing security holders, then the registrant must undertake to file a post-effective amendment to disclose the terms of that offering. We are proposing to eliminate this undertaking because it is no longer necessary. A registrant conducting the type of offering described in Item 512(c) would already have been required to register and disclose the offering to existing security holders as well as the reoffering to the public. Furthermore, Item 512(a)(1) requires registrants to undertake to file a post-effective amendment to disclose fundamental changes in the information set forth in the registration statement and material information with respect to the plan of distribution or changes in the plan of distribution.[153] Thus, disclosure of material changes in the terms of the reoffering would also be required as part of the Item 512(a)(1) undertaking, thus obviating the need for the Item 512(c) undertaking.

Consistent with the recommendations made in the FAST Act Report, we are also proposing to eliminate the Item 512(d), Item 512(e), and Item 512(f) undertakings, because they are obsolete.[154] Item 512(d) requires a registrant to include undertakings if the securities it registers are to be offered at competitive bidding.[155] The undertaking requires a registrant to use its best efforts to distribute a Section 10(a) prospectus to prospective bidders, underwriters, and dealers and to file a post-effective amendment reflecting the results of the bidding and any related terms. This undertaking arises from former Rule 50 under the Public Utility Holding Company Act of 1935 (''PUHCA''), which formerly required public utility company securities to be sold through competitive bids.[156] We propose eliminating this undertaking because the Commission rescinded Rule 50 in 1994,[157] and because Congress repealed PUHCA in 2005.[158] Furthermore, this undertaking was put into place prior to the adoption of Rule 430A, which permits the omission of pricing and underwriter related terms from the effective registration statement if the issuer includes that information in a prospectus or post-effective amendment after the effective date.[159] To the extent that competitive bidding is still used, registrants may file prospectuses that contain the pricing and underwriter disclosure pursuant to Rule 430A and those documents will be subject to the liability imposed by that rule.[160]

Item 512(e) provides that, if a registrant's prospectus directly incorporates by reference the registrant's annual report to security holders meeting the requirements of Rule 14a–4 [161] or Rule 14c–3,[162] the registrant must undertake to deliver the latest

[146] 17 CFR 229.508.

[147] 17 CFR 230.405.

[148] *See FAST Act Report, supra* note 2, at Recommendation E.7.

[149] 17 CFR 230.405.

[150] The only other use of the term ''sub-underwriter'' or ''subunderwriter'' in Regulation S–K, the Securities Act rules, or the Exchange Act rules is in Rule 491 [17 CFR 230.491]. We are proposing to amend Rule 491 to reference ''sub-underwriter,'' consistent with our proposed amendments here. The proposed definition of sub-underwriter would not change the meaning of that term in Rule 491 and appears to be consistent with its use in that context.

[151] 17 CFR 229.512.

[152] 17 CFR 229.512(c). The Item 512(c) undertaking was included in the Securities Act forms and guides, prior to the enactment of the integrated disclosure system in 1982. *See, e.g., Notice of Proposed Revision of Form S-4,* Release No. 33–3667 (July 31, 1956) [21 FR 6025 (Aug. 11, 1956)] and *Notice of Proposed Form S–11 for Registration of Securities of Certain Real Estate Companies,* Release No. 33–4347 (Apr. 10, 1961) [26 FR 3280 (Apr. 18, 1961)].

[153] 17 CFR 229.512(a)(1).

[154] *See* FAST Act Report, *supra* note 2, at Recommendation E.9.

[155] 17 CFR 229.512(d).

[156] *See Notice of Proposal to Adopt Rule 415 Relating to Competitive Bidding Registration Statements, to Amend Rules 424, 455, 471 and 472 and to Rescind Rule 460,* Release No. 33–3491–Z (Nov. 10, 1953) [18 FR 7300 (Nov. 18, 1953)]; *Adoption of Rule 415 Relating to Competitive Bidding Registration Statements, Amendment of Rules 424, 427, 455, 471 and 472 and Rescission of Rule 460,* Release No. 33–3494 (Jan. 13, 1954) [19 FR 399 (Jan. 22, 1954)]; and *Phase One Recommendations of Task Force on Disclosure Simplification,* Release No. 33–7300 (May 31, 1996) [61 FR 30397 (June 14, 1996)] (''1996 Disclosure Simplification Recommendations'').

[157] *See 1996 Disclosure Simplification Recommendations* (citing *Public Utility Holding Company Act Rules,* Release No. 35–26031 (Apr. 20, 1994) [59 FR 21922 (Apr. 28, 1994)]).

[158] *See* Energy Policy Act of 2005, Public Law No. 109–58, 119 Stat. 594 (2005).

[159] 17 CFR 230.430A.

[160] We understand that registration statements filed in connection with securities to be offered through competitive bidding are rarely used. *See* Louis Loss, Joel Seligman, & Troy Paredes, *Securities Regulation* (5th ed. 2016) (''Loss et al.'') § 2.A.4. Competitive Bidding. According to Loss et al., competitive bidding is now used by ''municipalities and public instrumentalities.'' Rule 430A provides that information omitted in reliance on that rule is deemed part of the registration statement as of the time it was declared effective, thus subjecting those disclosures to liability under Section 11 of the Securities Act.

[161] 17 CFR 240.14a–4.

[162] 17 CFR 240.14c–3.

annual report with the prospectus.[163] If interim information is required but is not included in the prospectus, the registrant must undertake to deliver the latest quarterly report that is incorporated by reference in the prospectus. The purpose of this undertaking is to ensure that the registrant delivers incorporated annual and quarterly reports with the prospectus, as required by former Form S-2.[164] The disclosure and delivery requirements of former Form S–2 were intended to minimize duplicative reporting while still requiring delivery of incorporated information.[165] The Commission rescinded Form S–2 as part of Securities Offering Reform, since its underlying purpose was outdated because of EDGAR, other technological developments, and the rapid dissemination of information in the market.[166] Similarly, we are now proposing to eliminate the related undertaking, since any material information in a registrant's annual or quarterly reports to security holders should be publicly available.

Finally, the undertaking in Item 512(f) applies to registrants that prior to the offering had no obligation to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act.[167] If such a registrant conducts an underwritten equity offering, it must undertake to provide the securities certificates required by the underwriter at closing to permit prompt delivery to each purchaser. The purpose of this undertaking is to ensure that the registrant delivers sufficient certificates to the underwriter at closing to permit aftermarket trading in new issues.[168] We are proposing to eliminate this undertaking because the need to deliver certificates to underwriters has decreased dramatically since this undertaking was adopted in the early 1970s. Today, equity securities trades in the United States are typically cleared and settled using the depository and book-entry services of the Depository Trust and Clearing Corporation's clearing agency subsidiaries.[169]

Request for Comment

37. Should we retain or modify any of the undertakings that we have proposed eliminating? If so, please explain why.

38. In what instances are physical securities certificates still delivered today? Should we retain the undertaking for those situations?

39. Are there other undertakings that we have not addressed in this release that are duplicative, no longer necessary or that should be eliminated for other reasons?

40. Are there undertakings we should consider requiring to modernize and address developments for novel securities offerings?

E. Exhibits

1. Description of Registrant's Securities (Item 601(b)(4))

Item 202 requires registrants to provide a brief description of their registered capital stock, debt securities, warrants, rights, American Depositary Receipts, and other securities.[170] Registrants provide Item 202 disclosure about registered securities in their registration statements [171] but are not required to provide this disclosure in their Form 10–K or Form 10–Q.[172]

Consistent with the staff's recommendation in the FAST Act Report,[173] we are proposing to amend Item 601(b)(4) [174] to require registrants to provide the information required by Item 202(a)–(d) and (f) as an exhibit to Form 10–K, rather than limiting this disclosure to registration statements.[175] Proposed Item 601(b)(4)(vi) would require Item 202 disclosure only for securities that are registered under Section 12 of the Exchange Act.[176] Because Item 202(e) requires Item 201(a) market information for securities other than common equity where there is an established trading market for those securities, proposed Item 601(b)(4)(vi) does not include Item 202(e). The proposed requirement is intended to increase investors' ease of access to information about the rights and obligations of each class of securities registered.

The proposed amendments would not change existing disclosure obligations under Form 8–K and Schedule 14A, which currently require registrants to disclose certain modifications to the rights of their security holders and amendments to their articles of incorporation or bylaws.[177] As

[163] 17 CFR 229.512(e).

[164] *See Proposed Comprehensive Revision to System for Registration of Securities Offerings,* Release No. 33–6235 (Sept. 2, 1980) [45 FR 63693 (Sept. 25, 1980)].

[165] *See Securities Offering Reform Adopting Release, supra* note 132.

[166] *See id.*

[167] 17 CFR 229.512(f).

[168] *See Hot Issues,* Release No. 33–5274 (July 26, 1972) [37 FR 16005 (Aug. 9, 1972)] (''Hot Issues Release''); *Notice of Adoption of Amendments to Registration Forms S–1 and S–2 under the Securities Act of 1933 and to Forms 10, 10–K and 10–Q and Rules 13a–13 and 15d–13 under the Securities Exchange Act of 1934,* Release No. 33–5395 (June 1, 1973) [38 FR 17202 (June 29, 1973)]. In 1972, the Commission conducted public hearings on the matter of hot issues securities markets, which revealed that ''one of the imperfections affecting aftermarket trading in new issues is the occasional failure of issuers to furnish securities in such denominations and registered in such manner as to permit adequate and prompt delivery to each purchaser. Accordingly, one of the proposals is that non-reporting registrants formally undertake in registration statements filed on Forms S–1 and S–2 that they will deliver the certificates to the underwriter at the closing for prompt delivery to customers.'' *See Hot Issues Release, supra* at 16007.

[169] *See* Loss et al. § 7.E.2. Current Law (''Virtually all equities securities trades in the United States are cleared and settled through the National Securities Clearing Corporation (NSCC) and the Depository Trust Company (DTC), clearing agency subsidiaries of the Depository Trust and Clearing Corporation (DTCC).''); Depository Trust & Clearing Corporation, *FAQs: How Issuers Work With DTC available at http://www.dtcc.com/matching-settlement-and-asset-services/issuer-services/how-issuers-work-with-dtc* (last visited Feb. 22, 2017) (''DTC provides (i) settlement services for virtually all equity, corporate and municipal debt trades and Money Market Instruments in the U.S.'').

[170] Items 202(a)–(d) and (f) [17 CFR 229.202(a)–(d) and (f)]. Item 202(e), ''Market information for securities other than common equity,'' is outside the scope of this release; it requires that if securities other than common stock are to be registered and there is an established trading market for such securities, registrants are required to provide market information for such securities comparable to that required by Item 201(a) of Regulation S–K.

[171] Item 202 disclosure is often incorporated by reference into a registration statement on Form 8–A from a prior registration statement on Form S–1. *See* Concept Release, *supra* note 6, at Section IV.D.2. Registrants are not currently required to include Item 202 disclosure as an exhibit to any filings with the Commission.

[172] 17 CFR 249.308a.

Registrants are required to file complete copies of their articles and bylaws as exhibits to Form 10–K, but they are not required to provide the descriptions called for by Item 202. *See* Item 601(b)(3) [17 CFR 229.601(b)(3)]. Also, under Accounting Standards Codification (''ASC'') Topic 505–10–50–3, registrants are required to summarize the ''pertinent rights and privileges of the various securities outstanding'' in the notes to their financial statements. ASC Topic 470–10–50–5 requires the same information for debt securities. While the date of sale is not required, registrants usually include it in their discussions of the rights and privileges of securities sold.

[173] *See* FAST Act Report, *supra* note 2, at Recommendation F.1.

[174] 17 CFR 229.601(b)(4).

[175] To the extent that a registrant has previously filed an exhibit containing Item 202 disclosure, it could incorporate that exhibit by reference and hyperlink to the previously-filed exhibit in future Form 10–K filings, assuming that the information contained therein remains unchanged. *See Exhibit Hyperlinks Adopting Release supra* note 15.

[176] The proposed amendment includes an instruction requiring disclosure for those classes of a registrant's securities that have not been retired by the end of the period covered by the report. We are also proposing to amend Item 202 to specify that Section 305(a)(2) of the Trust Indenture Act of 1939, 15 U.S.C. 77aa *et seq.,* as amended, would not affect a registrant's disclosure obligations under proposed Item 601(b)(4)(vi).

[177] Item 3.03 of Form 8–K requires disclosure of material modifications to rights of security holders while Item 5.03 requires disclosure of amendments to the articles of incorporation or bylaws for amendments not disclosed in a proxy or information statement. Item 5.03 of Form 8–K also requires disclosure of changes in fiscal year other than by means of a submission to a vote of security holders through the solicitation of proxies (or otherwise) or an amendment to the articles of incorporation or bylaws [17 CFR 249.308].

Continued

proposed, any modifications and amendments during a fiscal year would now also be reflected in the Item 202 disclosure provided in an exhibit to the registrant's next annual report.[178] The proposed amendments would be in addition to the current requirement to file a complete copy of the amended articles of incorporation or bylaws under Item 601(b)(3).[179]

We recognize that some commenters opposed requiring Item 202 disclosure in periodic reports, stating that this information can easily be found in registration statements,[180] while other commenters noted that the information overlaps with disclosure required under U.S. GAAP.[181] Requiring Item 202 disclosure as an exhibit to annual reports could improve the ability of investors to gain access to information about their rights as security holders. The proposed Item 601(b)(4)(vi) would allow investors to easily locate an updated description of their rights as security holders in the most recent annual report rather than require investors to search through prior filings to find this disclosure. Where a registrant has previously filed the Item 202 information as an exhibit, and so long as there has not been any change to the information called for by Item 202, the registrant may incorporate the information by reference and provide a hyperlink to the previously filed exhibit. Therefore, we believe that any additional compliance cost associated with the proposed amendment should not be unduly burdensome.

Request for Comment

41. Should the proposed amendments include a requirement to file Item 202 disclosure for each class of securities registered under Section 12 of the Exchange Act as an exhibit to the annual report? Why or why not? Should registrants also be required to include descriptions of securities that are not registered under Section 12 of the Exchange Act? For example, should issuers reporting only under Section 15(d) of the Exchange Act (*e.g.,* asset-backed issuers) be required to file Item 202 disclosure as a Form 10–K exhibit?

42. Do the requirements for Item 202, and our proposal to require that the Item 202 information be provided as an exhibit to the annual report, provide sufficient disclosure about debt securities or other classes of stock with different or preferential voting rights?

43. Would the new requirements result in significantly higher compliance costs? Would the new requirements provide benefits to investors and facilitate informed investment decisions? Would the proposed amendments require disclosure that is adequately provided elsewhere in the annual report or on EDGAR? [182]

44. Would compliance with the proposed amendment be problematic for issuers with multiples classes of registered securities (*e.g.,* well-known seasoned issuers or asset-backed issuers)? If so, how should we revise the proposed amendments to avoid unnecessary burdens that may be imposed on these issuers?

2. Information Omitted From Exhibits (Item 601)

Item 601 of Regulation S–K generally requires registrants to file complete copies of exhibits.[183] Securities Act Rule 406 [184] and Exchange Act Rule 24b–2 [185] permit registrants to request confidential treatment of information included in an exhibit to a filing or any other document required to be filed under either the Securities Act or the Exchange Act. Item 601(b)(2) states that registrants shall not file schedules or similar attachments to material plans of acquisition, reorganization, arrangement, liquidation, or succession unless they contain information material to an investment decision and unless that information is not otherwise disclosed in the agreement or the disclosure document.[186] The Commission staff generally has not objected where a registrant omits personally identifiable information from exhibits without submitting a confidential treatment request.

To modernize and simplify the disclosure requirements under Item 601, we are proposing to add new paragraphs (a)(5) and (a)(6) to expand the existing accommodation in Item 601(b)(2) to include all exhibits filed under Item 601 and permit the omission of personally identifiable information. We also propose to add paragraph (b)(10)(iv) to Item 601 to reduce significantly the need for registrants to submit applications for confidential treatment of information in material contract exhibits required by that item.[187] The proposals to add paragraphs (a)(6) and (b)(10)(iv) are broader than the staff's recommendations in the FAST Act Report. As explained more fully below, we believe that they are consistent with our mandate under the FAST Act to modernize and simplify our disclosure requirements while still providing all material information.[188]

a. Schedules and Attachments to Exhibits

Proposed Item 601(a)(5) would permit registrants to omit entire schedules and similar attachments to exhibits unless they contain material information and unless that information is not otherwise disclosed in the exhibit or the disclosure document. This exception, which is similar to the existing accommodation in Item 601(b)(2) for plans of acquisition, reorganization, arrangement, liquidation, or succession, would be expanded to all exhibits under the proposed amendments. Similar to the current provisions in Item 601(b)(2), proposed Item 601(a)(5) would require registrants to provide with each exhibit a list briefly identifying the contents of any omitted schedules and attachments.

Item 12 of Schedule 14A requires disclosure if action is to be taken regarding the modification of any class of securities of the registrant, or the issuance or authorization for issuance of securities of the registrant in exchange for outstanding securities. Section (b) of Item 12 requires disclosure of any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in Item 202 of Regulation S–K. Item 19 of Schedule 14A requires disclosure of amendments to the registrant's charter, bylaws, or other documents.

[178] Over the course of a given fiscal year, it is possible that a registrant may make various non-material changes to the rights and privileges of its securities that do not require separate disclosure on Form 8–K. However, if any changes are made, whether material or non-material, the proposed amendments would require a registrant to update the description of securities in the exhibit filed with its Form 10–K.

[179] *See* Item 601(b)(3) of Regulation S–K [17 CFR 229.601(b)(3)]. The proposal would amend Item 601(b)(4) instead of Item 601(b)(3) because (b)(4) is consistent with Item 202's requirement to provide a description of capital stock that is registered while (b)(3) is specific to the articles of incorporation and bylaws.

[180] *See, e.g.,* Letters from Fenwick; CGCIV; Chamber 2; and FedEx. *See also* Davis Polk 1.

[181] *See* Letters from CAQ and KPMG LLP (July 21, 2016) (''KPMG''). Both commenters referenced Item 202 in the context of broader recommendations to the Commission to work with the FASB and the PCAOB to eliminate redundancies.

[182] *See supra* notes 172 and 181 and accompanying text.

[183] Item 601 of Regulation S–K [17 CFR 229.601].

[184] 17 CFR 230.406.

[185] 17 CFR 240.24b–2.

[186] 17 CFR 229.601(b)(2).

[187] Certain domestic forms include their exhibits requirements in the form and/or do not separately reference Item 601 of Regulation S–K (*e.g.,* Schedule 13E–3 and Schedule 13D). As such, we are considering whether the rationale for the proposed amendments to Item 601 of Regulation S–K is also applicable to the exhibit requirements in these forms. For example, Schedule 13E–3 and Schedule 13D require registrants to file as exhibits certain material agreements that may be deemed analogous to the exhibits required under Item 601 of Regulation S–K. We are requesting further comment to assist in our evaluation of this issue.

[188] *See* FAST Act Report, *supra* note 2, at Recommendation F.2 (recommending only that the Commission permit registrants to omit attachments and schedules filed with exhibits unless they contain information that is material to an investment decision that has not been otherwise disclosed).

In addition, registrants would be required to provide, on a supplemental basis, a copy of any omitted schedules or attachments to the Commission staff upon request.[189]

The Commission requested comment in the Concept Release on whether to allow registrants to omit schedules and attachments to all exhibits, provided that the omitted schedules and attachments do not include material information that is not otherwise included in the exhibit or the disclosure document. Commenters uniformly supported expanding the exception under Item 601(b)(2).[190] Some noted that the current requirement to file complete exhibits is unnecessarily cumbersome and expensive where the schedules do not contain material information.[191] Commenters also stated that these burdens are exacerbated where those schedules contain, as is frequently the case, confidential information that would require registrants to file confidential treatment requests.[192] A few commenters that supported allowing registrants to omit schedules opposed requiring registrants to provide a list of their omitted schedules.[193] Another commenter supported a requirement to include a list, but stated that requiring registrants to provide a materiality analysis supporting the decision to omit the schedules was unnecessary.[194] We believe that a list of omitted schedules, similar to current Item 601(b)(2), would be informative for investors.

Request for Comment

45. Should the proposed amendments permit registrants to omit entire schedules and attachments to exhibits unless the schedules or attachments contain material information and unless that information is not otherwise disclosed in the exhibit or the disclosure document? Similarly, should we amend our investment company rules or forms to permit investment companies to omit entire schedules and attachments?

46. Should Item 601(a)(5) require registrants to provide a list of the contents of the omitted schedules and attachments as proposed? Would a list of the titles of the schedules and attachments be sufficient to identify the contents of the omitted schedules and attachments? Should we provide guidance on the registrant's description of any omitted schedule or attachment?

47. As proposed, Item 601(a)(5) would expand the existing Item 601(b)(2) accommodation to all exhibits. Should we require exhibits filed pursuant to certain subsections of Item 601(b) to include all schedules and attachments even if they are not material? If so, which exhibits and subsections?

b. Personally Identifiable Information

The Commission generally does not publish or make available information that ''would constitute a clearly unwarranted invasion of personal privacy.'' [195] This information includes personally identifiable information (''PII''). Exhibits filed pursuant to Item 601 may include PII such as bank account numbers, social security numbers, home addresses and similar information. The staff generally does not object where a registrant omits PII from exhibits without submitting a confidential treatment request.

In the Concept Release, the Commission requested comment about whether to continue or modify the current accommodation on PII. Numerous commenters recommended codifying the current staff practice of permitting registrants to omit PII from exhibits without making a formal confidential treatment request.[196]

Consistent with our mandate under the FAST Act to modernize and simplify our disclosure requirements while still providing all material information, Item 601(a)(6), as proposed, would permit registrants to omit PII without submitting a confidential treatment request under Rule 406 or Rule 24b–2. Allowing registrants to omit PII without submitting a confidential treatment request is also intended to better safeguard PII by limiting its dissemination. Under the proposed amendment, registrants also would not be required to provide an analysis to redact PII from exhibits.

Request for Comment

48. Should we codify the current staff practice of permitting registrants to omit PII without making a formal confidential treatment request as proposed? Similarly, should we amend our investment company rules or forms to similarly permit investment companies to omit PII?

c. Redaction of Confidential Information in Material Contract Exhibits

The proposed revisions to Item 601(b)(10) would permit registrants to omit confidential information from material contracts filed pursuant to that item where such information is both (i) not material and (ii) competitively harmful if publicly disclosed, even where the registrant has not submitted a confidential treatment request to the Commission. Instead, registrants would be required to mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of each redacted exhibit that information in the marked sections of the exhibit has been omitted from the filed version of the exhibit. Registrants would also be required to indicate with brackets where the information has been omitted from the filed version of the exhibit.[197]

Although registrants would not be required to file a confidential treatment request in accordance with Rule 406 or Rule 24b–2 in connection with the redacted exhibit, the responsibility of a registrant to determine whether all material information has been disclosed and whether they may redact the

[189] *See* proposed Item 601(a)(5) of Regulation S–K. Securities Act Rule 418 [17 CFR 230.418] states that the Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant or a registration statement, among other things. Exchange Act Rule 12b–4 [17 CFR 240.12b–4] similarly indicates that the Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement, and a periodic or other report filed under the Exchange Act. Unlike the current version of Item 601(b)(2), registrants would not be required to include with its list identifying the contents of all omitted schedules an agreement to furnish a supplemental copy of any omitted schedule to the Commission upon request. Instead, proposed Item 601(a)(5) would require registrants to provide a copy of any omitted schedule to the Commission staff upon request.

[190] *See, e.g.,* Letters from Committee on Securities Law of the Business Law Section of the Maryland State Bar Association (''Maryland Bar Securities Committee'') (July 21, 2016); ABA; NYSSCPA; FedEx; Fenwick; and Davis Polk 1. *See also* Letter from CGCIV (supporting exemption from filing immaterial attachments to material agreements for smaller reporting companies).

[191] *See, e.g.,* Letters from Fenwick and Davis Polk 1.

[192] *See, e.g.,* Letters from Fenwick; Fenwick and West LLP, Cooley LLP and Wilson Sonsini Goodrich & Rosati, PC (June 19, 2012) [S–K Study Letter] (''Silicon Valley''); and Mike Liles (Apr. 10, 2013) [S–K Study Letter] (endorsing the comments expressed in the Silicon Valley Letter).

[193] *See* Letter from Fenwick (stating that it does not believe ''the burden of completing such a list of omitted schedules is offset by any meaningful advantage to investors''); *see also* letters from NYSSCPA and FEI.

[194] *See* Letter from Maryland Bar Securities Committee.

[195] 17 CFR 200.80(b)(6) (exempting personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy).

[196] *See, e.g.,* Letters from NYSSCPA; Chamber 2; FedEx; CGCIV; Maryland Bar Securities Committee; General Motors; and Financial Executives International.

[197] These proposals are consistent with the marking requirements for confidential treatment requests under Rule 406 and Rule 24b–2.

information under the proposed rules would remain unchanged.[198] The Commission staff would continue its selective review of registrant filings and would selectively assess whether redactions from exhibits appear to be limited to information that is not material and that would subject the registrant to competitive harm if publicly disclosed. As is currently the case, the redacted information should include no more text than necessary to prevent competitive harm to the registrant. Upon request, registrants would be expected to promptly provide supplemental materials to the staff similar to those currently required in a confidential treatment request, including an unredacted paper copy of the exhibit and an analysis of why the redacted information is both (i) not material and (ii) would cause competitive harm if publicly disclosed.[199] The timing of any staff review would not alleviate a registrant's obligation to disclose all material information and its obligation to limit redactions to those provisions and terms that are both (i) not material and (ii) would cause competitive harm if publicly disclosed. Registrants could request confidential treatment of this supplemental information pursuant to Rule 83 while it is in the staff's possession. If the registrant's supplemental materials do not support its redactions, similar to the process the staff currently follows for confidential treatment requests under Rule 406 and Rule 24b–2, the staff may request that the registrant file an amendment that includes some, or all, of the previously redacted information.[200]

The Concept Release did not request comment on the confidential treatment process, other than its request for comment about omitting schedules and attachments to exhibits; however, two commenters noted that the requirement to file material agreements causes registrants to expend significant resources in preparing confidential treatment requests.[201] We believe that simplifying and streamlining this process would be consistent with the FAST Act mandate to revise Regulation S–K in a manner that reduces the costs and burdens on registrants while providing investors all material information. In addition, we believe the proposal would result in limiting the dissemination of sensitive information because registrants would not be required to provide an un-redacted copy of each exhibit at the time of filing in order to request confidential treatment. Instead, this information would only be required on request in connection with a staff filing review.

Request for Comment

49. Should registrants be permitted to omit confidential information from exhibits filed pursuant to Item 601(b)(10) that is both (i) not material and (ii) competitively harmful if publicly disclosed without submitting a confidential treatment request as proposed? Similarly, should we amend our investment company forms to permit investment companies to omit confidential information from exhibits?

50. Would the disclosure provided in exhibits change under the proposed amendments? Why or why not?

51. Under the proposed amendments, if the registrant's supplemental materials do not support its redactions, the staff may request that the registrant file an amendment that includes some, or all, of the previously redacted information. In these situations, should we require registrants to include an explanatory note describing why the amendment is being provided? Should we also require that any amendment highlight the previously redacted information?

52. Should we allow registrants to omit confidential information from exhibits other than those filed pursuant to Item 601(b)(10) that is both (i) not material and (ii) competitively harmful if publicly disclosed? For instance, should registrants be allowed to omit similar information from exhibits filed pursuant to Item 601(b)(2)? Should they be allowed to omit similar information from exhibits filed pursuant to other subsections of Item 601? If so, which subsections and why?

53. Should we apply the proposed amendments discussed in Section II.E.2. (Information Omitted from Exhibits) to forms that include their exhibits requirements in the form or do not separately reference Item 601 of Regulation S–K (*e.g.,* Schedule 13E–3 and Schedule 13–D)? If so, what forms should be amended and to what extent? If not, why? Are there special considerations associated with change of control transactions, going private transactions, or beneficial ownership reporting that render the provision of information in exhibits material to an investment or voting decision? What are the costs and benefits of applying the proposed amendments to these forms? How do they differ from the costs and benefits of applying the proposed amendments to Regulation S–K?[202]

3. Material Contracts (Item 601(b)(10)(i))

Item 601(b)(10)(i) requires registrants to file every material contract not made in the ordinary course of business, provided that one of two tests is met: (i) The contract must be performed in whole or in part at or after the filing of the registration statement or report, or (ii) the contract was entered into not more than two years before that filing.[203]

The first test captures contracts that have not been fully performed prior to the filing date. The second test—the two-year look back—captures material contracts that were fully performed before the filing date.[204] Currently, all registrants subject to Item 601 must consider both tests when deciding whether a material, non-ordinary course contract must be filed as an exhibit.

Consistent with the recommendations in the FAST Act Report,[205] we are proposing amendments to Item 601(b)(10)(i) that would limit the two-year look back test to newly reporting registrants. Proposed Instruction 1 to Item 601(b)(10)(i) defines a ''newly reporting registrant'' as any registrant filing a registration statement that, at the time of such filing, is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, whether or not such registrant has ever previously been subject to the reporting requirements of Section 13(a) or 15(d), and any registrant that has not filed an annual report since the revival of a previously suspended reporting

[198] *See* Rule 12b–20 [17 CFR 240.12b–20], Rule 408(a) [17 CFR 230.408(a)] and proposed Item 601(b)(10)(iv).

[199] This analysis would be substantially the same as is currently required in confidential treatment requests submitted in reliance on Rule 80(b)(4) [17 CFR 200.80(b)(4)] pursuant to Rule 406 or Rule 24b–2.

[200] Upon completion of the staff's review, the materials would be returned or destroyed if the registrant complies with the procedures outlined in Rule 418 or 12b–4.

[201] *See* Letter from Fenwick and letter from Davis Polk 1 (requesting that the Commission reconsider the utility of the (b)(10) exhibit filing requirement).

[202] We are proposing to apply the proposed amendments to Form 20–F to maintain a consistent approach to the exhibit filing requirements for domestic registrants and foreign private issuers. *See infra* Section II.E.5 (Exhibits—Application to Foreign Private Issuers).

[203] Item 601(b)(10)(i) of Regulation S–K [17 CFR 229.601(b)(10)(i)].

[204] The two-year look back is included in Schedule A of the Securities Act [15 U.S.C. 77aa(24)] and serves as a ''cutoff period'' so registrants would not have to file material contracts that may have been fully performed many years prior to registration. When Section 12(g) was added to the Exchange Act in 1964, the Commission was authorized to issue rules requiring such material contracts to be filed with Exchange Act reports. *See* Section 12(b)(1)(I) of the Exchange Act; H.R. Rep. No. 88–1418, 83rd Cong., 2nd Sess., 1964. Prior to the enactment of Section 12(g), the Exchange Act reporting requirements were applicable only to listed companies.

[205] *See* FAST Act Report, *supra* note 2, at Recommendation F.3.

obligation.[206] As an example, a registrant that is filing its first registration statement under the Securities Act or the Exchange Act, or filing its first Form 10–K since the revival of its reporting obligation,[207] would be required to file material agreements under Item 601(b)(10)(i) for the two-year look back period.[208] The definition of ''newly reporting registrant'' under the proposed instruction also would include any registrant that (a) was a shell company, other than a business combination related shell company, as defined in Rule 12b–2 under the Exchange Act, immediately before completing a transaction that has the effect of causing it to cease being a shell company, and (b) has not filed a registration statement or Form 8–K, as required by Item 2.01 and Item 5.06 of that form, since the completion of the transaction (or, in the case of foreign private issuers, has not filed a Form 20–F since the completion of the transaction).[209] Under the proposed amendments, a registrant meeting this definition would be required to file material agreements for the two-year look back period. The proposed amendments would help ensure that investors receive access to agreements containing material information, including agreements entered into by newly reporting registrants up to two years prior to the commencement of their reporting obligations. Registrants with established reporting histories would not be required to comply with the two-year look back requirement because investors would continue to have access to any material agreements previously filed on EDGAR.[210] As such, the proposed amendments would streamline reporting obligations while maintaining investor protections.

Request for Comment

54. Should we revise Item 601(b)(10)(i) to limit the two-year look back test to newly reporting registrants as proposed?

55. Should the two-year look back requirement apply to a registrant completing a reverse merger involving any public shell company that is not a business combination-related shell company as proposed? Why or why not?

56. Should the proposed amendment be broadened to require that a public company acquiring or merging with a non-public company must apply the two-year look back test to agreements entered into by the non-public company prior to the transaction date?

57. Should registrants that have revived reporting obligations be required as proposed, to file material contracts for the full two-year look back period, regardless of how long their prior reporting obligation was suspended? Alternatively, if the registrant's reporting obligation was suspended for less than two years prior to revival, should the registrant only be required to file agreements entered into while the obligation was suspended?

4. Subsidiaries of the Registrant and Entity Identifiers (Item 601(b)(21)(i))

Item 601(b)(21) requires a registrant to list as an exhibit all of its subsidiaries, the state, or other jurisdiction of incorporation or organization of each, and the names under which those subsidiaries do business.[211] The name of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a ''significant subsidiary'' under Rule 1–02(w) of Regulation S–X.[212]

Consistent with the staff's recommendation in the FAST Act Report,[213] we are proposing amendments to Item 601(b)(21)(i) that would require registrants to include in the exhibit the legal entity identifier (''LEI''), if one has been obtained, of the registrant and each subsidiary listed. An LEI is a 20-character, alpha-numeric code that allows for unique identification of entities engaged in financial transactions. LEIs are intended to improve market transparency by providing clear identification of participants.[214] Fees are not imposed on investors for use of, or access to, LEIs. All of the associated reference data needed to understand, process, and use LEIs is widely and freely available. These associated reference data also are not subject to any usage restrictions. There is a cost of obtaining an LEI for registrants: A one-time fee of $75–$119 and $50–$99 in annual maintenance fees.[215]

In the Concept Release, we solicited comment on whether we should require registrants to disclose their LEI and the LEIs of their subsidiaries (if available) in Exhibit 21 and how this information would benefit investors. Many commenters supported requiring disclosure of LEIs,[216] with most of them

[206] *See* proposed Instruction 1 to paragraph (b)(10) of Item 601.

[207] *See* Exchange Act Rules Compliance and Disclosure Interpretation 153.02 (stating that a Form 10–K for the previous fiscal year is the first report due after a reporting obligation is revived), *available at https://www.sec.gov/divisions/corpfin/guidance/exchangeactrules-interps.htm* (last updated December 8, 2016).

[208] In the case of a registrant with a suspended reporting obligation that, less than two years later, is revived, the proposed requirement to file material agreements for the two-year look back period may be satisfied by incorporating by reference and hyperlinking to agreements previously filed on EDGAR and filing any material agreements entered into while the registrant was not reporting. *See Exhibit Hyperlinks Adopting Release, supra* note 14, at 14135.

[209] Under the proposed amendment, the definition of ''newly reporting registrant'' would not include reporting companies completing merger transactions with business combination-related shell companies.

[210] Schedule A of the Securities Act requires that registrants file ''every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing.'' *See* Schedule A, paragraph 24 [15 U.S.C. 77aa(24)]. Due to the availability of filings on EDGAR, as noted above, we believe the two-year look back requirement does not provide additional investor protection when applied to registrants with a reporting history.

[211] Item 601(b)(21)(i) of Regulation S–K [17 CFR 229.601(b)(21)(i)].

[212] Item 601(b)(21)(ii) of Regulation S–K [17 CFR 229.601(b)(21)(ii)].

[213] *See* FAST Act Report, *supra* note 2, at Recommendation F.4.

[214] *See* Arthur B. Kennickell, Bd. of Governors of the Fed. Reserve Sys., *Identity, Identification and Identifiers: The Global Legal Entity Identifier System* (Nov. 8, 2016), *available at https://www.federalreserve.gov/econresdata/feds/2016/files/2016103pap.pdf.*

[215] *See* Glob. Legal Entity Identifier Found., *Frequently Asked Questions—Fees, Payment and Taxes, available at https://lei.bloomberg.com/docs/faq;* and Glob. Mkt. Entity Identifier Util., *GMEI Utility Pricing, available at https://www.gmeiutility.org/gmeiUtilityPricing.jsp. See also,* Letter from SIFMA.

[216] *See, e.g.,* Letters from Data Coalition (July 21, 2016) (''Data Coalition'') (recommending that the Commission adopt the ''if available'' disclosure standard as an interim step prior to requiring registrants to obtain and disclose LEIs); Bloomberg (recommending that filers should be required to obtain an LEI); SIFMA (noting that regulators have driven the expansion of the LEI system and expressing support for recent regulations that impose requirements upon certain investment companies to obtain an LEI); and XBRL US (recommending that the Commission require registrants to obtain an LEI for every company in their corporate structure; stating that use of LEIs would improve the functionality of filings by identifying participants in financial transactions and bringing clarity to interrelationships between entities). *See also* Letters from E. Bean; SEC Investor Advisory Committee (June 15, 2016) (''IAC 1'') (stating that LEIs could facilitate the work of the Commission and other prudential regulators related to systemic risk, firm interconnectivity, and leverage at broker-dealers, asset managers, and other market participants and benefit investors trying to understand complex structures); Owner Subcommittee of the SEC's Investor Advisory Committee (Nov. 22, 2016) (''IAC 2''); Main Street Alliance (July 5, 2016); The Financial Accountability and Corporate Transparency Coalition (July 6, 2016); Citizens for Tax Justice; GRI (July 21, 2016); American Sustainable Business Council, Citizens for Tax Justice, FACT Coalition, Fair Share, Global Financial Integrity and Main Street Alliance (July 21, 2016); Americans for Tax Fairness (July 21, 2016); AFL–CIO (July 21, 2016); Oxfam America (July 21, 2016); S. Percoco; Americans for Financial Reform (Aug. 10, 2016); NYSCRF; Global Legal Identity Identifier Foundation (July 21, 2016); and CFA Institute. *See*

Continued

recommending that we require both the registrant and its subsidiaries to obtain and disclose LEIs.[217] These commenters generally stated that the use of LEIs would improve investors' ability to understand registrants' risk profiles. In this regard, commenters observed that LEIs would allow investors to link third-party data with structured data from the Commission to produce more meaningful analysis.[218]

The proposed amendment is intended to modernize the disclosure requirements under Regulation S–K by requiring registrants to provide any LEIs obtained for themselves or their listed subsidiaries to investors. This proposal would allow investors to use the LEI to more quickly and precisely identify registrants and their subsidiaries. Our proposal is consistent with prior regulatory efforts. For example, as part of our recent investment company reporting modernization efforts, we adopted rules requiring certain registrants and funds to obtain LEIs to provide a consistent means of identification.[219] Due in part to these and other similar global regulatory efforts, the usage of LEIs has increased over the last few years.[220]

We recognize that many registrants and their subsidiaries may not have LEIs. Accordingly, our proposals would require disclosure of LEIs only for those registrants and subsidiaries that choose to obtain this identifier. Below, we solicit comment as to whether to require registrants and their subsidiaries to obtain LEIs.

Request for Comment

58. Should we require registrants to include in Exhibit 21 the LEI (if one has been obtained) of the registrant and each subsidiary required to be listed in the exhibit? Would requiring registrants to disclose LEIs in Exhibit 21 as proposed, provide investors with sufficient access to that information? Is there another location in registrant filings, other than Exhibit 21, where LEI information would be more accessible to investors? For example, should a registrant be required to disclose its LEI, if it has one, on the cover page of each registration statement, periodic filing, or current report and provide the LEIs for its significant subsidiaries in an exhibit?

59. If we require registrants to include LEIs in Exhibit 21 as proposed, should we also require them to provide that information as machine-readable data? If so, what structured data format would be the most useful to investors? For example, the Commission recently adopted amendments requiring investment companies to provide LEIs in XML format.[221] Should we require registrants that have already obtained LEIs to disclose their LEIs in XML format? Or, for consistency with the proposal to tag information on the cover page of certain forms using Inline XBRL format,[222] should we require disclosure of LEIs in Inline XBRL format? What would be the additional cost to registrants to provide LEIs in XML, Inline XBRL, or another machine-readable format?

60. In light of the many comments received on the costs and benefits of LEIs,[223] should our rules encourage or require registrants and each subsidiary thereof required to be listed in Exhibit 21 to obtain an LEI? If so, how should we structure our rules to achieve this purpose?

61. Some registrants have numerous subsidiaries or affiliates operating globally, while other registrants have simple corporate structures. Should we require certain types of registrants, such as larger registrants or subsidiaries, to obtain LEIs? For example, should we limit the requirement to large accelerated filers, well-known seasoned issuers, or foreign private issuers?

5. Application to Foreign Private Issuers

The Commission previously adopted amendments to conform the exhibit requirements in Form 20–F to the requirements in Item 601.[224] To maintain a consistent approach to the exhibit requirements for domestic registrants and foreign private issuers, the proposed amendments would require foreign private issuers to provide information in exhibit filings comparable to the information provided by domestic registrants under Item 601(a)(5), Item 601(a)(6), Item 601(b)(4)(vi), Item 601(b)(10)(i), Item 601(b)(10)(iv), and Item 601(b)(21), as proposed. In each case, we believe that the justifications for the proposed amendments to Item 601 are equally applicable to Form 20–F.

We are not proposing similar changes to Form 40–F. Form 40–F generally permits Canadian issuers to use Canadian disclosure documents to satisfy the Commission's registration and disclosure requirements. As a result, the exhibit requirements in Form 40–F are largely in accordance with Canadian disclosure standards.

Request for Comment

62. Should we amend the exhibit requirements of Form 20–F so that they are consistent with the requirements under Item 601 as proposed? Why or why not? Are there any unique considerations with respect to foreign private issuers in this context?

63. Should we make corresponding changes to the exhibit requirements in Form 40–F? Why or why not?

64. Would the proposed amendments conflict with home-country requirements in some jurisdictions? If so, please explain.

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also letter from TagniFi, LLC (Jan. 27, 2016) [Disclosure Effectiveness letter] (''TagniFi'').

[217] *See id.* Two commenters opposed an LEI requirement, stating that ''there is no global standard for LEI.'' *See* Letters from Financial Executives International and General Motors.

[218] *See, e.g.,* Letters from SIFMA, Bloomberg, and Data Coalition. *See also Nationally Recognized Statistical Rating Organizations,* Release No. 34–72936 (Aug. 27, 2014) [79 FR 55077 (Sept. 15, 2014)] (the ''2014 NRSRO Amendments Release'') and *Credit Risk Retention,* Release No. 34–73407 (Oct. 22, 2014) [79 FR 77601 (Dec. 24, 2014)] (the ''Credit Risk Retention Release'').

[219] *See Investment Company Reporting Modernization,* Release No. 33–10231 (Nov. 18, 2016) [81 FR 81870]) (the ''IM Modernization Adopting Release''). *See also id.* at n. 61 (discussing additional contexts in which the Commission has required LEIs, including Form PF—Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors, *available at http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf*); *Regulation SBSR–Reporting and Dissemination of Security-Based Swap Information,* Release No. 34–74244 (Feb. 11, 2015) [80 FR 14564 (Mar. 19, 2015)]. *See also 2014 NRSRO Amendments Release, supra* note 218; *Credit Risk Retention Release, supra* note 218.

[220] *See, e.g.,* Legal Entity Identifier Regulatory Oversight Comm., *The Global LEI System and regulatory uses of the LEI* (Nov. 5, 2015), *available at http://www.leiroc.org/publications/gls/lou_20151105-1.pdf* (progress report by the Legal Identifier Regulatory Oversight Committee, including an annex listing regulatory actions in the United States, the EU countries, and eight other countries which require, request, or allow the use of LEIs). The global LEI system currently has over 580,000 registrations and is growing. *See* Global LEI Foundation daily updated ''concatenated file,'' which includes all LEIs issued globally and related LEI reference data, *available at https://www.gleif.org/en/lei-data/gleif-concatenated-file/lei-download*#or *http://openleis.com. See also* Glob. Legal Entity Identifier Found., *Regulatory Use of the LEI* (providing an overview of current and proposed global regulatory activities involving LEI), *available at https://www.gleif.org/en/about-lei/regulatory-use-of-the-lei;* Global LEI Data Quality Reports Archive, *available at https://www.gleif.org/en/lei-data/gleif-data-quality-management/about-the-data-quality-reports/archive*# (showing total number of LEIs issued, renewed, reactivated and lapsed from January 2016 through April 2017).

[221] *See IM Modernization Adopting Release, supra* note 219.

[222] *See infra* Section II.G.1 (Tagging Cover Page Data).

[223] *See supra* notes 216 to 218 and accompanying text.

[224] *See International Disclosure Standards Release,* Release No. 33–7637 (Feb. 2, 1999) [64 FR 6261 (Feb. 9, 1999)] (expressing the Commission's intention ''to conform the exhibit requirements for Form 20–F with the exhibit requirements for registration statements filed by U.S. issuers under the Exchange Act'' and stating that all of the Form 20–F exhibit requirements ''are required for domestic issuers filing a registration statement on Form 10 or an annual report on Form 10–K'').

F. Incorporation by Reference

To reduce duplicative disclosure, registrants have been permitted to incorporate previously filed information into their filings since the enactment of the Securities Act and the Exchange Act.[225] Initially, incorporation by reference was limited to exhibits, but over time we have increasingly permitted incorporation by reference in other contexts. The rules and instructions governing incorporation by reference are now found in a variety of regulations, including Regulation S–K, Regulation C, Regulation 12B and many of the Commission's forms.

In the FAST Act Report, the staff recommended that the Commission consider consolidating, clarifying, and updating Item 10(d) of Regulation S–K and the other rules governing incorporation by reference.[226] Consistent with our mandate under the FAST Act, our proposed amendments would revise Item 10(d), Rule 411,[227] Rule 12b–23,[228] and a number of our forms to simplify and modernize these rules while still providing all material information. Our proposed amendments would also rescind Rule 12b–32.[229] In addition, to provide for a consistent set of incorporation by reference rules for investment companies and investment advisers, we are proposing parallel amendments to Rule 0–4 [230] and a number of forms under the Investment Company Act,[231] certain conforming amendments to Rule 0–6 [232] under the Investment Advisers Act,[233] and the rescission of Rule 8b–23,[234] Rule 8b–24,[235] and Rule 8b–32 [236] under the Investment Company Act (certain provisions of which would be consolidated into proposed new Rule 0–4). The proposed amendments would streamline the requirements associated with incorporation by reference and facilitate investor access to incorporated documents through the use of hyperlinks. The proposed amendments are also consistent with the Commission's longstanding acceptance of incorporation by reference in the interests of encouraging registrants to eliminate duplicative disclosures.

Our proposed amendments respond to some of the recommendations from commenters on the Concept Release. Commenters generally supported the use of incorporation by reference.[237] A number of commenters recommended expanding the ability to incorporate by reference.[238] Some commenters, while supporting the use of incorporation by reference, cautioned that it should not excessively fragment disclosure or make disclosure more difficult to access.[239]

1. Item 10(d)

Item 10 of Regulation S–K [240] contains general requirements on the application of Regulation S–K. Item 10(d) focuses on incorporation by reference.[241] Item 10(d) states that, where rules, regulations, or instructions to the forms permit incorporation by reference, a document may be incorporated by reference to the specific document and to the prior filing or submission in which that document was physically filed or submitted. Item 10(d) generally prevents registrants from incorporating by reference a portion of a document that itself also incorporates pertinent information by reference.[242] It also prohibits incorporating documents by reference if they have been on file with the Commission for more than five years and do not fall within one of the exceptions provided in the rule.[243]

Consistent with the staff's recommendation in the FAST Act Report, we are proposing to eliminate the five-year limit in Item 10(d). This requirement originated from the Commission's policy on retention of hard copy records of filings, as set forth in the Commission's Rules of Practice.[244] This requirement previously imposed a 10-year limit but was reduced to five years in 1977 to allow for the Commission's ''orderly destruction of unneeded filings.'' [245] At the time, the Commission noted that the ''cost of storage outweighs the usefulness to the Commission and to the public of many if not most of these records.'' [246] Nevertheless, exceptions were added for documents contained in registration statements of reporting registrants and for documents that a registrant identifies by file number that have not been disposed of pursuant to the Commission's Records Control Schedule.[247] Given these broad exceptions and the current practice of retaining documents electronically, the five-year limit now serves little purpose and may lead to confusion about which documents may be incorporated by reference.[248]

Without the provisions relating to the five-year limit, little substance remains in Item 10(d). Therefore, to simplify the requirements, we are proposing to move the remaining provision in Item 10(d) prohibiting indirect incorporation by reference into the other rules governing incorporation by reference.[249] In the

[225] *See* Federal Trade Commission Release No. 33–47 (Sept. 22, 1933) (allowing for incorporation by reference of exhibits filed with registration statements); Release No. 34–51 (Nov. 27, 1934) (allowing for incorporation by reference of exhibits filed with the Commission under the Exchange Act or filed with an exchange).

[226] *See* FAST Act Report, *supra* note 2, at Recommendations A.1 and A.2.

[227] 17 CFR 230.411.

[228] 17 CFR 240.12b–23.

[229] 17 CFR 240.12b–32.

[230] 17 CFR 270.0–4.

[231] 15 U.S.C. 80a–1 *et seq.*

[232] 17 CFR 275.0–6.

[233] 15 U.S.C. 80b–1 *et seq.*

[234] 17 CFR 270.8b–23.

[235] 17 CFR 270.8b–24.

[236] 17 CFR 270.8b–32.

[237] *See* Letters from Wachtell, Lipton, Rosen & Katz (May 16, 2016) (''Wachtell''); Ball Corporation (July 19, 2016) (''Ball''); Chamber 2; FedEx; CGCIV; International Integrated Reporting Council (July 20, 2016) (''IIRC''); California State Teachers' Retirement System (July 21, 2016) (''CalSTRS''); Edison Electric and AGA; American Federation of State, County and Municipal Employees (July 21, 2016) (''AFSCME''); Fenwick; and NIRI.

[238] *See* Letters from Wachtell; Chamber 2; FedEx; CGCIV; IIRC; Edison Electric and AGA; Fenwick; IAC 1; and NIRI.

[239] *See* Letters from IIRC and CalSTRS. The IIRC recommended emphasizing the use of incorporation by reference for ''supplementary'' information so as to focus the disclosure in a document on ''core'' information.

[240] 17 CFR 229.10.

[241] 17 CFR 229.10(d).

[242] Indirect incorporation by reference is permitted when the registrant is expressly required to incorporate a document by reference and, in the case of asset-backed issuers, under Item 1100(c) of Regulation AB [17 CFR 229.1100(c)]. *See* Item 10(d).

[243] *See infra* note 247 and accompanying text (discussing the exceptions).

[244] *See Rules of Practice,* Release No. 34–35833 (June 9, 1995) [60 FR 32738 (June 23, 1995)] (moving the requirements from Rule 24 of the Commission's Rules of Practice to Item 10(d)). We are also proposing to eliminate remaining references to Rule 24 in Regulation S–K and other rules and forms. *See, e.g.,* Rule 411(d) and Form N–2.

[245] *See* 25 FR 6719 (July 15, 1960) (adopting Rule 24); *Incorporation by Reference,* Release No. 33–5818 (Mar. 18, 1977) [42 FR 16922 (Mar. 30, 1977)] (adopting an amendment to Rule 24 reducing the 10-year limit to five years).

[246] *Notice of (1) Proposed Amendments to Rule 24 of the Rules of Practice and All Other Commission Rules Relating to Incorporation By Reference and Basic Documents and (2) Proposed Revocation of Securities Exchange Act Rule 12b–34,* Release No. 33–5711 (May 21, 1976) [41 FR 105 (May 28, 1976)] (proposing a three-year limit with certain ''basic documents'' being retained for a longer period).

[247] *See* Item 10(d)(1)–(2) and the Commission's Records Control Schedule [17 CFR 200.80f].

[248] We believe that it is very unlikely that a registrant would attempt to incorporate by reference to a document that was filed with the Commission but is no longer available because it was not submitted on EDGAR and has been destroyed pursuant to the Records Control Schedule. For example, the Commission retains Securities Act and Exchange Act registration statements, reports and proxy materials that have not been filed on EDGAR for 30 years. *See* Records Control Schedule [17 CFR 200.80f]. Under the proposed amendments, a registrant would not be permitted to incorporate by reference to a destroyed document because it would render its disclosure incomplete, unclear, or confusing. *See, e.g.,* proposed Rule 411(e) and Rule 12b–23(e).

[249] *See* the proposed amendments to Rule 411, Rule 12b–23, Rule 0–4, and Rule 0–6. Paragraph (d) of Item 10 also states that, when incorporation by reference is permitted, a document may be

Continued

FAST Act Report, the staff recommended consolidating the incorporation by reference rules in Item 10(d). After considering this recommendation, we believe that consolidating these procedural rules in Regulation C and Regulation 12B (and, for investment companies and investment advisers, in Rule 0–4 under the Investment Company Act and Rule 0–6 under the Investment Advisers Act, respectively [250]) would better align with the Commission's original intent of focusing Regulation S–K on substantive disclosure requirements.[251]

Request for Comment

65. Should we consolidate the requirements governing incorporation by reference as proposed? Would the proposed structure of the incorporation by reference rules be simpler for registrants, particularly smaller registrants, to follow? Instead of preserving the different rules for incorporation by reference under Regulation C and Regulation 12B, should we combine Rule 411, Rule 12b–23, and Rule 12b–32 in a single item of Regulation S–K? Would that facilitate or streamline compliance with the rules?

66. Should we eliminate Item 10(d)'s five-year limit on incorporation by reference as proposed? Given the exceptions that exist and the Commission's electronic filing requirements, is the five-year limit obsolete? Would eliminating the five-year limit make it difficult for investors to locate information that a registrant incorporates by reference?

67. For investment companies and investment advisers, should we consolidate the different rules for incorporation by reference into Rule 0–4 and Rule 0–6, respectively as proposed? Would this structure be simpler for investment companies and investment advisers to follow, or are there special considerations regarding investment companies and investment advisers that make the current or another structure more appropriate?

2. Securities Act Rule 411, Exchange Act Rule 12b–23 and Rule 12b–32 and Related Rules Under the Investment Company Act and Investment Advisers Act

Rule 12b–23 governs incorporation by reference for registration statements filed pursuant to Sections 12(b) and 12(g) of the Exchange Act and reports filed pursuant to Sections 13 and 15(d) of the Exchange Act.[252] Rule 12b–23 broadly allows for incorporation by reference in answer, or partial answer, to any item of an Exchange Act registration statement or report. Rule 12b–32 governs incorporation by reference for exhibits filed with registration statements and reports. Rule 411 governs incorporation by reference for registration statements filed under the Securities Act, including exhibits thereto.[253] Rule 411 restricts incorporation by reference in a prospectus unless otherwise provided in the appropriate form but allows for incorporation by reference similar to Rule 12b–23 for the non-prospectus portions of a registration statement.[254]

Under the Investment Company Act, Rule 0–4 provides general incorporation by reference rules for investment company registration statements, applications, and reports filed with the Commission. Rule 8b–23 (additional incorporation by reference rules for registration statements and reports), Rule 8b–24 (rules regarding summaries or outlines of documents), and Rule 8b–32 (incorporation of exhibits by reference) provide additional incorporation by reference rules for investment company registration statements and reports. Under the Investment Advisers Act, Rule 0–6 governs incorporation by reference for investment adviser applications for Commission orders under the Investment Advisers Act other than applications for registration as an investment adviser.

a. Exhibit and Other Filing Requirements

Rule 12b–23(a)(3) under the Exchange Act requires that copies of any information incorporated by reference must be filed as an exhibit, with limited exceptions.[255] This provision was introduced in 1971 so that then-existing microfiche technology for the public dissemination of reports and documents filed with the Commission could function properly.[256] Rule 411(b)(4) under the Securities Act has a more limited exhibit filing provision for non-prospectus information that is incorporated by reference into a document that does not comply with the five-year limit in Item 10(d). Rule 8b–23 under the Investment Company Act generally requires investment company registrants to file with a registration statement or report a copy of any registration statement, report, or prospectus from which information is incorporated by reference, except in cases where the registration statement, report, or prospectus was filed electronically.[257] We are proposing to

incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. We are proposing to eliminate this provision because similar provisions exist in Rule 411(d), Rule 12b–23(b), Rule 0–4(c), and Rule 0–6(c).

[250] As part of these amendments, we are proposing amendments to various Investment Company Act forms to eliminate references to Item 10(d), along with outdated references in our forms and Rule 0–4 and Rule 0–6 to 17 CFR 228.10(f), a former rule under Regulation S–B which was rescinded in 2007. *See Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)].

[251] *See* FAST Act Report, *supra* note 2, at Recommendation A.2 (''These rules could be consolidated in Item 10(d) for submissions that are required to comply with Regulation S–K.''). When the Commission adopted the integrated disclosure system, it indicated that it intended to bifurcate the regulations into procedural requirements and substantive disclosure requirements. *See Proposed Revision of Regulation C, Registration and Regulation 12B, Registration and Reporting,* Release No. 33–6333 (Aug. 6, 1981) [46 FR 41971 (Aug. 18, 1981)] (''In its development of an integrated disclosure system, the Commission has sought to consolidate requirements relating to substantive disclosure and document content in Regulation S–K. The proposals in this release reflect the continuation of that process and also the effort to simplify and consolidate procedural requirements in Regulations C and 12B.''); *Integrated Disclosure System Adopting Release, supra* note 69 (''The third aspect of the integrated disclosure system consists of Regulation C and Regulation 12B, which contain the procedures to be used in preparing and filing registration statements and reports under the Securities Act and the Exchange Act, respectively.''). Nevertheless, the rules governing incorporation by reference could be consolidated in Regulation S–K. We are soliciting comment on whether such an approach would be preferable.

[252] *See* Rule 12b–1 [17 CFR 240.12b–1] (setting forth the scope of Regulation 12B).

[253] *See* Rule 400 [17 CFR 230.400] (setting forth the scope of Regulation C).

[254] *See Integrated Disclosure System Adopting Release, supra* note 69; *Proposed Revision of Regulation C, Registration and Regulation 12B, Registration and Reporting,* Release No. 33–6333 (Aug. 6, 1981) [46 FR 41971 (Aug. 18, 1981)] (''While it is generally proper to prevent prospectuses from incorporating exhibits which are not delivered, the Commission does not believe it is necessary to impose such limits in connection with Exchange Act reports which are not actually delivered in registered public offerings of securities.'').

[255] *See* Rule 12b–23(a)(3) [17 CFR 240.12b–23(a)(3)](providing exceptions for a proxy or information statement incorporated by reference in response to Part III of Form 10–K, a form of prospectus filed pursuant to Rule 424(b) [17 CFR 230.424(b)] incorporated by reference in response to Item 1 of Form 8–A, and information filed on Form 8–K).

[256] *See Registration and Reporting and Form for Annual Reports of Employee Stock Purchase Plans,* Release No. 34–9048 (Jan. 4, 1971) [36 FR 4483 (Mar. 6, 1971)] (''In order that the microfiche system for the public dissemination of reports and documents filed with [the] Commission may work, the amended rule requires that copies of information or financial statements incorporated by reference, or copies of the pertinent pages of any document containing such information or statement, be filed with the registration statement or report in which it is so incorporated.'').

[257] *See* Rule 8b–23(a) [17 CFR 270.8b–23(a)]. In addition, Rule 0–4 under the Investment Company Act and Rule 0–6 under the Investment Advisers Act permit the incorporation by reference as an exhibit in any registration statement, application or report (in the case of Rule 0–4) or in any application (in the case of Rule 0–6) any document or part thereof previously or concurrently filed with the

eliminate these requirements, consistent with commenters' suggestions and the staff's recommendation in the FAST Act Report to make the rules for incorporation by reference more consistent, and to apply consistent rules for incorporation by reference under the Investment Company Act and Investment Advisers Act.[258] We no longer believe that these requirements are necessary as most Exchange Act filings are made publicly available on EDGAR, and as we generally do not have similar exhibit filing requirements for Securities Act registration statements.[259]

In connection with these proposed amendments, we are also proposing to eliminate the corresponding exhibit requirement in Item 601(b)(99)(ii) of Regulation S–K, which was adopted in connection with Rule 12b–23(a) and Rule 411(b)(4).[260] In addition to Item 601(b)(99), other provisions in Item 601 require documents to be filed as exhibits only when they are incorporated by reference into a filing. For example, Item 601(b)(13) requires a registrant to file an annual report to security holders, Form 10–Q or quarterly report to security holders as an exhibit when the registrant incorporates all or a portion of such reports by reference. Although annual reports to security holders are readily available to investors and the staff outside of EDGAR, we believe it is appropriate to retain the exhibit requirement in these circumstances because some registrants satisfy their disclosure requirements by incorporating a significant amount of disclosure from these reports. We are not proposing to eliminate these other exhibit filing requirements in Item 601. Nonetheless, we are proposing to eliminate the requirement in Item 601(b)(13) to file a Form 10-Q as an exhibit when it is specifically incorporated by reference into a prospectus. This provision would no longer be necessary because, under the proposed rules, a registrant would be required to include a hyperlink to any information that is incorporated by reference to a document available on EDGAR.[261]

Request for Comment

68. Should we eliminate the requirement in Rule 12b–23(a)(3) and Rule 411(b)(4) that copies of information incorporated by reference be filed as exhibits to registration statements or reports? Would eliminating these requirements encourage incorporation by reference as suggested by some commenters?[262] Would eliminating the requirement make it difficult for investors to locate the incorporated information on EDGAR?

69. Should we modify, as proposed, the exhibit filing provisions in Rule 0–4, Rule 8b–23, and Rule 0–6 regarding materials incorporated by reference? Are there special considerations regarding investment companies and applications under the Investment Advisers Act that merit maintaining or modifying the current provisions we are proposing to eliminate? Should we specify in Rule 0–4, as proposed, that financial statements may be filed as exhibits to investment company applications, as Rule 0–6 currently specifies with respect to applications filed under the Investment Advisers Act? Given that applications under the Investment Advisers Act are filed with the Commission in paper, should our final rules continue to require the filing of additional copies of materials incorporated by reference?

70. Some documents are required to be filed as exhibits only when they are incorporated by reference into a filing. For example, Item 601(b)(13) requires an annual report to security holders to be filed as an exhibit to a Form 10–K when all or part of the annual report is incorporated by reference into the text of Form 10–K. Should we amend Item 601(b)(13) or other provisions in Item 601 to eliminate these requirements (or is the proposed elimination of Rule 12b–23(a)(3) sufficient to encourage incorporation by reference)? Please address the availability of the information called for by Item 601 to investors and the Commission in your response.[263]

b. Hyperlinks

Consistent with the recommendation of commenters and the staff, we are proposing to facilitate greater investor access to disclosure by amending Rule 411, Rule 12b–23, and Rule 0–4 to require hyperlinks to information that is incorporated by reference if that information is available on EDGAR.[264] The Commission recently adopted rules requiring hyperlinks to most exhibits filed pursuant to Item 601, Form F–10[265] or Form 20–F.[266] To accommodate hyperlinks, those filings must be made in HTML format.[267] The requirement to file documents in HTML format would be expanded under the proposed rules to include filings that are subject to the proposed hyperlinking requirements in Rule 411, Rule 12b–23, and Rule 0–4.[268] We believe that

Commission. Both rules also permit the incorporation by reference of financial statements (or parts thereof), although Rule 0–6 specifies that the financial statements (or parts thereof) that are incorporated are to be filed as exhibits. For consistent rules under both Acts, we are proposing amendments to Rule 0–4 to specify that financial statements may be filed as exhibits to investment company applications, as Rule 0–6 currently specifies with respect to applications filed under the Investment Advisers Act.

Furthermore, if the number of copies of any document from which information is incorporated by reference is less than the number of copies required to be filed with a registration statement, application, or report, Rule 0–4 and Rule 0–6 require an investment company or applicant, respectively, to file as many additional copies of the document incorporated by reference as may be necessary to meet the requirements of the registration statement, application, or report. *See* Rule 0–4(a), Rule 0–6(a). We are proposing to eliminate the requirement to file additional copies from Rule 0–4 because most investment company filings are available on EDGAR. Although investment adviser applications are filed in paper format, in the staff's experience, those applications rarely incorporate by reference information as permitted by Rule 0–6. For our regulatory purposes, we do not believe that the number of copies specified in current Rule 0–6 is needed. Thus, for the foregoing reasons and for consistency purposes, we are similarly proposing to eliminate the requirement to file additional copies from Rule 0–6.

[258] *See* Letters from ABA and Fenwick. *See also* FAST Act Report, *supra* note 2, at Recommendation A.2.

[259] We note that investment advisers register and submit some filings to the Commission electronically through the Investment Adviser Registration Depository (''IARD'').

[260] *See Integrated Disclosure System Adopting Release, supra* note 69 (adopting Item 601(b)(28)(ii), which is now found in Item 601(b)(99)(ii)) and *Proposed Revision of Regulation S–K and Proposed Rescission of Guides for the Preparation and Filing of Registration Statements and Reports,* Release No. 33–6332 (Aug. 6, 1981) [46 FR 41925 (Aug. 18, 1981)].

[261] *See infra* Section II.F.2.b. (Incorporation by Reference—Hyperlinks).

[262] *See* Letters from ABA and Fenwick.

[263] For example, annual reports are required to be delivered to security holders. *See* Rule 14a–3(b) and Rule 14c–3(a) [17 CFR 240.14a–3(b) and 14c–3]. Such reports must also be provided to the Commission. *See* Rule 14a–3(c) [17 CFR 240.14a–3] and Rule 14c–3(b) (requiring hard copies of these reports to be delivered to the Commission).

[264] *See* Letters from Chamber; FedEx; Fenwick; and CGCIV. *See also* FAST Act Report, *supra* note 2, at n.34. We are not proposing similar amendments to Rule 0–6 because applications under the Investment Advisers Act filed pursuant to that rule are not required to be filed electronically. In addition, applications filed pursuant to Rule 0–6 may incorporate information that may not be filed on EDGAR.

[265] 17 CFR 239.40.

[266] *See Exhibit Hyperlinks Adopting Release, supra* note 14, at 14130.

[267] *See id.* at 14130. Larger registrants were required to comply with the rules requiring exhibit hyperlinks for filings submitted on or after September 1, 2017. *Id.* The rules we adopted at that time did not generally apply to investment companies. However, as discussed below, we are proposing to apply similar requirements to certain filings by investment companies in this release. *See infra* Section II.G.2.

[268] *See* proposed Rule 105(e) of Regulation S–T. We do not believe that the proposed amendments would significantly increase the number of filings that must be in HTML format. Filings that are not subject to Rule 411 or Rule 12b–-23, such as proxy

Continued

expanding the hyperlinking requirement to other information that is incorporated by reference would improve the readability and navigability of disclosure documents and discourage repetition, consistent with our FAST Act mandate.

The proposed requirements for hyperlinking are similar to the requirements for exhibit hyperlinking. Specifically, under the proposed amendments, registrants would not be required to file an amendment to a document solely to correct an inaccurate hyperlink unless, that hyperlink was included in a pre-effective registration statement. An inaccurate hyperlink alone would neither render the filing materially deficient nor affect a registrant's eligibility to use Form S–3 [269] or Form F–3.[270] Lastly, we are not proposing to require refiling of information that is incorporated by reference from a document that was previously filed with the Commission in paper. Similar to our reasoning in the Exhibit Hyperlinks Adopting Release, we believe that requirement would have limited utility given that electronic filing has been required for over two decades and paper filings are currently made in very limited circumstances.[271]

Unlike the requirements for exhibit hyperlinking, however, a registrant would not be required to correct inaccurate hyperlinks in an effective registration statement by including a corrected hyperlink in a subsequent periodic report or a post-effective amendment. We preliminarily believe that it would result in more confusion than clarity if we were to require registrants to re-file disclosure to correct a hyperlink or to include a section solely devoted to corrected hyperlinks in the body of a periodic report or post-effective amendment. This differs from exhibit hyperlinks where the corrected hyperlink would be unobtrusively located in the exhibit index with other exhibits. The requirement in proposed Rule 411, Rule 12b–23, and Rule 0–4 to describe the location of the information incorporated by reference should mitigate the impact of any inaccurate hyperlinks.

Request for Comment

71. As proposed, in most cases a registrant would be required to include a hyperlink to information that it incorporates by reference. Would the proposed hyperlinking requirements significantly increase the compliance burden on registrants? Should we provide a delayed compliance date for smaller reporting companies and ASCII filers? [272] If so, what compliance date would be appropriate? Should we provide any exceptions to the proposed hyperlinking requirement? For example, should we exclude references to entire forms that are readily accessible on EDGAR, such as Form 10–K, or for particular types of disclosure? If so, which forms or types of disclosure would be appropriate and why?

72. Should investment companies be required to include a hyperlink to information incorporated by reference as proposed? Are there special considerations regarding filings by investment companies that merit modifying the requirement in any way? For example, should investment company applications be required to include a hyperlink to information that is incorporated by reference?

73. When should registrants be required to update inaccurate hyperlinks? Should these updating requirements differ from the requirements to update inaccurate exhibit hyperlinks as proposed? [273] Should we instead require registrants to update hyperlinks in a post-effective amendment or subsequent periodic report?

74. Should we amend our forms to clarify that information incorporated by reference must include a hyperlink to where that information may be found on EDGAR? Would the requirements be sufficiently clear if we include them only in the rules as proposed?

c. Financial Statements

In addition to addressing incorporation by reference, the FAST Act Report recommended that we consider revising our rules and forms to allow for consistent cross-referencing to disclosure found elsewhere in a filing.[274] To address the concern that cross-referencing to non-financial information from within the financial statements may raise questions about the scope of an audit or review, the staff recommended that we consider prohibiting the use of such cross-referencing. Several commenters on the Concept Release also supported using cross-references to reduce repetitive disclosure while recommending that the Commission clarify or delineate what information constitutes the set of audited or reviewed financial statements.[275]

In most cases, there is no prohibition on cross-referencing to or incorporating information from the financial statements to satisfy the narrative disclosure requirements of Regulation S–K.[276] In some cases cross-referencing is specifically permitted.[277] Therefore, although we encourage registrants to make use of the disclosure in their financial statements to satisfy other disclosure requirements,[278] we are not proposing clarifying amendments to our rules or forms to address incorporation by reference from the financial statements at this time.

By contrast, where financial statements cross-reference or incorporate information from outside the financial statements, it can raise questions as to the scope of an auditor's responsibilities.[279] To address this concern, we are proposing amendments to our rules and forms that would prohibit that type of incorporation by reference or cross-referencing.[280] These amendments would not prohibit cross-references to other parts of a filing when otherwise specifically permitted by our rules.[281] These amendments would also not prohibit incorporating financial information from other filings to satisfy

statements on Schedule 14A, would not be affected by this proposal.

[269] 17 CFR 239.13.

[270] 17 CFR 239.33.

[271] *See Exhibit Hyperlinks Adopting Release, supra* note 14, at 14131. *See also* FAST Act Report, *supra* note 2, at n.31 and accompanying text.

[272] *See Exhibit Hyperlinks Adopting Release,* at 14130.

[273] *See Exhibit Hyperlinks Adopting Release, supra* note 14, at n.73.

[274] *See* FAST Act Report, *supra* note 2, at Recommendation A.2.

[275] *See* Letters from Deloitte & Touche LLP (July 15, 2016); CAQ; Ernst & Young 3; PNC; Grant Thornton LLP (July 21, 2016); KPMG; PWC; Crowe Horwath LLP (July 21, 2016) (''Crowe Horwath''); and CFA Institute.

[276] Although Rule 411 restricts incorporation by reference in a prospectus, it does not prohibit cross-references within a prospectus. Also, Securities Act forms, such as Forms S–1 and S–3, permit incorporation by reference in the prospectus if specified conditions are met.

[277] *See, e.g.,* Item 101(b) and Item 101(d)(2) of Regulation S–K [17 CFR 229.101(b) and (d)(2)].

[278] For example, disclosure about legal proceedings, transactions with related persons and matters relevant to MD&A might be disclosed in the financial statements.

[279] *See supra* note 275 and accompanying text.

[280] See our proposed amendments to Rule 411, Rule 12b–23, and Rule 0–4 and Securities Act Forms S–1, S–3, S–11, and F–1. This approach would also avoid the concern raised by one commenter that registrants may lose their Securities Act Section 27A [15 U.S.C. 77z–2] safe harbor by cross-referencing to the body of a periodic report within their financial statements. *See* Letter from General Motors. Because Rule 0–6 governs incorporation by reference only for applications filed under the Investment Advisers Act, we are not proposing to make similar amendments to that rule, but request comment on whether the final rule should include such provision.

[281] For example, registrants would continue to be permitted to include cross-references in the financial statements to information outside of the financial statements about segments when that information conforms with generally accepted accounting principles. *See* Item 101(b) of Regulation S–K.

financial reporting requirements when otherwise permitted or required.[282]

We are also proposing an amendment to Rule 0–4 that, except as provided in the Commission's rules, would restrict the incorporation of financial information required to be given in comparative form for two or more fiscal years or periods unless the information incorporated by reference includes the entire period for which the comparative data is given.[283] We are proposing this amendment to provide for consistency with similar restrictions under both current and proposed Rule 411 and Rule 12b-23 and request comment on whether this amendment is appropriate.

Request for Comment

75. Should we amend our rules or forms to clarify or expand when financial statement disclosure may be used to satisfy other disclosure requirements? If so, are there particular areas of disclosure that we should address?

76. To clarify the scope of the financial statements and an auditor's responsibilities, we have proposed prohibiting registrants from incorporating or cross-referencing information outside of the financial statements into their financial statements unless otherwise specifically permitted or required by the Commission's rules. Is the proposed approach appropriate or would an alternative approach better achieve this goal? Should we provide other exceptions to the proposed rule?

77. Are the proposed amendments appropriate for investment companies? Do investment companies raise special considerations that our rules and forms should address? Should we amend Rule 0–6 to provide for similar rules regarding the incorporation by reference of financial statements into applications under the Investment Advisers Act? Why or why not?

d. Other Amendments

We are also proposing several non-substantive changes to Rule 411, Rule 12b–23 and Rule 0–4 to streamline, clarify, and conform these rules. One of these proposed changes relates to the current provisions governing how financial information from another filing may be incorporated by reference.[284] Rule 12b–23 states that financial information incorporated by reference must comply with the requirements of the form or report into which it is incorporated. Rule 411 and Rule 0–4 contain similar language.[285] These provisions could be read to imply that the financial statements must comply with the form on which they were originally filed, rather than the form into which they are being incorporated. We are proposing to eliminate these provisions because all information, not just information incorporated by reference or financial information, must comply with the requirements of the form in which it is used unless otherwise permitted by rule or statute.

The proposed amendments would also eliminate several redundant provisions in Rule 411 and Rule 12b–23. Rule 411(b) provides that information may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in a prospectus ''subject to the following provisions.'' Although presented as conditions to using incorporation by reference, the provisions that follow mostly discuss situations where incorporation by reference is permitted by other parts of these rules. For example, Rule 411(b)(1) states that non-financial information may be incorporated by reference to any document in response to the non-prospectus disclosure requirements in filings under the Securities Act. Rule 12b–23(a) contains a similar structure for any item of a registration statement or report. Further, Rule 411(b)(3) (for non-prospectus disclosure requirements) and Rule 12b–23(a)(2) both state that incorporating information by reference to other parts of the same filing is generally permitted. Incorporation by reference in all of these contexts is permitted by the broader provisions of Rule 411(b) and Rule 12b–23(a). Accordingly, we are proposing to eliminate paragraphs (b)(1) and (b)(3) of Rule 411 and paragraph (a)(2) of Rule 12b-23, as these provisions are unnecessary.

We are also proposing to move the provisions relating to incorporating exhibits by reference from Rule 12b–32 into Rule 12b–23. Previously, Regulation C had a bifurcated structure, similar to Rule 12b–32 and Rule 12b–23, with both Rule 411 and Rule 447 governing the incorporation of exhibits by reference for Securities Act filings. Rule 447 was consolidated into Rule 411 in 1982.[286] Although Rule 12b–32 is currently found under the exhibits subheading of Regulation 12B, we believe that reducing the number of separate rules governing incorporation by reference would simplify compliance. We are not proposing any substantive changes to Rule 12b–32.[287]

For similar reasons, we are proposing to move the provisions relating to incorporating exhibits by reference from Rule 8b–32 into Rule 0–4, with one exception.[288] Under Rule 8b–32(c), an investment company may only incorporate by reference into a registration statement or report required to be filed electronically an exhibit that was filed in electronic format, unless the exhibit was filed in paper under a hardship exemption and any required confirming copy has been submitted.[289] Given that EDGAR is now the primary method for the filing of investment company registration statements, applications, and reports with the Commission and our rules require the filing of electronic format copies of paper format documents filed under a hardship exemption,[290] this provision is obsolete, and therefore, we are proposing to eliminate it.[291]

We are also proposing additional modifications to Rule 0–4 and Rule 0–6 to modernize and simplify these rules. First, we are proposing to eliminate the requirement that if a certificate of an independent public accountant previously or concurrently filed is incorporated by reference by an investment company (with respect to the filing of a registration statement, application, or report) or an investment adviser (with respect to the filing of an application) a written consent of the accountant must be filed with the filing.[292] We note that Rule 439 under

[282] For example, registrants using Form S–3 would continue to be permitted to incorporate financial statements filed with a Form 8–K that reports the acquisition of a significant business. Also, registrants using Form S–4 to report a merger with another registrant would continue to be able to incorporate the financial statements of the registrant filed on Form 10–K and Form 10–Q.

[283] *See* proposed Rule 0–4(b).

[284] *See* Rule 411(b)(2) (discussing the incorporation by reference of financial information in the non-prospectus portion of a registration statement) and Rule 12b–23(a)(1).

[285] Similar language also exists in Rule 8b–23, which we are proposing to rescind.

[286] *See Integrated Disclosure System Adopting Release, supra* note 69.

[287] The proposed amendments would conform the language of Rule 12b–32 (as incorporated into Rule 12b–23) with similar language currently found in Rule 411(c). References to 17 CFR 228.10(f), which no longer exists, would be eliminated.

[288] As with the proposed amendments to Rule 12b–23, we are proposing to conform the language of paragraphs (a) and (b) of Rule 8b–32 (as incorporated into Rule 0–4) with similar language currently found in Rule 411(c). References to 17 CFR 228.10(f), which no longer exists, would similarly be eliminated.

[289] *See* Rule 8b–32(c).

[290] *See, e.g.,* Rule 201(b) of Regulation S–T [17 CFR 232.201(b)], Notes 2 and 3 to Rule 202 of Regulation S–T [17 CFR 232.202].

[291] *See* paragraph (a)(iv) of Rule 101 of Regulation S–T [17 CFR 232.101] (specifying the investment company filings required to be submitted electronically).

[292] *See* Rule 0–4(b), Rule 0–6(b).

the Securities Act [293] provides a similar requirement for these types of consents for registration statements under the Securities Act. We further note that our investment company registration forms do not require the filing of these consents where a registration statement or amendment is filed only under the Investment Company Act.[294] We are unaware of circumstances under which a consent would be required in connection with an investment company report or an application filed by an investment company or investment adviser. Therefore, we are proposing to eliminate this requirement from Rule 0–4 and Rule 0–6 but request comment on whether the final rules should retain it.

Second, we are proposing to eliminate the restrictions currently contained in Rule 0–4(d) and Rule 0–6(d) on incorporating by reference exhibits or financial statements made in certain filings.[295] Given that EDGAR is now the primary method for the filing of registration statements and reports with the Commission, and that documents filed on EDGAR remain available regardless of whether a filing is withdrawn, whether a registration statement ceases to be effective, and whether the other circumstances outlined in Rule 0–4(d) and Rule 0–6(d) apply to a particular filing, these provisions are no longer necessary.[296] For our regulatory purposes, we do not believe that the restrictions are needed. Thus, for the foregoing reasons and for consistency purposes, we are proposing to eliminate this provision from Rule 0–4 and Rule 0–6 but request comment on whether the final rules should retain it.

Finally, we are proposing to eliminate the provisions currently contained in Rule 0–4(e) and Rule 0–6(e). These provisions provide that the Commission may refuse to permit incorporation by reference in any case in which, in the Commission's judgment, such incorporation would render a registration statement or report of an investment company or an application filed by an investment adviser incomplete, unclear, or confusing. Instead, for consistency with proposed Rule 411(e) and proposed Rule 12b–23(e), we are proposing to amend Rule 0–4 and Rule 0–6 to contain a general requirement that information must not be incorporated by reference in any case where such information would render the disclosure incomplete, unclear, or confusing.[297]

Request for Comment

78. We are proposing to eliminate several redundant parts of the rules that address incorporation by reference. Are those provisions helpful to understanding whether and when incorporation by reference is permitted? Should we include those provisions in instructions to the rules or in other guidance?

79. Are the proposed amendments appropriate with respect to investment companies, or do investment companies raise special considerations that our rules should address? For example, should our rules maintain the current restriction contained in Rule 8b–32(c) regarding exhibits filed as part of registration statements and reports required to be filed electronically? Should our rules retain the current requirement that a consent be filed where an independent public accountant certificate is incorporated by reference? Should our rules retain the current prohibitions on incorporating by reference information filed as part of certain filings specified in Rule 0–4(d) and Rule 0–6(d)? In these cases, should our rules retain the current provisions of our rules, or should they be modified in any way? If so, how?

80. Are the proposed amendments to Rule 0–4 and Rule 0–6 sufficient to help ensure that information incorporated by reference into a registration statement, report, or application does not render the disclosure in these documents incomplete, unclear, or confusing? If so, should we, as proposed to provide regulatory consistency between operating companies on the one hand and investment companies and investment advisers on the other, eliminate the current provisions in Rule 0–4(e) and Rule 0–6(e) that the Commission may refuse to permit incorporation by reference in any case in which in its judgment the incorporation would render a registration statement, report, or application incomplete, unclear, or confusing? Why or why not? If retained, should the provisions be modified in any way, and if so, how?

81. Are the proposed rules governing incorporation by reference under the Investment Company Act or Investment Advisers Act sufficiently clear? Should we modify them in any other respect? For example, should our rules expressly permit or prohibit information to be incorporated into the body of an application?

3. Forms

Incorporation by reference is also addressed in our forms.[298] Accordingly, we are proposing revisions to several of the Commission's forms to implement the proposed amendments discussed above. In addition to conforming changes, we are proposing amendments to Form 10, Form 10–K and Form 20–F to allow registrants to exclude item numbers and captions or to create their own captions tailored to their disclosure.[299] The proposed amendments would not affect captions that are expressly required by the forms or Regulation S-K. For example, Form 10–K and Form 20–F require captions for ''audit fees,'' ''audit-related fees,'' ''tax fees,'' and ''all other fees.'' Regulation S–K requires a caption for ''risk factors.'' [300] These proposed amendments are intended to reduce the use of unnecessary cross-references

[293] 17 CFR 239.439.

[294] *See, e.g.,* General Instruction B.2(b) of Form N–1A.

[295] Specifically, the rules restrict the incorporation by reference of exhibits or financial statements which (1) have been withdrawn, (2) were filed in connection with certain registration statements that have ceased to be effective, (3) are contained in filings subject to pending proceedings under (i) Section 8(b) or 8(d) of the Securities Act, (ii) Section 8(e) of the Investment Company Act, (iii) in the case of applications under Rule 0–6, Section 203(e)(1) of the Investment Advisers Act, or (iv) orders under any of the foregoing, and (4) in the case of investment companies, were documents filed in paper and with respect to an electronic filer under a temporary hardship exemption under Rule 201 of Regulation S–T and an electronic copy has not been submitted.

[296] As noted earlier, investment advisers register and submit some filings to the Commission electronically through IARD.

[297] *See* proposed Rule 0–4(e), proposed Rule 0–6(b). A substantially similar provision exists in current Rule 8b–23(c) (which we are proposing to rescind) pertaining to information incorporated by reference into an investment company registration statement or report.

[298] Although, as stated above, Rule 411, Rule 12b–23 and Rule 12b–32 generally govern incorporation by reference for filings subject to Regulation C or Regulation 12B, provisions in the forms that cover the same subject matter are controlling. *See* Rule 400 [17 CFR 230.400] (stating that the provisions in a form, or an item of Regulation S–K referred to in such form, will control when they cover the same subject matter as a rule in Regulation C, unless otherwise specifically provided in Regulation C) and Rule 12b–1 (stating that provisions in a form will control when they cover the same subject matter as a rule in Regulation 12B).

[299] Rule 12b–13 requires registrants to include the numbers and captions of all items in these forms. Although provisions in a form control when they cover the same subject matter as a rule in Regulation 12B, these forms do not contradict Rule 12b–13.

[300] The proposed amendments are not intended to change instances where the staff has interpreted a requirement to allow for a caption to be excluded. *See, e.g.,* Regulation S–K Compliance and Disclosure Interpretation 233.02 (discussing the caption called for by Item 407(e)(4)). The proposed amendments would also not eliminate General Instruction G.4 of Form 10–K, which requires captions when the registrant incorporates all of the information in its Form 10–K by reference to its annual report to security holders and its definitive proxy or information statement. In connection with this proposal, we are also proposing to amend Rule 12b–13 to make it clearer that the provisions of a form control over the requirements of that rule.

when information may be responsive to more than one disclosure item in the Exchange Act forms.[301]

While item numbers and captions are generally not required in the prospectus portion of most Securities Act filings, they are required in many Exchange Act forms.[302] Although clear disclosure will often call for appropriate headings or captions, the proposed amendments would provide registrants with more flexibility in how they present their disclosure. Increasing flexibility in this manner may reduce repetitive disclosure or unnecessary cross-references when information may be responsive to more than one item and thereby enhance the overall readability of required disclosures.

Request for Comment

82. Should we amend Form 10, Form 10–K, and Form 20–F to eliminate the requirements to include most item numbers and captions as proposed? Would the proposed amendments to these forms lead to disclosure that is less clear or less comparable across registrants? Under the proposed amendments, a few required captions would remain, such as the caption for ''risk factors'' and the captions required by General Instructions G.4 of Form 10–K.[303] Should we retain these requirements, or should they also be eliminated?

83. Would increasing flexibility in how the disclosure in Form 10, Form 10–K, and Form 20–F is presented lead to less repetitive disclosure? Should we eliminate the requirements to include item numbers and captions in other forms, such as in Part II of Form 10–Q or in Form 8–K?

84. In addition to or in lieu of eliminating the requirements for most item numbers and captions, should we amend our rules to provide guidance on the use of cross-references, as suggested by one commenter? [304] If so, how should the guidance discourage excessive cross-referencing while acknowledging that some cross-references may be necessary to provide clear disclosure? Should the cross-referencing guidance differ based on the nature of the document or the disclosure? For example, should the guidance treat a prospectus differently from a Form 10–K filing, or treat information in the financial statements differently from narrative disclosure?

85. The proposed amendments would not alter the general rule that a prospectus may not incorporate information by reference unless permitted by the appropriate form. Our forms, however, typically provide registrants with significant latitude to incorporate information by reference when specified conditions are met.[305] Should we change the information that may be incorporated by reference into a prospectus under any of our forms? If so, which information, and why?

G. Manner of Delivery [306]

1. Tagging Cover Page Data

Currently, operating company registrants are required to file their financial statements as an exhibit in a machine-readable format using eXtensible Business Reporting Language (''XBRL'').[307] This disclosure is required as an exhibit to periodic reports and Securities Act registration statements, including reports on Form 8–K or Form 6–K that contain revised or updated financial statements.

Registrants must also tag in XBRL a specific group of data points that appears on the cover page of the filing. These specific data points, which are tagged according to Regulation S–T and the EDGAR Filer Manual, are known as document and entity identifier elements (''DEIs'') and include, among others, form type, company name, filer size, and public float.[308] This information corresponds to some, but not all, of the information that registrants are required to include on the filing cover page. For example, the Form 10-K cover page contains approximately 25 data points. Less than half of those data points are currently required to be tagged in XBRL. The non-tagged data points include, among others, the exchange on which securities are registered and the state (or jurisdiction) of incorporation.

In the FAST Act Report, the staff recommended that the Commission consider requiring operating company registrants to tag in XBRL all the data points on the cover pages of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F. The staff also recommended that the Commission consider revising the cover page of these forms to include the trading symbol for each class of securities registered under the Exchange Act and require registrants to format this additional data point in XBRL.[309]

We are proposing amendments to require all of the information on the cover pages of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F to be tagged in Inline XBRL in accordance with the EDGAR Filer Manual. Under the proposed amendments, the cover page data would appear in HTML format with embedded XBRL data. We recently proposed to require the use of the Inline XBRL format, where XBRL data is embedded into an HTML document, instead of the traditional XBRL format [310] for the submission of operating company financial statements.[311] We intend for

[301] A commenter recommended amending our rules to include a ''policy'' on avoidance of duplication that would clarify that a registrant is not required to repeat or include cross-references to disclosure found elsewhere in a document when responding to specific line item requirements; however, we believe amending our forms in the manner proposed would provide clearer guidance for registrants. *See* Letter from ABA.

[302] *See* Securities Act Rule 404 [17 CFR 230.404] and Exchange Act Rule 12b–13 [17 CFR 240.12b–13]. Rule 404 does not require the numbers or captions of items to be included in a prospectus, but does require them for the non-prospectus portion of a registration statement. *See* Rule 404(d).

[303] *See supra* note 300 and accompanying text.

[304] *See* Letter from ABA.

[305] For example, subject to certain conditions, Form S–1 allows registrants to incorporate information by reference in most of the items of Part I—Information Required in Prospectus. *See* General Instruction VII and Item 12 of Form S–1.

[306] After consideration of the staff's recommendation G.2. in the FAST Act Report, we are not, at this time, proposing to require the use of external hyperlinks whenever our rules call for the inclusion of an internet address. In the FAST Act Report, the staff recommended requiring external hyperlinks provided that the appropriate technology is available to prevent these hyperlinks from jeopardizing the security and integrity of the EDGAR system. *See* FAST Act Report, *supra* note 2, at n.15.

[307] For domestic disclosure forms, the XBRL data-tagging requirements are imposed through Item 601(b)(101) of Regulation S–K and Rule 405(b) of Regulation S–T. *See* Item 601(b)(101) of Regulation S–K and Rule 405(b) of Regulation S–T [17 CFR 232.405(b)]. For foreign disclosure forms, analogous XBRL tagging requirements are included in the instructions to the relevant forms. *See, e.g.,* paragraphs 100 and 101 of the Instructions to Exhibits to Form 20–F.

[308] *See* Rule 405 of Regulation S–T [17 CFR 232.405]; See also *Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Jan. 30, 2009) [74 FR 15666] (discussing the requirement to tag document and entity identifier elements, such as form type, company name, and public float, according to Regulation S–T and the EDGAR Filer Manual).

[309] *See* FAST Act Report, *supra* note 2, at Recommendations G.1.

[310] In the traditional XBRL format currently required for financial statements, none of the registrant's XBRL data is embedded into an HTML document. Instead, an exhibit containing all XBRL data is filed with the relevant form. Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate document.

[311] *See Inline XBRL Filing of Tagged Data,* Release No. 33–10323 (Mar. 1, 2017) [82 FR 14282 (Mar. 17, 2017)] (''Inline XBRL Proposing Release''). As part of the proposal, we also proposed to require the use of Inline XBRL format for the submission of mutual fund risk/return summary information. *See also Order Granting Limited and Conditional Exemption Under Section 36(a) of the Securities Exchange Act of 1934 from Compliance with Interactive Data File Exhibit Requirement in Forms 6–K, 8–K, 10–Q, 10–K, 20–F and 40–F to Facilitate Inline Filing of Tagged Financial Data,* Release No. 34–78041 (Jun. 13, 2016) [81 FR 39741 (June 17, 2016)] (exercising exemptive authority ''to permit, but not require, operating companies to use Inline

Continued

the cover page data to be tagged in the same format as this other information. Therefore, if the Inline XBRL proposal is not adopted, we are proposing, as an alternative, to require operating company filers to tag each cover page data point in an XBRL exhibit to the relevant filing.

To implement the cover page tagging requirements, we propose to add new Rule 406 to Regulation S–T, new Item 601(b)(104) to Regulation S–K, new paragraph 104 to the ''Instructions as to Exhibits'' of Form 20–F and new paragraph B.17 to the ''General Instructions'' of Form 40–F to require registrants to file with each of the specified forms a ''Cover Page Interactive Data File.'' Under the proposed amendments, registrants filing Form 20–F and Form 40–F would be required to tag cover page data only when those forms are used as annual reports. The proposed amendments would not apply to Form 20–F and Form 40–F when used as registration statements. We are also proposing to revise Rule 11 of Regulation S–T to add the term ''Cover Page Interactive Data File.'' The term would be defined as the machine readable computer code that presents the information required by Rule 406 of Regulation S–T in Inline XBRL format.

We believe that the proposal to require mandatory tagging of all data points on the cover pages of the specified forms would allow investors to automate their use of this information. This would enhance their ability to identify, count, sort, and analyze registrants and disclosures to the extent these data points otherwise would be formatted solely in ASCII or HTML. At the same time, we do not expect the incremental compliance burden associated with tagging the additional cover page information to be significant, given that registrants already are required to tag some of this information as well as information in their financial statements. We therefore believe that the enhanced comparability and usability of these proposed disclosures would justify the burden of requiring registrants to tag the additional data and would help to modernize our disclosure system in a manner consistent with the FAST Act mandate.

We are also proposing amendments to the cover pages of these forms to include the trading symbol for each class of registered securities.[312] Because the cover pages of Form 10–K, Form 20–F, and Form 40–F already require disclosure of the title of each class of securities registered pursuant to Section 12(b) of the Exchange Act and each exchange on which they are registered, our proposed amendments to these forms would revise the cover page to include a corresponding field for the trading symbol. Unlike Form 10–K, Form 20–F, and Form 40–F, however, the cover pages of Form 10–Q and Form 8–K do not currently require disclosure of the title of each class of securities and each exchange on which they are registered. Accordingly, to ensure that registrants and their registered securities are identified in a consistent manner across forms, we are proposing to revise the cover pages of Form 10–Q and Form 8–K to include this disclosure in addition to the trading symbol.

Requiring the disclosure of trading symbols on the cover pages of periodic reports would facilitate investors' efforts to search news websites and stock market databases for information about registrants and distinguish among similarly named companies. Further, we believe that requiring the tagging of trading symbols would allow investors to sort and compare filings and disclosures more easily and accurately.

Request for Comment

86. Should we require as proposed, all of the information on the cover pages of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F to be tagged in Inline XBRL? Should the proposed cover page tagging requirement apply to any other forms (*e.g.,* Form 6–K)?

87. Should we amend the cover pages of Form 10–K, Form 20–F, and Form 40–F to include the trading symbol for each class of registered securities as proposed? Should we also revise the cover pages of Form 10–Q and Form 8–K as proposed, to include the title, trading symbol and exchange of each class of registered securities?

88. Under the proposed amendments, Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F would require each registrant to identify on the cover page of those forms the exchange on which each class of securities is registered. The proposed amendments to Item 501(b)(4) would require each registrant to identify on the cover page of the prospectus its principal U.S. market or markets for the securities being offered. Should we reconcile these differing cover page disclosures? If so, how?

89. If we do not adopt Inline XBRL for the submission of operating company financial statements, should we instead require the cover page data to be tagged using traditional XBRL format?

90. Instead of requiring the cover page data to be tagged using Inline XBRL or traditional XBRL format, should we require the cover page data to be submitted using an XML format? Why or why not?

91. Are there any changes we should make to the proposed amendments to better ensure accurate and consistent tagging? If so, which changes should we make and why?

92. Are there any disclosures discussed in this release that we should require to be provided in a structured format? For example, should we require the use of structured data within Item 303(a) to facilitate readability and navigability of this disclosure for investors? Are there specific elements of Item 303(a) disclosure, such as the table of contractual obligations, which should be provided in a machine-readable structured data format? Would it be useful to investors to require registrants to provide any of the property disclosures under Item 102 in a machine-readable format, such as geospatial coordinates? To the extent that we consider additional structured data requirements in periodic reports, what level and type of structured data requirements would be appropriate? For example, should we require registrants to identify sections, subsections or topics with ''block text'' labels, or should we require registrants to structure numeric elements and tables individually? What would be the challenges and costs of such an approach? What would be the benefits?

2. Exhibit Hyperlinks and HTML Format for Investment Companies

As discussed above, the Commission recently adopted rules requiring hyperlinks to most exhibits filed pursuant to Item 601, Form F–10, and Form 20–F, and, to accommodate hyperlinks, those filings will be required to be made in HTML.[313] In this release, we are proposing parallel amendments to certain of our forms that are used by investment companies and amendments to Rule 102[314] of Regulation S–T to apply similar hyperlinking and HTML requirements to those registrants to facilitate access to these exhibits for investors and other users of the information.

XBRL in their periodic and current reports under the Exchange Act through March 2020'').

[312] In the Disclosure Update and Simplification Proposing Release, we have proposed to amend Item 201(a) to also require disclosure of the trading symbol(s) for each class of a registrant's common equity. *See Disclosure Update and Simplification Proposing Release, supra* note 13, at 51637.

[313] *See Exhibit Hyperlinks Adopting Release, supra* note 14 at 14130.

[314] 17 CFR 232.102.

Under the proposed amendments, affected registrants would be required to include a hyperlink to each exhibit identified in a filing's exhibit index, unless the exhibit is filed in paper pursuant to a temporary or continuing hardship exemption under Rule 201 or Rule 202 of Regulation S-T, or pursuant to Rule 311 of Regulation S–T.[315] This requirement would apply to registration statements on Form S–6, Form N–1A, Form N–2, Form N–3, Form N–4, Form N–5, Form N–6, and Form N–14 and to reports on Form N–CSR.[316] Consistent with our rules for operating companies, we are not proposing to require registrants to refile electronically any exhibits filed only in paper.[317] Under the proposed amendments, an electronic filer would also be required to correct an inaccurate or nonfunctioning link or hyperlink to an exhibit.[318]

In connection with the proposed exhibit hyperlinking requirements, we are also proposing amendments to Rule 105 of Regulation S-T to require investment company registrants to file registration statements and reports that include exhibits in HTML format. Currently, investment company registrants must submit electronic filings to the Commission using the EDGAR system in either ASCII format or HTML format. Because the ASCII format does not support hyperlink functionality, the exhibit hyperlinking requirement would be feasible only if registrants are required to file in HTML. Under the proposed requirement, registrants would be required to file registration statements and reports on Form S–6,[319] Form N–1A,[320] Form N–2,[321] Form N–3,[322] Form N–4,[323] Form N–5,[324] Form N–6,[325] Form N–14, and Form N–CSR[326] in HTML format. While the affected registration statements and reports would be required to be filed in HTML pursuant to the proposed amendments to Rule 105, registrants would continue to be permitted to file in ASCII any schedules or forms that are not subject to the exhibit filing requirements, such as proxy statements, or other documents included with a filing, such as an exhibit.

Request for Comment

93. Should we require investment company registrants to include hyperlinks in the exhibit index for registration statements and reports as proposed? Should we amend Rule 105 of Regulation S-T to require investment company registrants to file registration statements and reports that include exhibits in HTML format as proposed?

94. Should we revise any additional forms to require exhibit hyperlinks? For example, should we revise a form to require exhibit hyperlinks even though all exhibits filed with this form will be attached to it?

95. Should we require, as proposed, that electronic filers correct an inaccurate or nonfunctioning link or hyperlink? If so, when should the correction be required to be filed?

96. Should we require registrants to refile electronically any exhibit previously filed in paper so that they can include a hyperlink in the exhibit index?

97. What compliance date would be appropriate for investment companies to begin filing in HTML format? Should the compliance date be the same for all affected investment companies, or should we distinguish between larger and smaller investment companies, for example, by providing an extended compliance date for smaller entities? If we provide an extended compliance date for smaller entities, what additional compliance period would be necessary and how should we define those smaller entities? For example, should we define smaller investment companies for these purposes as investment companies that, together with other investment companies in the same group of related investment companies have net assets of less than $1 billion as of the end of the most recent fiscal year of the investment company?

H. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed amendments, specific issues discussed in this release and other matters that may have an effect on the proposals. We note that comments that are accompanied by supporting data and analysis are of particular assistance to us.

III. Economic Analysis

We are mindful of the costs and benefits of our rules. Section 2(b) of the Securities Act, Section 3(f) of the Exchange Act, Section 2(c) of the Investment Company Act, and Section 202(c) of the Investment Advisers Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[327] Additionally, Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider, among other things, the impact that any new rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.[328]

In this release, we are proposing amendments to simplify and modernize disclosure requirements in Regulation S–K and related rules and forms as required by Section 72003 of the FAST Act.[329] The proposed amendments are based on the staff's recommendations in the FAST Act Report. The FAST Act Report was tailored to the statutory mandate of providing specific and detailed recommendations on modernizing and simplifying Regulation S–K in a manner that reduces costs and burdens on registrants while still providing all material information. As discussed above, the proposed amendments reflect the input of public commenters as well as the Commission's experience with

[315] As with the rules for operating companies, the proposed rules for investment companies would exclude any XBRL exhibits. *See id.* at 14133.

[316] *See* proposed Instructions as to Exhibits of Form S–6; proposed Instruction to Item 28 of Form N–1A; proposed Instruction 4 to Item 25.2 of Form N–2; proposed Instruction 3 to Item 29(b) of Form N–3; proposed Instruction 3 to Item 24(b) of Form N–4; proposed Instructions as to Exhibits of Form N–5; proposed Item 26 of Form N–6; proposed Instruction to Item 16 of Form N–14; proposed Instruction to Item 12 of Form N–CSR. We are also proposing to amend Forms N–3 and N–14 to clarify that Rule 303 of Regulation S–T applies to registration statements on Forms N–3 and N–14 that are electronically filed. *See* proposed General Instruction G to Form N–3; proposed Instruction to Item 16 of Form N–14.

[317] *See Exhibit Hyperlinks Adopting Release, supra* note 14, at 14133.

[318] 17 CFR 232.105(d)(2). In the case of a registration statement that is not yet effective, the filer would be required to file an amendment to the registration statement containing the inaccurate or nonfunctioning link or hyperlink. In the case of a report on Form N–CSR, the filer would be required to correct the inaccurate or nonfunctioning link or hyperlink in its next report on Form N–CSR. In the case of a registration statement on Form S–6, Form N–14, Form N–5, Form N–1A, Form N–2, Form N–3, Form N–4, or Form N–6 that has become effective, the filer would be required to correct an inaccurate or nonfunctioning link or hyperlink in the next post-effective amendment, if any, to the registration statement. Alternatively, an electronic filer may correct an inaccurate or nonfunctioning link or hyperlink in a registration statement that has become effective by filing a post-effective amendment to the registration statement. *Id.*

[319] 17 CFR 239.16.

[320] 17 CFR 239.15A and 17 CFR 274.11A.

[321] 17 CFR 239.14 and 17 CFR 274.11a–1.

[322] 17 CFR 239.17a and 17 CFR 274.11b.

[323] 17 CFR 239.17b and 17 CFR 274.11c.

[324] 17 CFR 239.24 and 17 CFR 274.5.

[325] 17 CFR 239.17c and 17 CFR 274.11d.

[326] 17 CFR 249.331 and 17 CFR 274.128.

[327] 15 U.S.C. 77b(b), 15 U.S.C. 78c(f), 15 U.S.C. 80a–2(c), and 15 U.S.C. 80b–2(c).

[328] 15 U.S.C. 78w(a)(2).

[329] Public Law 114–94, Sec. 72003, 129 Stat. 1312 (2015).

Regulation S–K arising from the Division of Corporation Finance's disclosure review program. To promote consistency, we are also proposing parallel amendments to certain rules and forms applicable to investment companies and investment advisers, including proposed amendments that would require certain investment company filings to be submitted in HTML format.

A. Background

1. The Benefits of Information Disclosure

The primary purpose of disclosure under the federal securities laws is to provide investors with the information they need to make informed investment and voting decisions. The separation of ownership and management typically prevents investors from directly observing many managerial decisions and requires them to rely on financial and qualitative disclosures for information. Absent regulation, managers may lack incentives to voluntarily disclose or standardize relevant information. As a result, in the absence of disclosure requirements, an information asymmetry often exists between managers and investors that limits the ability of investors to distinguish between well-run and poorly-run companies and can lead to under-supply and inefficient allocation of capital.[330] A disclosure regime that facilitates the disclosure of material, reliable information can reduce informational asymmetries between managers of companies and investors, which can enhance capital formation and the allocative efficiency of the capital markets.

Materiality is a key principle of public company reporting.[331] Efforts to make disclosures more effective typically focus on evaluating whether existing or proposed disclosures provide material information to those using the disclosures. Material disclosures can reduce information asymmetries between managers of companies and investors, decrease the cost of capital, and lead to more efficient share prices and heightened accountability of the managers of companies.[332]

2. The Costs of Disclosure

Although disclosure requirements benefit investors and financial markets, there are potential drawbacks associated with these requirements. For example, disclosure can be costly for registrants to produce and disclosure of sensitive information can result in competitive disadvantages.

Disclosure of information that is unnecessary or that may not be material also entails costs to investors, if it affects their ability to discern material information effectively. While material disclosures provide important information to investors about their investments, sorting through information that is unnecessary or not material can obscure material information that investors find useful. Consistent with this view, research has found that attention to one subject generally leaves less attention available for others.[333]

In the economic analysis that follows, we first examine the current regulatory and economic landscape that forms the baseline for our analysis. We then analyze the likely economic effects arising from the proposed amendments relative to that baseline. These economic effects include the costs and benefits and impact on efficiency, competition, and capital formation.

B. Baseline

To assess the economic effect of the proposed amendments, we are using as our baseline the current state of the Commission's filing and disclosure regime. In characterizing the baseline, it is useful to distinguish between operating companies and investment companies. Although both types of registrants are subject to similar registration and reporting requirements, there are differences in the specific rules and forms applicable to each. In particular, on March 1, 2017, the Commission adopted amendments requiring registrants that file registration statements and reports subject to the exhibit requirements under Item 601 of Regulation S–K, or that file Form F–10 or Form 20–F, (*i.e.,* operating companies) to submit these filings in HTML format and to include a hyperlink to each exhibit listed in the exhibit index of these filings.[334] In contrast, there is currently no comparable requirement for investment companies; however, this proposal includes amendments to a set of forms under the Investment Company Act that would apply HTML and hyperlinking requirements to filers of those forms.

For operating companies, the baseline includes the disclosure requirements in Regulation S–K and related rules and forms as well as Commission and staff guidance on the application of those requirements. Table 1 below suggests that the proposed amendments to Regulation S–K and related rules and forms would apply to a substantial number of operating companies. On average, 7,800 different registrants per year have filed periodic reports on Form 10–K and Form 10–Q in recent years. As shown in the table below, approximately 800 foreign private issuers provided periodic information to investors in the U.S. capital markets using Form 20–F and Form 40–F. The number of registrants filing definitive proxy statements on Schedule 14A has exceeded 5,000 each year.[335]

[330] *See,* Akerlof, George A., *The Market for* ''*Lemons*''*: Quality Uncertainty and the Market Mechanism,* 84 Q. J. ECON. 488–500 (1970).

[331] *See* Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Cmte. Print 95–29, House Cmte. On Interstate and Foreign Commerce, 95th Cong., 1st. Sess. (Nov. 3, 1977), at 320. *available at* http://opc-ad-ils/InmagicGenie/DocumentFolder/report%20of%20the%20advisory%20committee%20on%20corporate%20disclosure%20to%20the%20sec%2011011977.pdf.

[332] *See* Brüggemann, Ulf and Kaul, Aditya and Leuz, Christian and Werner, Ingrid M., *The Twilight Zone: OTC Regulatory Regimes and Market Quality* (June 14, 2017). IGM Working Paper #95; Fisher College of Business Working Paper No. 2013–03–09; European Corporate Governance Institute (ECGI)—Law Working Paper No. 224/2013; Charles A. Dice Center Working Paper No. 2013–09. *Available at* SSRN: *https://ssrn.com/abstract=2290492* or *http://dx.doi.org/10.2139/ssrn.2290492.*

See also C. Leuz and P. Wysocki, 2016, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research,* Journal of Accounting Research Vol. 54, 525–622 and M. Lang, K. Lins, and M. Maffett. *Transparency, Liquidity, and Valuation: International Evidence on When Transparency Matters Most,* Journal of Accounting Research 50 (2012): 729–774.

[333] *See* Pashler, H.E., The Psychology of Board: Attention (Cambridge, MA: MIT Press 1998) and Hirshleifer, David & Siew Hong Teoh, *Limited attention, information disclosure, and financial reporting,* 36 J. Acct. & Econ. 337–386 (2003).

[334] While compliance with these rules was required by September 1, 2017, smaller reporting companies, as well as registrants that are neither accelerated filers nor large accelerated filers, are not required to comply until September 1, 2018. Although these registrants are not yet required to comply with the exhibit hyperlinks and HTML rules, we are treating these rules as part of the baseline for all filers subject to Regulation S–K.

[335] We note that, in addition to operating companies, registered investment companies file proxy statements as well.

TABLE 1—NUMBER OF REGISTRANTS FILING VARIOUS DISCLOSURE FORMS FROM 2012–2016

Year	10–K	10–Q	20–F	40–F	DEF 14A
2012	8240	8381	712	153	5371
2013	7898	8031	690	145	5382
2014	7857	7872	669	143	5259
2015	7767	7676	687	131	5390
2016	7373	7147	675	126	5126

As discussed above, investment companies that file certain forms required by the Investment Company Act would also be affected by the proposed amendments. Table 2 below lists the number of filings filed by investment companies in fiscal year 2016 using EDGAR submission types potentially affected by the proposed amendments, broken out by the number of filings in HTML and ASCII format. From January 1, 2016 to December 31, 2016, investment companies filed 64,522 filings using EDGAR submission types potentially affected by the proposed amendments. Of these filings, the vast majority (58,429) were filed in HTML, while fewer than ten percent (6,093) were filed in ASCII format. As shown in Table 2, most of the filers had substantially more HTML filings than ASCII filings, while the Form S–6 filers had more ASCII filings than HTML filings in 2016.

TABLE 2—NUMBER OF POTENTIALLY AFFECTED FILINGS FROM JANUARY 1, 2016 TO DECEMBER 2016 [336]

	Number of HTML Filings	Number of ASCII Filings
N–1A Filers	48,150	1,280
N–2 Filers	2,965	77
N–3 Filers	42	6
N–4 Filers	5,247	758
N–6 Filers	1,549	245
S–6 Filers	476	3,727
Total	58,429	6,093

The proposed amendments would require registrants to include hyperlinks in the case of exhibits included with the forms and exhibits that are incorporated by reference from a previously filed document. To draw a baseline indicative of current disclosure practices, we selected a random sample of 400 filings (359 in HTML and 41 in ASCII) submitted in 2016 that may be affected by the proposed amendments. Table 3 below shows the average and median number of exhibits listed in the sampled filings by the type of exhibit (*i.e.,* filed with the form vs. incorporated by reference).

TABLE 3—NUMBER OF EXHIBITS IN SAMPLED FILINGS [337]

	Number of exhibits listed in the index		Number of exhibits filed with the filing		Number of exhibits incorporated by reference		Number of sampled filings
	Average	Median	Average	Median	Average	Median	
N–1A	5.8	0	0.6	0	5.2	0	267
N–2	7.4	2	2.1	2	5.0	0	21
N–3	0	0	0	0	0	0	1
N–4	13.6	0	0.7	0	12.9	0	31
N–6	11.1	0	0.8	0	10.3	0	11
N–14	38.0	38.5	1.5	1	36.5	37.0	6
N–CSR	2.3	3	1.9	0	0.1	0	43
S–6	36	36	5.0	5.0	31.0	31.0	30
All Filings	6.7	N/A	0.9	N/A	5.8	N/A	400

Table 3 shows a significant variation in the number of exhibits listed in the exhibit index across different types of filings. Registration statements on Form N–4, Form N–14, and Form S–6 typically contain a large number of exhibits and had significantly more exhibits incorporated by reference than filings on other forms affected by the proposed amendments. Of the 400 sampled filings, we found that none of them included hyperlinked indexes.

As discussed above, disclosure requirements involve trade-offs between benefits to investors in terms of reducing information asymmetries and costs to registrants associated with producing disclosure. While the proposed amendments would apply to all registrants subject to the regulation, the trade-offs between the costs and benefits of disclosure requirements would vary across different types of registrants. For example, smaller companies typically have proportionately higher disclosure costs as well as proportionately higher disclosure benefits.[338] That is, the fixed costs of disclosure requirements typically constitute a higher percentage of revenues for smaller companies than

[336] The figures in this table are presented on the basis of filer type, not on the basis of the form on which the document was filed. Therefore, not all of the filings presented in the table would be subject to the proposed requirements.

[337] In counting the number of exhibits, we did not include the following exhibits: 101.INS XBRL Instance Taxonomy; 101.SCH XBRL Taxonomy Extension Schema Document; 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document; 101.DEF XBRL Taxonomy Extension Definition Linkbase Document; 101.LAB XBRL Taxonomy Extension Labels Linkbase Document; and 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document because XBRL exhibits are not covered by the proposal.

Average represents the sum of the number of exhibits divided by the number of sampled forms for each form type. *Median* represents the middle number of exhibits for each form type when the numbers of exhibits are listed from the smallest to the largest. For instance, for Form N–2, the number of exhibits listed in the index ranged from 0 to 55, with 2 as the middle number.

[338] In its 2015 proposing release to amend the definition of ''smaller reporting company,'' the Commission observed that, based on a review of filings, approximately 42% of registrants qualified as smaller reporting companies. *See Amendments to Smaller Reporting Company Definition,* Release No. 33–10107 (Jun. 27, 2017) [81 FR 43130 (Jul. 1, 2016)], *available at https://www.sec.gov/rules/proposed/2016/33-10107.pdf.*

for larger companies. However, the benefits of disclosure may be greater for smaller companies because information asymmetries between investors and managers of smaller companies are typically higher than for larger, more seasoned companies with a large following.[339] Compliance costs could be also higher for foreign registrants to the extent that the disclosure requirements in the United States are different from the disclosure requirements in their home countries.

C. Economic Analysis of the Proposed Amendments: General Assessment, Including Impact on Efficiency, Competition, and Capital Formation

In this subsection, we evaluate the broad economic effects of the proposed amendments, including a discussion of their impact on efficiency, competition, and capital formation. The proposals amend a well-established and robust disclosure regime that has existed for many years. As a result, we expect the aggregate impact of the proposed amendments to be incremental to the effects that have already been realized from the existing disclosure regime.

As discussed above, disclosure provides benefits to participants in financial markets by reducing information asymmetries that exist between investors in a company and managers tasked with operating the company. Both registrants and investors alike would generally benefit from the proposed amendments, because they would simplify the requirements and resulting content of existing disclosures while still providing all material information. The proposed changes to the requirements and resulting improved presentation are expected to increase the usefulness of the disclosures for investors and generally lower the regulatory burden (and compliance costs) for registrants. In addition, the improved information environment associated with modernized and simplified disclosures is expected to incrementally enhance capital formation and the allocative efficiency of the capital markets through more accurate share prices, better accountability of managers and increased capital market liquidity.

We expect some of the proposed amendments to entail modest initial implementation costs. However, we believe that the initial costs would be in manageable amounts. Furthermore, those costs would be offset by future savings as a result of simplified and streamlined disclosure requirements, after implementation. Some of the proposed amendments, such as those that impose new data tagging, hyperlinking, or disclosure requirements, would involve not only implementation costs but would also increase compliance costs for registrants going forward, although as discussed below, we do not expect these additional costs to be significant.

While the purpose of the proposed amendments is to simplify and modernize public company disclosure requirements without loss of material information, we acknowledge that the proposed amendments could result in a loss of some information in specific cases, as discussed below. This loss of information could potentially increase information asymmetry in those cases, which may have negative implications for investor protection, market transparency, efficiency, and capital formation. In turn, such loss of information could raise the firm's cost of capital.[340] However, we believe this potential adverse effect would be mitigated by the fact that registrants will continue to be required to provide further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.[341]

D. Economic Analysis of the Specific Amendments: Proposals That Clarify and Update Existing Rules

1. Proposals That Clarify or Streamline a Rule's Requirements

a. Description of Property (Item 102)

Item 102 requires disclosure of the location and general character of the principal plants, mines, and other materially important physical properties of the registrant and its subsidiaries. The staff has observed, however, that the item may elicit disclosure that is not material.[342] The proposed amendments to Item 102 would clarify that a description of property is required only to the extent physical properties are material to the registrant and make other clarifying amendments.[343] The proposed amendments would not modify the Item 102 requirements for companies in the mining, real estate, and oil and gas industries.

The main benefit of the proposed amendments would be to reduce the amount of duplicative disclosure that is not material by emphasizing materiality and harmonizing the rule's thresholds for disclosure. The proposed amendments also could facilitate compliance and avoid any confusion associated with different disclosure standards. The aggregate reduction in regulatory burden due to the proposed amendments to Item 102 may extend to approximately 6,500 registrants.[344]

When Item 102 was originally adopted, registrants were more likely to maintain large physical properties and other assets, such as mines and manufacturing plants.[345] However, the nature of enterprise has changed dramatically over the last thirty years. Currently, many of the largest and most profitable firms operate in the services and technology industries that are often not characterized by large physical assets. Nevertheless, many modern firms are highly geographically dispersed. As a consequence, information about the geographic operations of these companies—including information about the location of physical properties—could be highly relevant for investors by providing information about important firm customers and employees. We expect that any risk of exclusion of relevant information under the proposed amendment would be minimal, because Item 102 explicitly solicits the disclosure of material information. This risk is further mitigated by the fact that registrants may disclose relevant property information elsewhere in their filings, such as in response to Item 101 (Description of Business).

b. Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303)

We are proposing a series of amendments to Item 303. In this subsection, we discuss all amendments to Item 303 that are intended to clarify the rule's requirements, while in

[339] *See, e.g.,* R. Frankel and X. Li, *Characteristics of a firm's information environment and the information asymmetry between insiders and outsiders,* 37 J. Acct. Econ. 229, 229–259 (June 2004). *See also,* L. Cheng, S. Liao, and H. Zhang, *The Commitment Effect versus Information Effect of Disclosure—Evidence from Smaller Reporting Companies,* 88 Acct. Rev. 1239, 1239–1263 (2013).

[340] *See* Easley, D., Hvidkjaer, S., & M. O'Hara, *Is information risk a determinant of asset returns*? 57 J. Finance. 2185–2221 (2002).

[341] *See* Rule 12b–20 [17 CFR 240.12b–20] and Rule 408(a) [17 CFR 230.408(a)].

[342] *See* FAST Act Report, *supra* note 2, at Recommendation B.1. *See also Concept Release, supra* note 6, at Section IV.A.6.b and SEC Staff's *Report of the Task Force on Disclosure Simplification* (Mar. 5, 1996) *available at https://www.sec.gov/news/studies/smpl.htm.*

[343] *See* Section II.A (Description of Property).

[344] We derive this number by taking the average number of registrants filing annual reports as reported in Table 1 and excluding all companies in the mining, oil and natural gas, and real estate industries.

[345] Since 1935, we have required disclosure similar to that required under Item 102. *See* Release No. 33–276 (January 14, 1935) [*not published in the* ***Federal Register***].

Subsection E.1 below, we discuss proposals intended to amend the content of MD&A. Instruction 1 to Item 303(a) provides that, generally, MD&A shall cover the three-year period covered by the financial statements and either use year-to-year comparisons or any other formats that in the registrant's judgment would enhance a reader's understanding. Additionally, the instruction states that reference to the five-year selected financial data may be necessary where trend information is relevant.

We are proposing to amend the instructions to Item 303(a) to emphasize that a registrant may use any presentation that would enhance a reader's understanding. As discussed above, our proposed amendments to Item 303(a) are consistent with the Commission's existing interpretive guidance on MD&A. We are also proposing to eliminate mention of the five-year selected financial data in the instructions to Item 303(a) because disclosure requirements for liquidity, capital resources, and results of operations already require trend disclosure.

The proposed amendments emphasize the flexibility available to registrants with respect to the form of MD&A presentation. The major benefit of flexibility is that it allows registrants to frame the information in a way that emphasizes material information. One potential cost associated with this aspect of the rule is that, in framing the discussion in a way that emphasizes material information, registrants may inadvertently de-emphasize information that investors nevertheless find useful or relevant. To the extent the proposed amendment leads to more tailored disclosure, it also could make disclosure less comparable across registrants and over time.

To maintain a consistent approach to MD&A for domestic registrants and foreign private issuers, we are proposing changes to Form 20–F similar to the proposed changes to Item 303(a).[346] The disclosure requirements for Item 5 of Form 20–F are substantively comparable to the MD&A requirements under Item 303 of Regulation S–K. The economic effects of the proposed amendments to Form 20–F are therefore similar to those for the proposed amendments to Item 303(a) described above.

c. Risk Factors (Item 503(c))

Item 503(c) requires disclosure of the most significant factors that make an offering speculative or risky. We are proposing to relocate Item 503(c) from Subpart 500 to Subpart 100 of Regulation S–K.[347] We believe that Subpart 100 is a more appropriate location for the risk factor disclosure requirements, because it covers a broad category of business information and is not limited to offering-related disclosure. Additionally, our proposed amendments would eliminate the risk factor examples that are enumerated currently in Item 503(c).[348]

We do not expect that relocating the disclosure requirement within Regulation S–K would pose any additional costs to registrants or investors because we are only proposing to change the location of the requirement. The content of the requirement would not change.

With respect to the proposed elimination of the examples in Item 503(c), we believe that this could prompt registrants to more carefully evaluate and classify their risk exposures, which could ultimately benefit investors through more specific and relevant risk factor disclosures. Although examples could be useful to registrants in some cases, they could also anchor or skew the registrant's risk analysis in the direction of the examples. [349]

An alternative to the proposed amendments, as suggested by some commenters, would be to expand or update the list of examples or revise them to specify generic risks that should not be disclosed. While such an approach might lead to incremental improvements in existing disclosures, it would not eliminate the anchoring effect discussed above nor would it serve to discourage generic or ''boilerplate'' disclosures as effectively as the proposed amendments. It is also possible that a list of generic risks could inadvertently be viewed as exhaustive. In addition, specifying a list of generic risks that should not be disclosed may create a rule that needs to be regularly updated.

d. Plan of Distribution (Item 508)

Item 508 requires disclosure about the plan of distribution for securities in an offering, including information about underwriters. We are proposing to amend Rule 405 to define the term ''sub-underwriter'' to clarify its application in Item 508 of Regulation S–K.[350] We believe that defining the term ''sub-underwriter'' would reduce compliance costs by helping registrants to more easily determine what disclosure is required under Item 508. We also believe that a defined term could help investors better understand the role of ''sub-underwriters'' in the offering process. We do not believe there would be additional costs associated with the proposed amendment, since it merely clarifies an existing disclosure requirement.

e. Material Contracts (Item 601(b)(10))

Item 601(b)(10)(i) currently requires registrants to file every material contract not made in the ordinary course of business, provided that the contract meets one of two tests: (i) The contract must be performed in whole or in part at or after the filing of the registration statement or report, or (ii) the contract was entered into not more than two years before that filing.

The second test, the two-year look back, captures material contracts that were fully performed before the filing date. We are proposing amendments to Item 601(b)(10)(i) that would limit the two-year look back test to newly reporting registrants.[351] Proposed Instruction 1 to Item 601(b)(10)(i) defines a ''newly reporting registrant'' as any registrant filing a registration statement that, at the time of such filing, is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, whether or not such registrant has ever previously been subject to the reporting requirements of Section 13(a) or 15(d), and any registrant that has not filed an annual report since the revival of a previously suspended reporting obligation.[352] As an example, a registrant that is filing its first registration statement under the Securities Act or the Exchange Act, or filing its first Form 10–K since the revival of its reporting obligation, would be required to file material agreements under Item 601(b)(10)(i) for the two-year look back period. The definition of ''newly reporting registrant'' under the proposed instruction also would include any registrant that (a) was a shell company, other than a business combination related shell company, as defined in Rule 12b–2 under the Exchange Act, immediately before completing a transaction that has the effect of causing it to cease being a shell company, and (b) has not filed a registration statement or Form 8–K, as required by Item 2.01 and Item 5.06 of that form, since the completion of the

[346] *See supra* Section II.C.B.2.

[347] *See supra* Section II.D.2.

[348] *See id.*

[349] There is extensive evidence in psychology and economics that individuals tend to rely too heavily on the first piece of information offered (the ''anchor'') when making decisions. *See e.g.,* Tversky, A. & Kahneman, D., *Judgment under Uncertainty: Heuristics and Biases.* 185 Science. 1124–1131 (1974).

[350] *See supra* Section II.D.3.

[351] *See supra* Section II.E.3.

[352] *See supra* Section II.E.3.

transaction (or in the case of foreign private issuers, has not filed a Form 20–F since the completion of the transaction).[353] Under the proposed amendments, a registrant meeting this definition would be required to file material agreements for the two-year look back period.

We expect that the proposed amendments would streamline reporting obligations while maintaining investor protections. Although the two-year look back test captures material contracts that were fully performed before the filing date, this test does not provide any new information to the market for registrants with established reporting histories. Excluding these registrants from the two-year look back requirement would marginally reduce their compliance burdens, because they would not need to re-file (or incorporate by reference) agreements that were previously filed and are no longer in effect. At the same time, investors would continue to have access to any material agreements that a registrant previously filed on EDGAR.

f. Proposals With a Minor Effect on Disclosure

The following proposed amendments are expected to have minor impacts on the disclosure provided:

- Item 401—proposal would clarify what disclosure about executive officers does not need to be repeated in proxy or information statements if it is already included in Form 10–K.
- Item 405—proposal would simplify the Section 16 reporting process by allowing registrants to rely on a review of Section 16 reports submitted on EDGAR instead of gathering reports furnished to the registrant.[354]
- Item 501(b)(1)—proposal would eliminate the portion of the item that discusses when a name change may be required and the exception to that requirement.
- Item 501(b)(3)—proposal would allow registrants to move details of an offering price method or formula from the prospectus cover page to another location in the prospectus; the proposal also would require registrants to state that the price will be more fully explained in the prospectus and accompany that statement with a cross-reference to the more detailed offering price disclosure.
- Item 501(b)(10)—proposal would streamline the prospectus legend requirements.
- Incorporation by Reference—proposals would (i) provide clearer guidance on cross-referencing; (ii) consolidate the requirements for incorporation by reference in Securities Act Rule 411, Exchange Act Rule 12b–23 and related rules under the Investment Company Act and Investment Advisers Act to eliminate redundant or unnecessary requirements; and (iii) allow registrants more flexibility in excluding item numbers and captions or creating their own captions tailored to their disclosure in Form 10, Form 10–K and Form 20–F.

Since the proposed amendments listed above would alter existing disclosure practices only to a minor degree, their implementation would have little economic effect. We believe that the proposed amendments would allow registrants to improve the readability and navigability of disclosure documents and reduce repetition. The proposed amendments also would reduce compliance costs for registrants while preserving all material information. We do not envision any significant incremental costs associated with the proposed amendments because they do not significantly change the required disclosures.

2. Proposals To Update Rules to Account for Subsequent Developments

The following proposed amendments would update existing rules to account for subsequent developments and are expected to have minor impacts on the disclosure provided:

- Item 407(d)—proposal would update the outdated reference to AU sec. 380 in Item 407(d)(3)(i)(B).
- Item 407(e)—proposal would update requirements for compensation committee disclosure to exclude EGCs because they are not required to include a CD&A.
- Item 512—proposal would eliminate certain undertakings that are redundant and obsolete.

We believe that the proposed amendments listed above would reduce potential confusion in applying our rules, result in more consistent disclosure practices, and ease compliance burdens for registrants, with a minimal impact on the information available to investors. We do not envision any significant incremental costs associated with the proposed amendments, because the substance of the rules would not change.

E. Economic Analysis of the Specific Amendments: Proposals That Simplify the Disclosure Process or Eliminate Disclosures

1. Management's Discussion and Analysis of Financial Condition and Results of Operations (Item 303)

Under the proposed amendments to Item 303 of Regulation S–K, when the financial statements included in a filing cover three years, discussion about the earliest year would not be required if (i) this discussion is not material to an understanding of the registrant's financial condition, changes in financial condition, and results of operations, and (ii) the registrant has filed its prior year Form 10–K on EDGAR containing MD&A of the earliest of the three years included in the financial statements of the current filing.

We believe that the main economic benefit of the proposed amendments would be to simplify and modernize MD&A as well as increase its readability while still providing all material information. This may facilitate a better understanding of the firm's financial prospects. Because MD&A is typically one of the most labor-intensive pieces of disclosure to produce, eliminating the requirement to discuss the earliest year financial statements in some circumstances could meaningfully reduce compliance costs for registrants.

One potential cost of the proposed amendments is that investors may receive less comparative discussion about earlier period financial results within a filing. Although previously disclosed information could provide helpful context for the new information being disclosed, this information would have been incorporated into market prices when it was originally presented. There may be certain situations in which this context may be particularly useful in assessing a firm's financial condition—for example, in the case of restatements of prior period financials. Although we recognize these potential costs, we believe their impact would be mitigated by the fact that discussion of earlier year financial results could be excluded only under specified conditions, including that the discussion was not material to an understanding of the registrant's financial condition, changes in financial condition, and results of operations.

An alternative to the proposed amendments would be to retain the earliest year requirement but permit registrants to hyperlink to the prior year's report in lieu of repeating this disclosure. This alternative would likely reduce search costs for investors and allow efficient access to previously

[353] *See supra* Section II.E.3

[354] The proposal would also eliminate the requirement for reporting persons to furnish Section 16 reports to registrants, which could ease the compliance burden on reporting persons.

disclosed information about a firm's financial condition. However, we believe that this alternative would not reduce compliance costs to registrants as effectively as the proposed amendments. Furthermore, this alternative may detract from investor understanding of material information about a firm's financial condition to the extent that it resulted in hyperlinking to information that is no longer material to such an understanding.

2. Information Omitted From Exhibits (Item 601): Item 601(a)(5), Item 601(a)(6), and Item 601(b)(10)(iv)

Proposed Item 601(a)(5) would permit registrants to omit schedules and attachments to exhibits unless they contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document.[355] The proposed amendments also would require registrants to provide with each exhibit a list briefly identifying the contents of all omitted schedules and attachments.[356] In addition, registrants would be required to provide, on a supplemental basis, a copy of any of the omitted schedules or attachments to the Commission staff upon request.[357]

Allowing registrants to omit schedules and attachments that are not material to all exhibits would lower their filing costs. As noted in Section II.E.2.a above, some commenters have noted that these burdens are exacerbated if the schedules contain commercially sensitive information that would require registrants to file confidential treatment requests. The omission of schedules that are not material would also help investors more clearly focus on the material disclosures.

Based on our review of confidential treatment requests submitted under Rule 406 and Rule 24b–2 granted in fiscal year 2016, we estimate that over 90% of confidential treatment requests are granted for material contracts based on competitive harm to the registrant, discussed below. For the subset of confidential treatment requests that were granted for reasons other than competitive harm to the registrant, we expect that many of those exhibits likely contain schedules or attachments that could be omitted under proposed Item 601(a)(5), although we are unable to reliably estimate how many, because this would depend, in part, on whether the schedules contain material information. Any reduction in burden would be incremental to that attributable to the proposed amendments to Item 601(b)(10)(iv), which would likely address over 90% of confidential treatment requests.

Item 601(a)(6), as proposed to be amended, would permit registrants to omit PII without submitting a confidential treatment request under Rule 406 or Rule 24b–2.[358] Under the proposed amendment, registrants also would not be required to provide an analysis in order to redact PII from exhibits. Since the proposed amendment leaves the decision about omission of PII entirely to the registrant, it could result in more liberal redactions. Thus, there is a tradeoff between reduced compliance costs and the potentially adverse effects of reduced disclosure. However, our analysis indicates that the Commission granted very few confidential treatment requests in reliance on the Freedom of Information Act[359] (''FOIA'') exemption concerning PII. As an illustration, in fiscal year 2016 only nine confidential treatment requests were granted pursuant to this FOIA exemption. Presumably, most registrants are currently taking advantage of existing staff guidance that PII may be omitted without filing a confidential treatment request. As a result, we do not expect that codifying this accommodation would significantly alter existing disclosure practices.

We are also proposing to add paragraph (b)(10)(iv) to Item 601 to permit registrants to omit confidential information in material contract exhibits filed pursuant to that item that is both (i) not material and (ii) competitively harmful if publicly disclosed, without submitting a confidential treatment request.[360] Instead, registrants would be required to mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of each redacted exhibit that certain information is omitted from the filed version of the exhibit.[361] The registrant would also be required to indicate with brackets where the information is omitted from the filed version of the exhibit.[362]

Registrants could be asked by the Commission staff to provide on a supplemental basis an unredacted copy of the exhibit.[363] The staff also could request that the registrant provide an analysis of why the redacted information is both (i) not material and (ii) competitively harmful.[364] Registrants could request confidential treatment of this supplemental information pursuant to Rule 83 while it is in the possession of the staff.

The proposed amendment would significantly reduce the costs associated with preparing confidential treatment requests and expedite the filing process. In this regard, one commenter on the Concept Release reviewed seven different confidential treatment requests on which it assisted clients since 2012 and found that legal fees alone ranged from approximately $35,000 to over $200,000.[365]

Because more than 90% of the confidential treatment requests granted by the Commission in fiscal year 2016 were made in reliance on the FOIA exemption concerning competitive harm, the proposed amendments to Item 601(b)(10) to allow registrants to omit competitively harmful information that is not material without filing a confidential treatment request could correspondingly reduce the number and cost of confidential treatment requests pursuant to Rule 406 and Rule 24b–2 by over 90%. However, this reduction in cost would be partially offset by the proposed amendment's provision that the staff may request an analysis similar to the current competitive harm analysis. Registrants would incur costs to prepare and provide this analysis in response to any request from the staff.

One potential cost of the proposed amendments is that information may be redacted that would not otherwise be afforded confidential treatment by the staff. However, based on previous experience and a review of confidential treatment requests, we believe that such instances would be rare. Over the past five fiscal years, very few confidential treatment requests were denied by the staff. Specifically, of the confidential treatment requests filed over the last five fiscal years, on average, approximately 1.0% were withdrawn because the staff determined that the information likely was material to investors.[366] During this time, on

[355] *See supra* Section II.E.2.a (Exhibits—Information Omitted from Exhibits, Schedules and Attachments).

[356] *See id.*

[357] *See id.*

[358] *See supra* Section II.E.2.b.

[359] 5 U.S.C. 552.

[360] *See supra* Section II.E.2.c.

[361] *See id.*

[362] *See id.*

[363] *See id.*

[364] *See id.*

[365] *See* Letter from Fenwick.

[366] The following confidential treatment requests were filed and withdrawn for likely materiality during the last five fiscal years: 2016: 1,271 filed and approximately 7 withdrawn; 2015: 1,369 filed and approximately 14 withdrawn; 2014: 1,413 filed and approximately 19 withdrawn; 2013: 1,290 filed and approximately 16 withdrawn; and 2012: 1,466 filed and approximately 6 withdrawn.

average, approximately 95% of confidential treatment requests filed were granted, and requests were rarely denied.[367] Also during the past five fiscal years, on average, approximately 12% of confidential treatment requests filed were revised prior to the request being granted to limit the number of terms redacted based on likely materiality or over broad redactions.[368] Under the proposed amendments, the Commission staff would continue its selective review of registrant filings and would selectively assess whether redactions from exhibits appear to be limited to information that is not material and that would subject the registrant to competitive harm if publicly disclosed.

F. Economic Analysis of the Specific Amendments: Proposals That Require More Disclosure or the Incorporation of New Technology

1. Description of Registrant's Securities (Item 601(b)(4))

Item 202 requires registrants to provide a brief description of their registered capital stock, debt securities, warrants, rights, American Depositary Receipts, and other securities. We are proposing to amend Item 601(b)(4) to require registrants to provide Item 202 disclosure as an exhibit to Form 10–K for each class of securities that is registered under the Exchange Act, rather than limiting this disclosure to registration statements. The proposed amendments would not change existing disclosure obligations under Form 8–K and Schedule 14A, which currently require registrants to disclose certain modifications to the rights of their security holders and amendments to their articles of incorporation or bylaws. Any modifications and amendments during a fiscal year to the information called for by Item 202 would now also be reflected in an exhibit to the registrant's next annual report.

Information about Exchange Act registered securities allows investors to assess the existing capital structure of registrants, which can help investors understand better their exposure to risks and their control rights. Requiring Item 202 disclosure as an exhibit to annual reports would improve investors' access to information about their rights as security holders, thereby facilitating more informed investment and voting decisions.

The proposed requirements would impose some incremental compliance costs for registrants to include the proposed disclosure with their annual reports. Table 1 above shows that on average 7,800 registrants file Form 10–K each year and therefore would be subject to the new Item 601(b)(4) exhibit filing requirement. However, because registrants already prepare very similar disclosure to satisfy existing disclosure obligations under Form 8–K and Schedule 14A and would be able to incorporate by reference and hyperlink to prior disclosure, so long as there has not been any change to the information called for by Item 202, we expect these incremental costs to be minimal.

2. Subsidiaries of the Registrant and Entity Identifiers (Item 601(b)(21))

Item 601(b)(21) requires a registrant to list in an exhibit its subsidiaries, the state or other jurisdiction of incorporation or organization of each, and the names under which those subsidiaries do business. We are proposing amendments to Item 601(b)(21)(i) that would require registrants to include in the exhibit the LEI, if one has been obtained, of the registrant and each subsidiary listed.[369]

A key benefit of LEIs is that they allow for unique identification of entities engaged in commercial and financial transactions. For various reasons, firm and subsidiary names can be spelled and recorded differently across filings, corporate websites, and standard databases. In addition, subsidiaries can share the same (or very similar) names. These issues can make names poor identifiers of market participants, which could be an obstacle in some forms of investment analysis involving computerized data access.

In contrast, LEIs provide clear and unique identification of market participants that facilitates the statistical analysis and aggregation of firm financial data. In this regard, some commenters have observed that improved identifiers would allow investors to link third-party data with structured data from Commission filings to produce more meaningful analysis.[370] As a consequence, a standard identifier of firms and firm subsidiaries has the potential to improve not only individual investment decisions but also the efficiency of the overall market.

Disclosure of LEIs would also facilitate the ability of investors and the Commission to link the information disclosed in Commission filings with data from other filings or sources as LEIs become more widely used by regulators and the financial industry. This could aid in the performance of market analysis studies, surveillance activities, and systemic risk monitoring by the Commission and other regulators.

The proposed amendments would impose an incremental cost on registrants to include LEIs in the Item 601(b)(21) exhibit. We do not expect this incremental cost to be significant, however, given that this information should be readily available to registrants. Our proposals would require disclosure of LEIs only for those registrants and subsidiaries that have obtained this identifier, thereby not imposing additional costs.[371] As a result, the benefits of LEI disclosure outlined above may be limited to the extent that not all reporting entities obtain an identifier.

Moreover, standard identifiers, such as LEIs, are most beneficial to registrants and investors when a broad array of firms in the market adopt them. For example, a widely adopted identifier would facilitate the electronic link and cross-referencing of various informational items over a large group of registrants. Staff experience indicates that LEI adoption rates are currently low, which limits its benefits to investors and other users of financial information.[372] If LEIs are not widely used, firms may not have incentives to obtain an LEI. Since coordination among firms with regard to adoption is difficult to accomplish, LEIs could remain underutilized.

[367] In fiscal years 2016 and 2015, no confidential treatment requests were denied. In fiscal years 2014, 2013, and 2012, one, two and one CTR(s) were denied, respectively. On average, during the last five fiscal years, approximately 95% of confidential treatment requests were granted in full and approximately 5% were withdrawn. In addition to withdrawals based on staff determinations that the information was likely material, other reasons confidential treatment requests are withdrawn include that the offering is no longer going forward, the information is already public, or the contract is no longer material.

[368] Confidential treatment requests revised based on materiality and/or overbroad redactions in fiscal years 2016, 2015, 2014, 2013, and 2012, were approximately 119, 139, 183, 184, and 182, respectively.

[369] *See supra* Section II.E.4.

[370] *See id.*

[371] The use of and access to LEIs is free for investors. All of the associated reference data needed to understand, process and use LEIs is also widely and freely available. However, the cost of obtaining a LEI for registrants currently entails a one-time fee of $75-$119, and $50-$99 per year in annual maintenance fees.

[372] For example, in the context of Form ADV, which similarly requires an LEI to be reported only if the entity already has one, the Commission has noted that just 6.8% of registered investment advisers report an LEI when filing the form. *See Form ADV and Investment Advisers Act Rules,* Release No. IA–4509 (Aug. 25, 2016) [81 FR 60417 (Sept. 1, 2016)], at 114.

However, see also the discussion in the text around note 220, *supra.* Although overall adoption rates appear low, the use of LEIs may be increasing as a result of global regulatory efforts. *See* Glob. Legal Entity Identifier Found., *Regulatory Use of the LEI, available at https://www.gleif.org/en/about-lei/regulatory-use-of-the-lei* (last visited July 13, 2017).

3. Tagging Cover Page Data

We are proposing to require registrants to tag all of the information on the cover page of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F using Inline XBRL (or, if the Commission's recent proposal to require Inline XBRL for the submission of operating company financial statements is not adopted, in an XBRL exhibit to the relevant filing) in accordance with the EDGAR Filer Manual. To implement the cover page tagging requirements, we propose to add new Rule 406 to Regulation S–T, new Item 601(b)(104) to Regulation S–K, new paragraph 104 to the ''Instructions as to Exhibits'' of Form 20–F and new paragraph B.17 to the ''General Instructions'' of Form 40–F to require registrants to file with each of the specified forms a ''Cover Page Interactive Data File'' containing cover page data. We are also proposing to revise Rule 11 of Regulation S–T to add the term ''Cover Page Interactive Data File.'' Our proposals also would amend the cover pages of these forms to include the trading symbol for each class of the registrant's registered securities.[373]

Investment analysis increasingly relies on quantitative statistical methods. Machine-readable formats greatly facilitate quantitative analysis because they allow for the corresponding items to be imported directly into various platforms for data analysis. Thus, tagging all the data points on the cover pages of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F could decrease the costs to investors for implementing quantitative data analysis. We acknowledge that the amendment would impose additional costs on registrants but expect the additional burden to be minimal, given that registrants already furnish a substantial amount of information contained in these forms in a structured format.

An alternative to the Inline XRBL or traditional XBRL format is to specify an XML format for the cover pages of Form 8–K, Form 10–K, Form 10–Q, Form 20–F, and Form 40–F. An XML format could have a variety of implementations ranging from filers submitting the data according to a designated technical framework to inputting the cover page information in a web-fillable format within EDGAR. We are not proposing this approach, because the Inline XBRL and traditional XBRL format provide more precise rules that facilitate consistent input and data validation by filers and enhance the analytical capabilities of data users. Moreover, the Inline XBRL and traditional XBRL format have more robust data validation capabilities, which could help to ensure better data quality for investors. Inline XBRL also would not suffer from possible data quality discrepancies that may occur from filers rekeying the information from their cover page for submission in XBRL or XML.

4. Proposals for Additional Disclosure With Minimal Additional Costs to Registrants

The following proposed amendments are expected to impose only limited compliance costs on registrants:

- Incorporation by Reference—proposal would require hyperlinks internal to EDGAR for documents incorporated by reference.[374]
- Item 501(b)(4)—proposal would require disclosure on the prospectus cover page of any national securities exchange where the securities being offered are listed or, if not listed, the principal United States market or markets for the securities being offered and the corresponding trading symbols, if any. [375]

Requiring registrants to include hyperlinks to information that is incorporated by reference could improve the readability and navigability of disclosure documents by allowing users to be taken directly to the incorporated information by clicking on a link rather than having to locate the information on EDGAR. Although requiring the inclusion of hyperlinks for incorporated information would impose an additional compliance burden on registrants, we do not expect this burden to be significant given that hyperlinks are relatively easy to implement and involve minimal cost.

In the case of Item 501(b)(4), expanding the existing requirements for trading market disclosure to encompass information about markets that are not ''national securities exchanges'' would benefit investors by helping them to better assess their trading costs. The disclosure would impose some additional disclosure costs on registrants. However, we do not expect these costs to be significant given that registrants should have ready access to this information. In this regard, we note that the required disclosure would be limited to the principal United States market or markets where the registrant, through the engagement of a registered broker-dealer, has actively sought and achieved quotation.

G. Economic Analysis of HTML and Hyperlinking Requirements of Forms Under the Investment Company Act

As discussed above, we are proposing HTML and hyperlinks requirements for filers of certain forms under the Investment Company Act. Broadly speaking, we believe the proposed amendments would reduce search costs for investors. In particular, we believe that exhibit hyperlinks would help investors and other users to access a particular exhibit more efficiently as they would not need to search within the filing or through different filings made over time to locate the exhibit. Requiring exhibit hyperlinks may make it easier for investors and other users to find and access a particular exhibit that was originally filed with a previous filing.

To the extent that hyperlinks ease the navigation process for investors and other users, hyperlinks may also facilitate a more thorough review of a registrant's registration statements, applications, and reports and encourage more effective monitoring over time. The potential reduction of search costs and the enhanced ability of investors to review a registrant's disclosure may result in more informed investment and voting decisions, potentially enhancing allocative efficiency, and capital formation by registrants.

We expect that hyperlinks would be more beneficial in reducing search costs in the case of exhibits incorporated by reference than in the case of exhibits filed with the filing, and in particular, we expect these benefits to be most pronounced in the case of incorporation by reference from a filing that was not recently filed because more recent filings are displayed first on the EDGAR search results page. Further, we expect hyperlinks would have greater benefits in the case of registrants that submit more filings.

As a result of the proposed amendments, we expect that both HTML and ASCII registrants would incur compliance costs to include hyperlinks in their exhibit indexes. The cost of inserting a hyperlink to an exhibit incorporated by reference would likely be greater than the cost of

[373] Because the cover pages of Form 10–K, Form 20–F, and Form 40–F already require disclosure of the title of each class of securities registered pursuant to Section 12(b) of the Exchange Act and each exchange on which they are registered, our proposed amendments to these forms would revise the cover page to include a corresponding field for the trading symbol. Unlike these forms, however, the cover pages of Form 10–Q and Form 8–K do not currently require disclosure of the title of each class of securities and each exchange on which they are registered. Accordingly, to ensure that registrants and their registered securities are identified in a consistent manner across forms, we are proposing to revise the cover pages of Form 10–Q and Form 8–K to include this disclosure in addition to the trading symbol.

[374] *See supra* Section II.F.2.

[375] *See supra* Section II.D.1.c.

inserting a hyperlink to an exhibit filed with the document. While the average cost itself of inserting a hyperlink is minimal, the total hyperlinking costs for registrants would be a function of two main factors: (1) How many registration statements, applications and reports a registrant files that require an exhibit index; and (2) how many exhibits in the exhibit index of these registration statements, applications, and reports are either filed with the filing or incorporated by reference.

Filers reporting in ASCII would incur costs to switch to HTML, in addition to the costs of including hyperlinks in their exhibit indexes. We expect that the costs of switching to HTML would not be significant because the cost of software with built-in HTML and hyperlink features is minimal. Overall, given the modest costs involved, we do not expect that the proposed amendments would have significant competitive effects for registrants.

Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and whether the rules, if adopted, would promote efficiency, competition, and capital formation or have an impact on investor protection. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates.

IV. Paperwork Reduction Act

A. Background

Certain provisions of our rules and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[376] The Commission is submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[377] The hours and costs associated with preparing and filing the forms and reports constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the collections of information are:

''Regulation S–K'' (OMB Control No. 3235–0071); [378]

''Regulation S–T'' (OMB Control No. 3235–0424);

''Regulation 12B'' (OMB Control No. 3235–0062);

''Regulation C'' (OMB Control No. 3235–0074);

''Family of rules under section 8(b) of the Investment Company Act of 1940'' (OMB Control No. 3235–0176);

''Form S–1'' (OMB Control No. 3235–0065);

''Form S–3'' (OMB Control No. 3235–0073);

''Form S–4'' (OMB Control No. 3235–0324);

''Form S–6'' (OMB Control No. 3235–0184);

''Form S–11'' (OMB Control No. 3235–0067);

''Form N–14'' (OMB Control No. 3235–0336);

''Form F–1'' (OMB Control No. 3235–0258);

''Form F–3'' (OMB Control No. 3235–0256);

''Form F–4'' (OMB Control No. 3235–0325);

''Form F–7'' (OMB Control No. 3235–0325);

''Form F–8'' (OMB Control No. 3235–0378);

''Form F–80'' (OMB Control No. 3235–0404);

''Form F–10'' (OMB Control No. 3235–0380);

''Form SF–1'' (OMB Control No. 3235–0707);

''Form SF–3'' (OMB Control No. 3235–0690);

''Form 10'' (OMB Control No. 3235–0064);

''Form 20–F'' (OMB Control No. 3235–0288);

''Form 40–F'' (OMB Control No. 3235–0381);

''Form 10–K'' (OMB Control No. 3235–0063);

''Form 10–Q'' (OMB Control No. 3235–0070);

''Form 8–A'' (OMB Control No. 3235–0056);

''Form 8–K'' (OMB Control No. 3235–0060);

''Form 10–D'' (OMB Control No. 3235–0604);

''Schedule 14A'' (OMB Control No. 3235–0059);

''Schedule 14C'' (OMB Control No. 3235–0057); ''Form N–1A'' (OMB Control No. 3235–0307); ''Form N–2'' (OMB Control No. 3235–0026); ''Form N–3'' (OMB Control No. 3235–0316); ''Form N–4'' (OMB Control No. 3235–0318); ''Form N–5'' (OMB Control. No. 3235–0169); ''Form N–6'' (OMB Control No. 3235–0503); and ''Form N–CSR'' (OMB Control No. 3235–0570).

The forms, reports, and regulations listed above were adopted under the Securities Act, the Exchange Act or the Investment Company Act. The regulations, schedules, and forms set forth the disclosure requirements for registration statements, periodic and current reports, distribution reports and proxy, and information statements filed by registrants to help investors make informed investment and voting decisions. Other forms and reports are filed by entities regulated by the Investment Company Act in connection with the Commission's oversight of these entities.

We are proposing amendments, which are described in more detail in Section II above, based on the recommendations made in the FAST Act Report, as required by Section 72003 of the FAST Act. The proposed amendments are intended to modernize and simplify certain disclosure requirements in Regulation S–K and related rules and forms in a manner that reduces the costs and burdens on registrants while continuing to provide all material information to investors. The proposed amendments are also intended to improve the readability and navigability of the Commission's disclosure documents and discourage repetition and disclosure of immaterial information. In addition, we are proposing parallel amendments to several rules and forms applicable to investment companies and investment advisers to provide for a consistent set of incorporation by reference and hyperlinking rules for these entities, including proposed amendments that would require certain investment company filings to be submitted in HTML format.

B. Summary of the Proposed Amendments' Impact on Collection of Information

In this section, we summarize the proposed amendments and their general impact on the paperwork burden associated with the forms listed in Section IV.A. In Section IV.C. below, we provide revised burden estimates for each form.

[376] 44 U.S.C. 3501 *et seq.*

[377] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[378] The paperwork burdens for Regulation S–K, Regulation S–T, Regulation C and Regulation 12B are imposed through the forms that are subject to the requirements in these regulations and are reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to each of these regulations.

1. Proposed Amendments Expected To Decrease Burdens

a. Description of Property (Item 102)

The proposed amendments to Item 102 of Regulation S–K would clarify that a description of property is only required to the extent physical properties are material to the registrant and make other clarifying amendments.[379] The staff has observed that the current disclosure standard may lead registrants, in some instances, to devote resources to providing disclosure on properties that are not material. Although the proposed amendments to Item 102 are expected to help registrants avoid unnecessary disclosure in some instances, the amendments are clarifying in nature and therefore we do not believe they would significantly affect the paperwork burden associated with affected forms. Accordingly, we estimate that the paperwork burden would be reduced by 0.5 hours for each form affected by the proposed amendments. We expect that Form S–1,[380] Form S–4,[381] Form 10, and Form 10–K would be affected by this proposed amendment.

b. Management's Discussion and Analysis (Item 303)

The proposed amendments to Item 303 would allow registrants, in some circumstances, to eliminate the earliest year of the MD&A discussion.[382] The proposed amendments would also eliminate the reference to five-year selected financial data in Instruction 1 to Item 303(a) and clarify that registrants may use their discretion in selecting the best format for their MD&A presentation.[383] The combined effects of these amendments would be to eliminate the burden on registrants to prepare and provide repetitive disclosure that is not material. The proposed amendments are of particular significance, because MD&A is typically one of the most labor-intensive sections of any form in which it is required. We anticipate that the proposed amendments to simplify and clarify the MD&A requirements would reduce the paperwork burden associated with related forms.

We estimate that the aggregate impact of the proposed amendments would be a four hour reduction in paperwork burden each time Item 303 information is required to be included in a form. We estimate that the aggregate impact of the proposed corresponding amendments to Form 20–F would result in a four hour reduction each time information under Item 5 of that form is required. We expect that Form S–1,[384] Form S–4,[385] Form S–11,[386] Form F–1,[387] Form F–4,[388] Form 10, Form 10–K, Form 10–Q, and Form 20–F would be affected by this proposed amendment.

c. Directors, Executive Officers, Promoters and Control Persons (Item 401, Item 405 and Item 407)

The proposed amendments to Item 401, Item 405, and Item 407 of Regulation S–K would simplify and modernize executive officer, Section 16(a) compliance and corporate governance disclosure requirements. The proposed amendments to Item 401 would simplify the rules for determining what disclosure about executive officers may be included in Form 10–K when other disclosure in Part III of Form 10–K will be incorporated by reference to the registrant's definitive proxy or information statement.[389] The proposed amendments to Item 405 would allow registrants to rely on a review of Section 16 reports submitted on EDGAR rather than reports furnished to the registrant when providing disclosure about Section 16(a) compliance.[390] Finally, the proposed amendments to Item 407 clarify the applicable auditing standard and the disclosure requirements for the compensation committees of EGCs.[391]

The proposed amendments to Item 401, Item 405, and Item 407 would clarify and streamline existing disclosure requirements, and in that respect are expected to marginally reduce compliance costs for registrants. We estimate that the proposed amendments would reduce the paperwork burden for each affected form by 0.5 hours. We expect that Form S–1, Form S–4, Form S–11, Form 8–K, Form 10, Form 10–K, and Form 10–Q would be affected by this proposed amendment.

d. Exhibits (Item 601)

i. Information Omitted From Exhibits (Item 601(a)(5), Item 601(a)(6), and Item 601(b)(10)(iv))

We are proposing several amendments to Item 601 of Regulation S–K. Many of these amendments affect provisions related to the Commission's confidential treatment process. Specifically, the proposed amendments to Item 601(a)(5), Item 601(a)(6), and Item 601(b)(10)(iv) would permit registrants to omit, without submitting a confidential treatment request, schedules and attachments that are not material, personally identifiable information and confidential information in material contract exhibits that is both (i) not material and (ii) competitively harmful if publicly disclosed.

For purposes of the PRA, we consider the time and cost to prepare and submit a confidential treatment request to be part of the paperwork burden associated with preparing and filing the related disclosure form. We estimate that elimination of the need to prepare and submit a confidential treatment request to omit confidential information from exhibits filed pursuant to Item 601(b)(10) that is both (i) not material and (ii) competitively harmful if publicly disclosed would reduce internal burden hours by ten hours per request for an estimated 20% of registrants that prepare the confidential treatment request without relying on outside counsel, and reduce external costs by $4,000 per request for an estimated 80% of registrants that retain outside counsel for this work.[392]

Proposed Item 601(a)(5) would permit registrants to omit entire schedules and attachments to exhibits unless the schedules contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. The threshold for omission under proposed Item 601(a)(5) is lower than for omission under the proposed amendment to Item 601(b)(10) because registrants would not be required to show that the information would cause competitive harm if publicly disclosed.

Based on our review of confidential treatment requests granted in fiscal year 2016, we estimate that over 90% of these requests were granted for material contracts based on competitive harm to the registrant. For the remainder, we expect that many of those exhibits likely contain schedules that could be omitted under proposed Item 601(a)(5). However, we are unable to reliably estimate how many of these requests would be unnecessary under the proposed amendments to Item 601(a)(5) because this would depend, in part, on whether the schedules contain material

[379] *See supra* Section II.A.

[380] 17 CFR 239.11.

[381] 17 CFR 239.25.

[382] *See supra* Section II.B.

[383] *See supra id.*

[384] 17 CFR 239.11.

[385] 17 CFR 239.25.

[386] 17 CFR 239.18.

[387] 17 CFR 239.31.

[388] 17 CFR 239.34.

[389] *See supra* Section II.C.

[390] *See id.*

[391] *See id.*

[392] The $4,000 cost estimate is calculated as follows: 10 hours × $400 per hour of outside counsel work = $4,000. See *infra* note 412.

information. Given that the proposed amendments to Item 601(b)(10) would likely address over 90% of the confidential treatment requests submitted to the Commission, and to avoid overestimating the decrease in paperwork burden arising from the proposed amendments, we are not making an additional adjustment to our burden estimates in respect of the amendment to Item 601(a)(5) but are soliciting comment on ways to reasonably estimate such an adjustment.[393]

Based on these assumptions, we expect the annual internal burden hours and professional costs devoted to the confidential treatment process to decrease each time exhibit information described in Item 601(a)(5), Item 601(a)(6), or Item 601(b)(10)(iv) is omitted or redacted. In fiscal year 2016, 43% of confidential treatment requests were filed for Form 10–Q, 18% for Form 10–K, 13% for Form 8–K, 8% for Form S–1, 4% for Form 20–F, and 1% each for Form 10 and Form F–1. We are therefore ascribing changes in paperwork burdens and costs to these forms in these same proportions.

ii. Material Contracts Exhibits (Item 601(b)(10)(i))

The proposed amendment to Item 601(b)(10)(i) would limit the two-year look back filing requirement for material contracts to newly reporting registrants. Registrants that are not newly reporting registrants would no longer be required to comply with this filing requirement and thus would incur reduced compliance burdens. However, we believe that the current burden associated with the two-year look back requirement is minimal. Therefore, the proposed amendments are not expected to result in a significant reduction of the paperwork burden associated with the affected forms. We estimate that the paperwork burden would be reduced by 0.5 hours for each form affected by the proposed amendment. We expect that Form 10, Form 10–K, Form S–1, Form S–4, Form F–1, Form F–3, Form F–4, Form S–11, and Form SF–1 would be affected by this proposed amendment.

2. Proposed Amendments Expected To Increase Burdens

a. Registration Statement and Prospectus Provisions (Item 501(b))

We are proposing to amend Item 501(b) to require disclosure on the cover page of the prospectus of any national securities exchange where the securities being offered are listed or, if not listed, the principal United States market or markets for the securities being offered and the corresponding trading symbols, if any.[394] The proposed amendments would incrementally increase the compliance burden on registrants by requiring them to provide disclosure about trading markets other than national exchanges. Because we are proposing to limit the incremental disclosure to those trading markets where the registrants, through the engagement of a registered broker-dealer, has actively sought and achieved quotation, we believe this information should be readily available to registrants and impose only a minimal paperwork burden.

Accordingly, we estimate that the proposed amendment would slightly increase the paperwork burden associated with each affected form by 0.25 hours. We expect that Form S–1, Form S–3, Form S–4, Form S–11, Form F–1, Form F–3, Form F–4, Form SF–1,[395] and Form SF–3 [396] would be affected by this proposed amendment.

b. Exhibits (Item 601(b)(4)(vi) and (b)(21))

Proposed new Item 601(b)(4)(vi) would require registrants to file an Item 202 description of their Exchange Act registered securities as an exhibit to Form 10–K. The proposed amendments to Item 601(b)(21) would require disclosure of an LEI (if one has been obtained) for each registrant and any subsidiaries required to be disclosed in the exhibit.

We expect that the new requirements under Item 601(b)(4)(vi) would slightly increase the paperwork burden on registrants because registrants would be required to provide a description of registered securities annually. However, registrants would be able to incorporate by reference and hyperlink to prior disclosure if the information called for by Item 202 remains unchanged from prior years, thus mitigating any increase in the anticipated burden. Accordingly, we estimate the proposed amendments would increase the paperwork burden associated with Form 10–K and Form 20–F by 0.5 hours.

We expect that the proposed amendments to Item 601(b)(21) would also increase the burden on registrants; however, we expect this increase to be slight because LEI information should be readily available and would be only required if an identifier has already been obtained. Those registrants that have not obtained LEIs would not incur an additional burden. Accordingly, we estimate that the proposed amendments to Item 601(b)(21) would increase the paperwork burden associated with each affected form by 0.25 hours. We expect that Form S–1, Form S–4, Form F–1, Form 10, Form 10–K, Form S–11, Form SF–1, and Form SF–3 would be affected by the proposed amendment to Item 601(b)(21).

c. Manner of Delivery

Proposed new Rule 406, proposed new Item 601(b)(104), proposed new paragraph 104 to ''Instructions as to Exhibits'' of Form 20–F and proposed new Instruction 17 to ''Information To Be Filed on this Form'' of Form 40–F would require registrants to tag every data point on the cover pages of Form 10–K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F using Inline XBRL, including certain new data points added pursuant to the proposed amendments.[397] Although expanded data tagging would result in an increase in the burden associated with related forms, we note that registrants are already required to tag certain cover page information as well as financial statement information. For this reason, we believe most registrants already will have developed the internal resources or engaged outside professionals to assist them in complying with existing data tagging requirements.[398] In this respect, we do not believe the cover page tagging requirement would result in significant additional burdens for registrants.

Accordingly, we estimate that the requirement to tag additional cover page items would impose an increased paperwork burden of one hour for each affected form. We expect that Form 10–

[393] For similar reasons, we are making no additional adjustment to our burden estimates in respect of the amendments to Item 601(a)(6). In fiscal year 2016, only nine confidential treatment requests were granted by the Commission for documents containing PII. This suggests that most registrants are currently taking advantage of existing staff guidance that PII may be omitted without filing a confidential treatment request.

[394] *See supra* Section II.D.

[395] 17 CFR 239.44.

[396] 17 CFR 239.45.

[397] *See supra* Section II.G.1.

[398] As discussed above, the Commission recently proposed to require the use of the Inline XBRL format instead of the traditional XBRL format for the submission of operating company financial statements, and we intend for the cover page data to be tagged in the same format as this other information. *See id.* In the Inline XBRL Proposing Release, we provided estimates of the change in paperwork burden associated with the transition to Inline XBRL. *See supra* note 310. Because we expect to require the Inline XBRL format for tagging cover page data only if the Inline XBRL proposal has been adopted, we are not including PRA burden estimates related to the transition to Inline XBRL in this release.

K, Form 10–Q, Form 8–K, Form 20–F, and Form 40–F would be affected by the proposed new rules and form amendments.

As described in more detail above, we are proposing amendments to certain of our forms that are used by investment companies and amendments to Rule 102 of Regulation S–T to apply hyperlinking and HTML requirements to those registrants to facilitate access to most exhibits for investors and other users of the information.[399] We anticipate that the proposed amendments will increase the burdens and costs for registrants to prepare and file registration statements and reports on the affected forms. Because the software tools to prepare and file documents in HTML are widely used and available at minimal cost, we do not believe this requirement would appreciably change the existing burden estimates for the affected registration statements or reports, which already include the time and expense to prepare and file in electronic format on EDGAR. We believe the burdens associated with hyperlinking exhibits would be small as the registrant would already be preparing the exhibits and exhibit index for the related filing and would have readily available all the information necessary to create the hyperlinks. We assume that the average burden hours of requiring exhibit hyperlinks would vary based on the number of exhibits that are included with a filing, as discussed in detail below.[400]

3. Proposed Amendments Not Expected to Meaningfully Affect Burdens

a. Registration Statement and Prospectus Provisions (Item 501(b), Item 503(c), Item 508 and Item 512)

The proposed amendments to Item 501(b)(1), Item 501(b)(3), and Item 501(b)(10) would, respectively, eliminate misleading company name disclosure requirements, explicitly allow registrants to include a clear statement that the offering price will be determined by a particular method or formula (and require a cross reference to the offering price method or formula disclosure), and permit registrants to exclude some portion of the legend relating to state law in the prospectus for an offering that is not prohibited by state blue sky law.[401] The proposed amendments to Item 503(c) would relocate the current risk factor disclosure requirements to Subpart 100 and eliminate the risk factor examples without substantively changing the underlying disclosure requirements.[402] The proposed amendment to Item 508 would define the term ''sub-underwriter'' to clarify one aspect of the required disclosure about the plan of distribution for a registered securities offering.[403] The proposed amendments to Item 512 would eliminate certain undertakings that are redundant or obsolete.[404]

We believe these proposed amendments would not meaningfully affect the paperwork burden associated with the related forms because these amendments modernize and clarify certain requirements and do not substantively change the required disclosure. Therefore, we are not making any adjustments to the paperwork burden of affected forms due to these proposed amendments.

b. Incorporation by Reference

We are proposing amendments to simplify and modernize the rules and forms governing incorporation by reference. Under the proposed amendments, certain existing requirements for incorporation by reference would be consolidated into Rule 411, Rule 12b-23, Rule 0–4, and Rule 0–6.[405] The proposed amendments would also eliminate several redundant or outdated requirements. In addition, the proposed amendments would provide registrants with additional flexibility in organizing the disclosure in Form 10, Form 10–K, and Form 20–F by permitting them to exclude item numbers and captions or create their own captions tailored to the disclosure in these forms [406] These proposals are expected to decrease reporting burdens associated with incorporating information by reference in Commission filings, leading to an estimated 0.5 hour reduction in paperwork burden per affected form. However, this decrease would be offset by an estimated 0.5 hour increase in paperwork burden per affected form due to the proposed amendments requiring registrants to include hyperlinks to information incorporated by reference when that information is available on EDGAR.[407] Accordingly, we are not making any adjustments to the paperwork burden of affected forms due to these proposed amendments.

C. Burden and Cost Estimates to the Proposed Amendments

As discussed below, we expect that the proposed amendments would, in the aggregate, reduce the paperwork burden on respondents. The change in burden, however, would differ depending on the form because not all of the proposed amendments would apply to each form.

These estimates represent the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review disclosure required under the proposed amendments. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the registrant internally is reflected in hours.

1. Form 10–K and Form 10–Q; Schedule 14A and Schedule 14C

The proposed amendments are estimated to significantly reduce the paperwork burdens associated with Form 10–K [408] and Form 10–Q as well as Schedule 14A and Schedule 14C.[409] For purposes of the PRA, we estimate that 75% of the burden of preparation for these Exchange Act reports is carried by the registrant internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour.[410]

Table 4 below illustrates the total annual compliance burden, in hours and in costs, [411] of the affected

[399] *See supra* Section II.G.2.

[400] *See infra* Section IV.C.4.

[401] The proposed amendments would also streamline 501(b) by combining paragraphs (b)(10) and (b)(11) without substantive change.

[402] *See supra* Section II.D.2.

[403] *See supra* Section II.D.3.

[404] *See supra* Section II.D.4.

[405] *See supra* Section II.F.

[406] *See id.*

[407] *See id.*

[408] Schedules 14A and 14C require disclosure under Subpart 400 of Regulation S–K. This disclosure is often incorporated, in relevant part, into Part III of a registrant's Form 10–K. Therefore, our burden estimates for Form 10–K contemplate that Part III disclosure may be incorporated by reference to Schedules 14A or 14C.

[409] Schedule 14A requires that registrants, under certain circumstances, provide disclosure under Item 303. Our burden estimate for Schedule 14A assumes that registrants would duplicate the disclosure provided under this Item in the most recent Form 10–K and/or Form 10–Q.

[410] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing reports with the Commission.

[411] For convenience, the estimated hour and cost burdens in the tables in this section have been rounded to the nearest whole number.

collections of information resulting from the proposed amendments.[412]

TABLE 4—INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS FOR EXCHANGE ACT FORMS

	Current annual responses	Proposed number of affected responses	Current burden hours	Change in burden hours	Change in company hours	Change in professional hours	Change in professional costs
10–K	8,137	8,137	12,228,620	(32,703)	(23,325)	(9,378)	($3,715,600)
10–Q	22,907	22,907	3,220,037	(73,181)	(63,884)	(9,297)	(3,718,800)
8–K	118,387	118,387	507,665	116,867	88,490	28,377	11,350,800

2. Form S–1, Form S–3, Form S–4, Form F–3, Form F–4, Form SF–1, Form SF–3, Form 10, and Form 20–F

The proposed amendments are estimated to significantly reduce the paperwork burden associated with Form S–1, Form S–3, Form S–4, Form F–3, Form F–4, and Form 20–F. For registration statements on Form 10, Form S–1, Form S–3, Form S–4, Form F–1, Form F–3, Form F–4, Form SF–1, and Form SF–3, and Exchange Act report Form 20–F, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour.

Table 5 below illustrates the total annual compliance burden, in hours and in costs, of the affected collections of information resulting from the proposed amendments.[413]

TABLE 5—INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS FOR REGISTRATION STATEMENTS

	Current annual reponses	Proposed number of affected responses	Current burden hours	Change in burden hours	Change in company hours	Change in professional hours	Change in professional costs
S–1	901	901	150,242	(5,514)	(1,325)	(4,189)	($1,675,600)
S–3	1,082	1,082	127,806	(301)	(78)	(223)	(89,200)
S–4	551	551	564,731	(2,803)	(700)	(2,103)	(841,200)
S–11	100	100	19,476	(450)	(112)	(338)	(135,200)
SF–3	71	71	24,495	36	9	27	10,800
F–1	63	63	26,917	(431)	(98)	(333)	(133,200)
F–3	107	107	4,467	(10)	(1)	(9)	(3,600)
F–4	68	68	24,769	(281)	(70)	(211)	(84,400)
10	238	238	12,805	(1390)	(342)	(1,048)	(419,200)
20–F	725	725	479,501	(2454)	(588)	(1,866)	(746,400)
40–F	160	160	17,197	160	40	120	40,000

TABLE 6—CURRENT AND REVISED BURDENS UNDER THE PROPOSED AMENDMENTS FOR SECURITIES ACT AND EXCHANGE ACT FORMS

	Current burden		Revised burden	
	Burden hours (A)	Cost (B)	Burden hours (C)	Costs (D)
10–K	12,228,620	$1,631,470,000	12,205,295	$1,627,754,400
10–Q	3,220,037	429,368,808	3,156,153	425,650,008
8–K	507,665	67,688,700	596,155	79,039,500
S–1	150,242	180,290,100	148,917	178,614,900
S–3	127,806	153,367,008	127,728	153,277,808
S–4	564,731	677,677,104	564,031	676,835,904
S–11	19,476	23,371,200	19,364	23,236,000
SF–3	24,495	29,394,000	24,504	29,404,800
F–1	26,917	32,300,100	26,819	32,166,900
F–3	4,467	5,360,700	4,465	5,357,100
F–4	24,769	29,722,800	24,699	29,638,400
10	12,805	15,366,042	12,463	14,946,842
20–F	479,501	575,400,600	478,913	574,654,200

[412] The burdens associated with the proposed amendments to the forms listed in Table 4, other than the confidential treatment request proposal, have been estimated by assuming that 75% of the burden is borne by the company and 25% is borne by outside counsel at $400 per hour. The burdens associated with submitting confidential treatment requests in connection with the forms listed in Table 4 have been estimated by assuming that the average request requires approximately ten hours of preparation and that 20% of the burden is borne by the company and 80% of the burden is borne by outside counsel at $400 per hour.

[413] The burdens associated with the proposed amendments to the forms listed in Table 5, other than the confidential treatment request proposal, have been estimated by assuming that 25% of the burden is borne by the company and 75% is borne by outside counsel at $400 per hour. The burdens associated with submitting confidential treatment requests in connection with the forms listed in Table 5 have been estimated by assuming that the average request requires approximately ten hours of preparation and that 20% of the burden is borne by the company and 80% of the burden is borne by outside counsel at $400 per hour.

TABLE 6—CURRENT AND REVISED BURDENS UNDER THE PROPOSED AMENDMENTS FOR SECURITIES ACT—Continued AND EXCHANGE ACT FORMS

	Current burden		Revised burden	
	Burden hours (A)	Cost (B)	Burden hours (C)	Costs (D)
40–F	17,197	20,636,800	17,237	20,684,800

3. Form 8–A, Form 10–D, Form 40–F, Form F–7, Form F–8, Form F–10, and Form F–80

The proposed amendments to Form 8–A,[414] Form 10–D, Form 40–F, Form F–7,[415] Form F–8,[416] Form F–10, and Form F–80[417] are not expected to meaningfully reduce the associated paperwork burden for these forms. Accordingly, we have not included a tabular presentation of the impact on the total annual compliance burden of these forms as a result of these proposed amendments.

4. Form S–6, Form N–1A, Form N–2, Form N–3, Form N–4, Form N–5, Form N–6, Form N–14, and Form N–CSR

The proposed amendments to Form S–6,[418] Form N–1A,[419] Form N–2,[420] Form N–3,[421] Form N–4,[422] Form N–5,[423] Form N–6,[424] Form N–14, and Form N–CSR[425] are expected to increase the burdens and costs for registrants to prepare and file registration statements and reports on the affected forms, but we believe the burdens associated with hyperlinking exhibits would be small.[426] We assume that the average burden hours of requiring exhibit hyperlinks would vary based on the number of exhibits that are included with a filing. For purposes of the PRA, based on the average and median number of exhibits shown in Table 3 above and the staff's experience, we estimate that the average burden for a registrant to hyperlink to exhibits would be one hour per response for each of the affected forms. As discussed above, we are not making any adjustments to the paperwork burden of affected forms due to the proposed amendments to simplify and modernize the rules and forms governing incorporation by reference.[427]

The table below shows the total annual compliance burden, in hours and in costs, of the collections of information resulting from the proposed amendments.[428] The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review the exhibit hyperlinks. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. For purposes of the PRA, we estimate that 25% of the burden of preparation is carried by the registrant internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour.[429]

TABLE 6—INCREMENTAL PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS TO FORMS FOR INVESTMENT COMPANIES

Forms	Proposed number of affected responses (A)	Incremental burden hours/form (B)	Total incremental burden hours (C) = (A) × (B)	25% internal burden (D) = (C) × 0.25	75% outside professional (E) = (C) × 0.75	Professional costs (F) = E × $400
Form S–6	2,498	1	2,498	625	1,874	$749,600
Form N–1A	6,002	1	6,002	1,501	4,502	1,800,800
Form N–2	166	1	166	42	125	50,000
Form N–3	20	1	20	5	15	6,000
Form N–4	1,653	1	1,653	413	1,240	496,000
Form N–5	1	1	1	0	1	400
Form N–6	472	1	472	118	354	141,600
Form N–14	192	1	192	48	144	57,600
Form N–CSR	6,898	1	6,898	1,725	5,174	2,069,600
Total			17,902			5,371,600

D. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the

[414] 17 CFR 249.208a.

[415] 17 CFR 239.37.

[416] 17 CFR 239.38.

[417] 17 CFR 239.41.

[418] 17 CFR 239.16.

[419] 17 CFR 239.15A and 17 CFR 274.11A.

[420] 17 CFR 239.14 and 17 CFR 274.11a–1.

[421] 17 CFR 239.17a and 17 CFR 274.11b.

[422] 17 CFR 239.17b and 17 CFR 274.11c.

[423] 17 CFR 239.24 and 17 CFR 274.5.

[424] 17 CFR 239.17c and 17 CFR 274.11d.

[425] 17 CFR 249.331 and 17 CFR 274.128.

[426] *See supra* Section IV.B.2.c.

[427] *See supra* Section IV.B.3.b.

[428] For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

[429] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. These estimates are based on our estimates for the parallel requirement for operating companies. *Exhibit Hyperlinks Adopting Release, supra* note 14 at 14139.

burden of the proposed collection of information;

• Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

• Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, with reference to File No. S7–08–17. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–08–17 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[430] a rule is ''major'' if it has resulted, or is likely to result in:

• An annual effect on the U.S. economy of $100 million or more;

• a major increase in costs or prices for consumers or individual industries; or

• significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

• The potential effect on the U.S. economy on an annual basis;

• any potential increase in costs or prices for consumers or individual industries; and

• any potential effect on competition, investment, or innovation.

VI. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with the Regulatory Flexibility Act.[431] It relates to proposed amendments to modernize and simplify certain disclosure requirements in Regulation S–K and related rules and forms to implement Section 72003 of the FAST Act and provide consistent incorporation by reference and hyperlinking requirements in the rules and forms applicable to investment companies and investment advisers.

A. Reasons for, and Objectives of, the Proposed Action

The purpose of the proposed amendments is to modernize and simplify Commission disclosure requirements in a manner that reduces costs and burdens on companies while still providing all material information. Specifically, the proposed amendments would modernize and simplify these disclosure requirements by clarifying, consolidating, relocating and eliminating, or updating various Commission rules that govern public company disclosure. The proposed amendments would also modernize the rules by requiring cover page data to be tagged in a machine-readable format, requiring disclosure of LEIs and requiring hyperlinks to be included in some documents filed on EDGAR. The proposed amendments would largely implement the staff's recommendations in the FAST Act Report, as required by Section 72003(d) of the FAST Act. In addition, the proposed amendments would apply parallel incorporation by reference and hyperlinking requirements in the rules and forms used by investment companies and investment advisers to provide a consistent set of requirements for these registrants.

B. Legal Basis

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act of 1933, as amended, Sections 3(b), 12, 13, 14, 15, 16, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act of 1940, as amended and Sections 204, 206A, 210, and 211 of the Investment Advisers Act of 1940, as amended.

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect some registrants that are small entities. The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [432] For purposes of the Regulatory Flexibility Act, under our rules, an issuer, other than an investment company or an investment adviser, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[433] An investment company, including a business development company,[434] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[435] An investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[436] We estimate that there are 837 issuers that file with the Commission, other than investment companies and investment advisers, that may be considered small entities.[437] In addition, we estimate that, as of

[430] 5 U.S.C. 801 *et seq.*

[431] 5 U.S.C. 601 *et seq.*

[432] 5 U.S.C. 601(6).

[433] *See* Securities Act Rule 157 [17 CFR 230.157] and Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[434] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[435] *See* Investment Company Act Rule 0–10(a) [17 CFR 270.0–10(a)].

[436] *See* Investment Advisers Act Rule 0–7(a) [17 CFR 275.0–7(a)].

[437] This estimate is based on a review of Form 10–K and 20–F filings (from EDGAR XBRL) with fiscal periods ending between January 31, 2015 and January 31, 2016.

December 2016, there are 130 investment companies that would be subject to the proposed amendments that may be considered small entities. Finally, we estimate that, as of August 1, 2017, there are 557 investment advisers that may be subject to the proposed amendments that may be considered small entities.[438]

D. Reporting, Recordkeeping, and Other Compliance Requirements

As noted above, the purpose of the proposed amendments is to modernize and simplify the Commission's disclosure requirements and provide consistent incorporation by reference and hyperlinking rules for investment companies and investment advisers. If adopted, the majority of the proposed amendments are expected to have an incremental effect on existing reporting, recordkeeping and other compliance burdens for all issuers, including small entities.[439] Many of the proposed amendments would simplify and streamline existing disclosure requirements in ways that are expected to reduce compliance burdens. Some of the proposed amendments, like those that impose new data tagging,[440] hyperlinking [441] or disclosure requirements [442] would increase compliance costs for registrants, although we do not expect these additional costs to be significant.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

We believe the proposed amendments would clarify, consolidate and simplify compliance and reporting requirements for small entities and other registrants. As discussed above, we believe the majority of the proposed amendments would simplify and streamline disclosure requirements in ways that are expected to reduce compliance burdens.[443] We do not believe that the proposed amendments would impose any significant new compliance obligations. Accordingly, we generally do not believe it is necessary to establish different compliance and reporting requirements or timetables or to exempt small entities from all or part of the proposed amendments. We note in this regard that the Commission's existing disclosure requirements provide for scaled disclosure requirements and other accommodations for small entities, and the proposed amendments would not alter these existing accommodations.

Finally, with respect to using performance rather than design standards, the proposed amendments generally use design rather than performance standards in order to promote uniform filing requirements for all registrants. In some instances, the proposed amendments would modernize and simplify existing design standards. For example, the proposed amendments to Item 303(a) would emphasize the flexibility currently available to registrants with respect to the form of MD&A presentation.[444] In other instances, the proposed amendments may result in additional flexibility when preparing disclosures. For example, proposed Item 601(a)(5) would expand registrants' ability to omit schedules and attachments that are not material to exhibits.[445] As another example, the proposed amendments to Item 102 would clarify that the threshold for disclosure about registrants' physical properties is based on materiality.[446]

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- how the proposed rule and form amendments can achieve their objective while lowering the burden on small entities;
- the number of small entity companies that may be affected by the proposed rule and form amendments;
- the existence or nature of the potential effects of the proposed amendments on small entity companies discussed in the analysis; and
- how to quantify the effects of the proposed amendments.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of that effect. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules themselves.

VII. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act of 1933, as amended, Sections 3(b), 12, 13, 14, 15, 16, 23(a), and 36 of the Securities Exchange Act of 1934, as amended, Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act of 1940, as amended, and Sections 204, 206A, 210, and 211 of the Investment Advisers Act of 1940, as amended.

List of Subjects in 17 CFR Parts 229, 230, 232, 239, 240, 249, 270, 274, and 275

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we are proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

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[438] This estimate is based on Commission-registered investment adviser responses to Form ADV, Item 5.F and Item 12.

[439] We recognize that the fixed costs of disclosure requirements typically constitute a higher percentage of revenues for smaller companies than for larger companies. However, the benefits of disclosure may be greater for smaller companies because information asymmetries between investors and managers of smaller companies are typically higher than for larger, more seasoned companies with a large following. *See, e.g.,* R. Frankel and X. Li, *Characteristics of a firm's information environment and the information asymmetry between insiders and outsiders,* 37 J. Acct. Econ. 229, 229–259 (June 2004). *See also,* L. Cheng, S. Liao, and H. Zhang, *The Commitment Effect versus Information Effect of Disclosure—Evidence from Smaller Reporting Companies,* 88 Acct. Rev. 1239, 1239–1263 (2013).

[440] *See, e.g., supra* Section 0 (Tagging Cover Page Data).

[441] See, e.g., *supra* Section 0 (Exhibit Hyperlinks and HTML format for Investment Companies).

[442] See e.g., *supra* Section II.D.1.c (Market for the Securities (Item 501(b)(4)).

[443] *See supra* Sections (Economic Analysis) and *IV* (Paperwork Reduction Act).

[444] *See supra* Section (Year-to-Year Comparisons (Instruction 1 to Item 303(a)).

[445] *See supra* Section (Schedules and Attachments to Exhibits).

[446] *See supra* Section (Description of Property).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

§ 229.10 [Amended].

■ 2. Remove and reserve paragraph (d) of § 229.10.

■ 3. Amend § 229.102 by revising the introductory text, Instruction 1 and Instruction 2 to read as follows:

§ 229.102 (Item 102) Description of property.

To the extent material, disclose the location and general character of the registrant's principal physical properties. In addition, identify the segment(s), as reported in the financial statements, that use the properties described. If any such property is not held in fee or is held subject to an encumbrance that is material to the registrant, so state and describe briefly how held.

Instructions to Item 102: 1. What is required is information that will reasonably inform investors as to the suitability, adequacy, productive capacity, and extent of utilization of the principal physical properties of the registrant and its subsidiaries, to the extent the described properties are material. A registrant should engage in a comprehensive consideration of the materiality of its properties. If appropriate, descriptions may be provided on a collective basis; detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and shall not be given.

2. Disclosures with respect to this item need only be provided to the extent the properties are material to the registrant. In determining materiality under this Item, the registrant should take into account both quantitative and qualitative factors. See Instruction 1 to Item 101 of Regulation S–K (§ 229.101).

* * * * *

■ 4. Add § 229.105 to read as follows:

§ 229.105 (Item 105) Risk factors.

Where appropriate, provide under the caption ''Risk Factors'' a discussion of the most significant factors that make an investment in the registrant or offering speculative or risky. This discussion must be concise and organized logically. Do not present risks that could apply generically to any registrant or any offering. Explain how the risk affects the registrant or the securities being offered. Set forth each risk factor under a subcaption that adequately describes the risk. If the risk factor discussion is included in a registration statement, it must immediately follow the summary section. If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on Rule 430A (§ 230.430A(a) of this chapter). The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

■ 5. Amend § 229.202 by revising Instruction 3 under ''Instructions to Item 202'' to read as follows:

§ 229.202 (Item 202) Description of registrant's securities.

* * * * *

3. Section 305(a)(2) of the Trust Indenture Act of 1939, U.S.C. 77aaa *et seq.,* as amended (''Trust Indenture Act''), shall not be deemed to require the inclusion in a registration statement, prospectus, or annual report on Form 10–K of any information not required by this Item or Item 601(b)(4)(vi) of this chapter.

* * * * *

■ 6. Amend § 229.303 by revising Instruction 1 under ''Instructions to paragraph 303(a)'' to read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

* * * * *

Instructions to paragraph 303(a): 1. The registrant's discussion and analysis shall be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion shall cover the periods covered by the financial statements included in the filing and the registrant may use any presentation that in the registrant's judgment enhances a reader's understanding. A smaller reporting company's discussion shall cover the two-year period required in Article 8 of Regulation S–X and may use any presentation that in the registrant's judgment enhances a reader's understanding. For registrants providing financial statements covering three years in a filing, discussion about the earliest year would not be required if (i) that discussion is not material to an understanding of the registrant's financial condition, changes in financial condition and results of operations and (ii) the registrant has filed its prior year Form 10–K on EDGAR containing management's discussion and analysis of the earliest of the three years included in the financial statements of the current filing. An emerging growth company, as defined in Rule 405 of the Securities Act (§ 230.405 of this chapter) or Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter), may provide the discussion required in paragraph (a) of this Item for its two most recent fiscal years if, pursuant to Section 7(a) of the Securities Act of 1933 (15 U.S.C 77g(a)), it provides audited financial statements for two years in a Securities Act registration statement for the initial public offering of the emerging growth company's common equity securities.

* * * * *

■ 7. Amend § 229.401 by removing Instruction 3 to paragraph (b) of Item 401and adding an Instruction to Item 401 to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

Instruction to Item 401. The information regarding executive officers called for by this Item need not be furnished in proxy or information statements prepared in accordance with Schedule 14A or Schedule 14C under the Exchange Act (§ 240.14a–101 and § 240.14c–101 of this chapter) if you are relying on General Instruction G of Form 10–K under the Exchange Act (§ 249.310 of this chapter), such information is furnished in a separate section captioned ''Information about our Executive Officers,'' and is included in Part I of your annual report on Form 10–K.

■ 8. Revise § 229.405 to read as follows:

§ 229.405 (Item 405) Compliance with Section 16(a) of the Exchange Act.

(a) *Reporting obligation.* Every registrant having a class of equity securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*) and every closed-end investment company registered under the

Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) must:

(1) Under the caption ''Delinquent Section 16(a) Reports,'' identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to Section 12 of the Exchange Act, or any other person subject to Section 16 of the Exchange Act with respect to the registrant because of the requirements of Section 30 of the Investment Company Act (''reporting person'') that failed to file on a timely basis reports required by Section 16(a) of the Exchange Act during the most recent fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(3) of this section, unless the registrant otherwise knows that no Form 5 is required.

Instruction 1 to paragraph (a) of Item 405. If no disclosure is required, registrants are encouraged to exclude the caption ''Delinquent Section 16(a) Reports.''

Instruction 2 to paragraph (a) of Item 405. The registrant is only required to disclose a failure to file timely once. For example, if in the most recently concluded fiscal year a reporting person filed a Form 4 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the registrant should disclose that late filing and transaction pursuant to this Item 405 with respect to the most recently concluded fiscal year, but not in material filed with respect to subsequent years.

(b) *Scope of the Inquiry.* In determining whether disclosure is required pursuant to paragraph (a), the registrant may rely only on the following:

(1) A review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto filed electronically with the Commission during the registrant's most recent fiscal year;

(2) A review of Forms 5 (17 CFR 249.105) and amendments thereto filed electronically with the Commission with respect to the registrant's most recent fiscal year; and

(3) Any written representation from the reporting person that no Form 5 is required. The registrant must maintain the representation in its records for two years, making a copy available to the Commission or its staff upon request.

■ 9. Amend § 229.407 by revising paragraphs (d)(3)(i)(B) and (g) to read as follows:

§ 229.407 (Item 407) Corporate governance.

* * * * *

(d) * * *

(3)(i) * * *

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the applicable requirements of the Public Company Accounting Oversight Board (''PCAOB'') and the Commission;

* * * * *

(g) *Smaller reporting companies and emerging growth companies.* (1) A registrant that qualifies as a ''smaller reporting company,'' as defined by § 229.10(f)(1), is not required to provide:

(A) The disclosure required in paragraph (d)(5) of this Item in its first annual report filed pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) following the effective date of its first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*); and

(B) The disclosure required by paragraphs (e)(4) and (e)(5) of this Item.

(2) A registrant that qualifies as an ''emerging growth company,'' as defined in Rule 405 of the Securities Act (§ 230.405 of this chapter) or Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter) , is not required to provide the disclosure required by paragraph (e)(5) of this Item.

* * * * *

■ 10. Amend § 229.501 by:

■ a. Revising the instruction under ''Instruction to paragraph 501(b)(1)'', Instruction 2 under ''Instructions to paragraph 501(b)(3)'', paragraph (b)(4) and paragraph (b)(10); and

■ b. Removing paragraph (b)(11) to read as follows:

§ 229.501 (Item 501) Forepart of Registration Statement and Outside Front Cover Page of Prospectus.

* * * * *

(b) * * *

(1) * * *

Instruction to paragraph 501(b)(1): If your name is the same as that of a company that is well known, include information to eliminate any possible confusion with the other company. If your name indicates a line of business in which you are not engaged or in which you are engaged only to a limited extent, include information to eliminate any misleading inference as to your business.

* * * * *

Instructions to paragraph 501(b)(3):

* * *

2. If it is impracticable to state the price to the public, explain the method by which the price is to be determined. Instead of explaining the method on the outside front cover page of the prospectus, you may state that the offering price will be determined by a particular method or formula that is described in the prospectus and include a cross-reference to the location of such disclosure in the prospectus, including the page number. Highlight the cross-reference by prominent type or in another manner. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to the market price, indicate the market and market price of the securities as of the latest practicable date.

* * * * *

(4) *Market for the securities.* The national securities exchange(s) where the securities being offered are listed. If the securities being offered are not listed on a national securities exchange, the principal United States market(s) where the registrant, through the engagement of a registered broker-dealer, has actively sought and achieved quotation. In each case, also disclose the corresponding trading symbol(s) for the securities on such market(s).

* * * * *

(10) *Prospectus ''Subject to Completion'' legend.*

(i) If you use the prospectus before the effective date of the registration statement or if you use Rule 430A [§ 230.430A of this chapter] to omit pricing information and the prospectus is used before you determine the public offering price, include a prominent statement that:

(A) The information in the prospectus will be amended or completed;

(B) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(C) The securities may not be sold until the registration statement becomes effective; and

(D) The prospectus is not an offer to sell the securities, and it is not soliciting an offer to buy the securities, in any state where offers or sales are not permitted.

(ii) The legend called for by paragraph (b)(10)(i) of this Item may be in the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the

registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(iii) Registrants may exclude the statement in paragraph (b)(i)(D) of this Item if the offering is not prohibited by state law.

* * * * *

§ 229.503 [Amended].

■ 11. Amend § 229.503 by removing ''risk factors'' from the section heading and removing and reserving paragraph (c).

§ 229.512 [Amended].

■ 12. Remove and reserve paragraphs (c), (d), (e), and (f) of § 229.512.

■ 13. Amend § 229.601 by:

■ a. Revising paragraph (a)(1);

■ b. Adding paragraphs (a)(5) and (a)(6);

■ c. Revising entry (b)(4) from the exhibit table in paragraph (a) to add a subsection (vi) titled ''Description of registrant's securities'' and to add an ''X'' under column 10–K;

■ d. Revising entry (21) from the exhibit table in paragraph (a) to read ''Subsidiaries of the registrant and entity identifiers '';

■ e. Revising entry (104) from the exhibit table in paragraph (a) to read ''Cover Page Interactive Data File'' and adding an ''X'' under columns 8–K, 10–Q and 10–K;

■ f. Adding paragraph (b)(4)(vi) and the instructions to paragraph (b)(4)(vi) and paragraph (b)(10)(iv);

■ g. Revising paragraphs (b)(2), (b)(10), (b)(13), (b)(21)(i), and (b)(99); and

■ h. Adding paragraph (b)(104) to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 411(c) (§ 230.411(c) of this chapter) under the Securities Act and Rule 12b–23(c) (§ 240.12b–23(c) of this chapter) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits required in the exhibit table must be filed as indicated, as part of the registration statement or report.

* * * * *

(5) Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed unless such schedules contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. In addition, the registrant must provide a copy of any omitted schedule to the Commission staff upon request.

(6) The registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (*e.g.,* disclosure of bank account numbers, social security numbers, home addresses and similar information).

* * * * *

(b) * * *

(2) *Plan of acquisition, reorganization, arrangement, liquidation, or succession.* Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation, or arrangement and any amendments thereto described in the statement or report.

* * * * *

(4) * * *

(vi) For each class of securities that is registered under Section 12 of the Exchange Act, provide the information required by Item 202(a)-(d) and (f) of Regulation S–K (§ 229.202 of this chapter), Description of registrant's securities.

* * * * *

Instruction 1 to paragraph (b)(4)(vi). A registrant is only required to provide the information called for by Item 601(b)(4)(vi) if it is filing an annual report under Exchange Act Section 13(a) or 15(d).

Instruction 2 to paragraph (b)(4)(vi). For purposes of Item 601(b)(4)(vi), all references in Item 202 to securities to be or being registered, offered, or sold will mean securities that are registered as of the end of the period covered by the report with which the exhibit is filed. In addition, for purposes of this Item, the disclosure will be required for classes of securities that have not been retired by the end of the period covered by the report.

Instruction 3 to paragraph (b)(4)(vi). The registrant may incorporate by reference to a prior annual report under Exchange Act Section 13(a) or 15(d) containing the disclosure required by Item 601(b)(4)(vi) of Regulation S–K, as applicable, so long as there has not been any change to the information called for by Item 202, (Description of the registrant's securities) since the filing date of the linked filing. Such hyperlink will be deemed to satisfy the requirements of Item 601(b)(4)(vi) for the current filing.

* * * * *

(10) *Material contracts.* (i) Every contract not made in the ordinary course of business that is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or report. In addition, for newly reporting registrants, every contract not made in the ordinary course of business that is material to the registrant and that was entered into not more than two years before the date on which such registrant:

(A) First files a registration statement or report; or

(B) completes a transaction that had the effect of causing it to cease being a public shell company.

The only contracts that need to be filed are those to which the registrant or a subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

* * * * *

(iv) The registrant may redact provisions or terms of exhibits required to be filed by paragraph (b)(10) of this Item if those provisions or terms are both (i) not material and (ii) competitively harmful to the registrant if publicly disclosed. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) competitively harmful to the registrant if publicly disclosed. The registrant also must indicate by brackets where the information is omitted from the filed version of the exhibit.

If requested by the Commission staff, the registrant must promptly provide an unredacted paper copy of the exhibit on a supplemental basis. The Commission staff also may request the registrant to provide its materiality and competitive harm analyses on a supplemental basis. Upon evaluation of the registrant's supplemental materials, the Commission staff may request the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's materiality and competitive harm analyses.

The registrant may request confidential treatment of the supplemental material submitted under paragraph (iv) of this Item pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission staff. After completing its review of the supplemental information, the Commission staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rules 418 or

12b–4 (§ 230.418 or 240.12b–4 of this chapter).

Instruction 1 to paragraph (b)(10) of Item 601: For purposes of paragraph (b)(10)(i) of this Item, a ''newly reporting registrant'' is (i) any registrant filing a registration statement that, at the time of such filing, is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, whether or not such registrant has ever previously been subject to the reporting requirements of Section 13(a) or 15(d), (ii) any registrant that has not filed an annual report since the revival of a previously suspended reporting obligation, and (iii) any registrant that (a) was a shell company, other than a business combination related shell company, as defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before completing a transaction that has the effect of causing it to cease being a shell company and (b) has not filed a registration statement or Form 8–K as required by Items 2.01 and 5.06 of that form, since the completion of such transaction. For example, newly reporting registrants would include (i) a registrant that is filing its first registration statement under the Securities Act or the Exchange Act, and (ii) a registrant that was a public shell company, other than a business combination related shell company, and completes a reverse merger transaction causing it to cease being a shell company.

Instruction 2 to paragraph (b)(10): With the exception of management contracts, in order to comply with paragraph (iii) above, registrants need only file copies of the various compensatory plans and need not file each individual director's or executive officer's personal agreement under the plans unless there are particular provisions in such personal agreements whose disclosure in an exhibit is necessary to an investor's understanding of that individual's compensation under the plan.

Instruction 3 to paragraph (b)(10): If a material contract is executed or becomes effective during the reporting period reflected by a Form 10–Q or Form 10–K, it must be filed as an exhibit to the Form 10–Q or Form 10–K filed for the corresponding period. See paragraph (a)(4) of this Item. With respect to quarterly reports on Form 10–Q, only those contracts executed or becoming effective during the most recent period reflected in the report must be filed.

* * * * *

(13) *Annual or quarterly report to security holders.* (i) The registrant's annual report to security holders for its last fiscal year or its quarterly report to security holders, if all or a portion thereof is incorporated by reference in the filing. Such report, except for those portions thereof that are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed ''filed'' as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate must be manually signed in one copy. *See* Rule 439 (§ 230.439 of this chapter).

(ii) Electronic filings. If all, or any portion, of the annual or quarterly report to security holders is incorporated by reference into any electronic filing, all, or such portion of the annual or quarterly report to security holders so incorporated, must be filed in electronic format as an exhibit to the filing.

* * * * *

(21) *Subsidiaries of the registrant and entity identifiers.* (i) List the following information for the registrant and each of its subsidiaries: The name, the legal entity identifier (if a legal entity identifier has been obtained), the state or other jurisdiction of incorporation or organization, and the names under which the entity does business. This list may be incorporated by reference from another filed document which includes a complete and accurate list. ''Legal entity identifier'' means, with respect to any registrant or its subsidiaries, the legal entity identifier as assigned by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

* * * * *

(99) *Additional exhibits.* (i) Any additional exhibits that the registrant may wish to file must be so marked as to indicate clearly the subject matters to which they refer.

(ii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by ''other methods'' than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10–Q or the Form 10–K, as appropriate, covering the period in which the earnings statement was released.

* * * * *

(104) *Cover Page Interactive Data File.* A Cover Page Interactive Data File (as defined in § 232.11 of this chapter) as required by Rule 406 of Regulation S–T (17 CFR 232.406), and in the manner provided by the EDGAR Filer Manual.

* * * * *

■ 14. Amend § 229.1100 by:

■ a. Revising Instruction 1 to paragraph (c)(1) of Item 1100; and

■ b. Redesignating instructions 2 through 5 to paragraph (c)(1) as ''Instruction 2 to paragraph (c)(1) of Item 1100.'', ''Instruction 3 to paragraph (c)(1) of Item 1100'', ''Instruction 4 to paragraph (c)(1) of Item 1100.'', and ''Instruction 5 to paragraph (c)(1) of Item 1100'' to read as follows:

§ 229.1100 (Item 1100) General.

* * * * *

Instruction 1 to paragraph (c)(1) of Item 1100. In addition to the conditions in paragraph (c)(1) of this section, any information incorporated by reference must comply with all applicable Commission rules pertaining to incorporation by reference, such as Rule 303 of Regulation S–T (§ 232.303 of this chapter), Rule 411 of Regulation C (§ 230.411 of this chapter), and Rule 12b–23 of Regulation 12B (§ 240.12b–23 of this chapter), except that for purposes of paragraph (c)(1), an asset-backed issuer may incorporate by reference to a second document that incorporates pertinent information by reference to a third document.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 15. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o,78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 16. Amend § 230.405 by adding in alphabetical order the definition of Sub-underwriter to read as follows:

§ 230.405 Definition of terms.

* * * * *

Sub-underwriter. The term *sub-underwriter* means a dealer that is participating as an underwriter in an offering by committing to purchase securities from a principal underwriter for the securities but is not itself in privity of contract with the issuer of the securities.

* * * * *

■ 17. Revise § 230.411 to read as follows:

§ 230.411 Incorporation by reference.

(a) *Prospectus.* Except as provided by this section, Item 1100(c) of Regulation AB (§ 229.1100(c) of this chapter) for registered offerings of asset-backed securities, or unless otherwise provided in the appropriate form, information must not be incorporated by reference into the prospectus. Where a summary or outline of the provisions of any document is required in the prospectus, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference. In any financial statements, incorporating by reference, or cross-referencing to, information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules.

(b) *Information not required in a prospectus.* Information may be incorporated by reference in answer, or partial answer, to any item of a registration statement that calls for information not required to be included in a prospectus. Except as provided in the Commission's rules, financial information required to be given in comparative form for two or more fiscal years or periods must not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given. In any financial statements, incorporating by reference, or cross-referencing to, information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules.

(c) *Exhibits.* Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may be incorporated by reference as an exhibit to any registration statement filed with the Commission by the same or any other person. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant must file with the reference a statement containing the text of such modification and the date thereof.

(d) *Hyperlinks.* Include an active hyperlink to information incorporated into a registration statement or prospectus by reference if such information is publicly available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') at the time the registration statement or prospectus is filed. For hyperlinking to exhibits, please refer to Item 601 of Regulation S–K (§ 229.601 of this chapter) or the appropriate form.

(e) *General.* Include an express statement clearly describing the specific location of the information you are incorporating by reference. The statement must identify the document where the information was originally filed or submitted and the location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Information must not be incorporated by reference in any case where such incorporation would render the disclosure incomplete, unclear, or confusing. For example, unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document.

■ 18. Revise § 230.491 to read as follows:

§ 230.491 Information to be furnished under paragraph (6) of Schedule B.

Any foreign government filing a registration statement pursuant to Schedule B of the act need state, in furnishing the information required by paragraph (6), the names and addresses only of principal underwriters, namely, underwriters in privity of contract with the registrant, provided they are designated as principal underwriters and a brief statement is made as to the discounts and commissions to be received by sub-underwriters or dealers.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 19. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 20. In § 232.11 in alphabetical order add the definition of Cover Page Interactive Data File in to read as follows:

§ 232.11 Definitions of terms used in Part 232.

* * * * *

Cover Page Interactive Data File. The term *Cover Page Interactive Data File* means the machine-readable computer code that presents in Inline XBRL electronic format the cover page information for specified forms as required by Rule 406 (§ 232.406 of this chapter).

Note to definition of Cover Page Interactive Data File: When a filing is submitted using Inline XBRL, if permitted or required and as provided by the EDGAR Filer Manual, a portion of the Cover Page Interactive Data File must be embedded into a form with the remainder submitted as an exhibit to the form.

* * * * *

■ 21. Revise the second sentence of paragraph (a) and the third sentence of paragraph (d) of § 232.102 to read as follows:

§ 232.102 Exhibits.

(a) * * * Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by Rule 411 under the Securities Act (§ 230.411 of this chapter), Rule 12b–23 under the Exchange Act (§ 240.12b–23 of this chapter), Rule 0–4 under the Investment Company Act (§ 270.0–4 of this chapter) or Rule 303 of Regulation S–T (§ 232.303). * * *

* * * * *

(d) * * * For electronic filings on Form S–6 (§ 239.16 of this chapter), Form N–14 (§ 239.23 of this chapter), Form F–10 (§ 239.40 of this chapter), Form 20–F (§ 249.220f of this chapter), Form N–5 (§ 274.5 of this chapter), Form N–1A (§ 274.11A of this chapter), Form N–2 (§ 274.11a–1 of this chapter), Form N–3 (§ 274.11b of this chapter), Form N–4 (§ 274.11c of this chapter), Form N–6 (§ 274.11d of this chapter), Form N–CSR (§ 274.128 of this chapter), or filings subject to Item 601 of Regulation S–K (§ 229.601 of this chapter), each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language or an exhibit that is filed with Form ABS–EE (§ 249.1401 of this chapter)) must include an active link to an exhibit that is filed with the document or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. * * *

* * * * *

■ 22. Amend § 232.105 by revising paragraph (d) and adding paragraph (e) as follows:

§ 232.105 Use of HTML and hyperlinks.

* * * * *

(d) Electronic filers submitting Form S–6 (§ 239.16 of this chapter), Form N–14 (§ 239.23 of this chapter), Form F–10 (§ 239.40 of this chapter), Form 20–F (§ 249.220f of this chapter), Form N–5 (§ 274.5 of this chapter), Form N–1A (§ 274.11A of this chapter), Form N–2 (§ 274.11a–1 of this chapter), Form N–3 (§ 274.11b of this chapter), Form N–4 (§ 274.11c of this chapter), Form N–6

(§ 274.11d of this chapter), Form N–CSR (§ 274.128 of this chapter), or a registration statement or report subject to Item 601 of Regulation S–K (§ 229.601 of this chapter), must submit such registration statement or report in HTML and each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language or an exhibit filed with Form ABS–EE (§ 249.1401 of this chapter)) must include an active link to an exhibit that is filed with the registration statement or report or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR, unless such exhibit is filed in paper pursuant to a temporary or continuing hardship exemption under Rules 201 or 202 of Regulation S–T (§ 232.201 or § 232.202) or pursuant to Rule 311 of Regulation S–T (§ 232.311).

Instructions to paragraph (d): (1) No hyperlink is required for any exhibit incorporated by reference that has not been filed with the Commission in electronic format.

(2) An electronic filer must correct an inaccurate or nonfunctioning link or hyperlink to an exhibit, in the case of a registration statement that is not yet effective, by filing an amendment to the registration statement containing the inaccurate or nonfunctioning link or hyperlink; or, in the case of a registration statement that has become effective or an Exchange Act report, an electronic filer must correct the inaccurate or nonfunctioning link or hyperlink in the next Exchange Act periodic report that requires, or includes, an exhibit pursuant to Item 601 of Regulation S–K (§ 229.601 of this chapter), Form N–CSR (§ 274.128 of this chapter), or, in the case of a foreign private issuer (as defined in § 229.405 of this chapter), Form 20–F (§ 249.220f of this chapter) or Form F–10 (§ 239.40 of this chapter). In the case of a registration statement on Form S–6 (§ 239.16 of this chapter), Form N–14 (§ 239.23 of this chapter), Form N–5 (§ 274.5 of this chapter), Form N–1A (§ 274.11A of this chapter), Form N–2 (§ 274.11a–1 of this chapter), Form N–3 (§ 274.11b of this chapter), Form N–4 (§ 274.11c of this chapter), or Form N–6 (§ 274.11d of this chapter) that has become effective, an electronic filer must correct an inaccurate or nonfunctioning link or hyperlink in the next post-effective amendment, if any, to the registration statement. Alternatively, an electronic filer may correct an inaccurate or nonfunctioning link or hyperlink in a registration statement that has become effective by filing a post-effective amendment to the registration statement.

(e) Except for exhibits, which are covered by paragraph (d) of this section, electronic filers that are incorporating information by reference pursuant to Rule 411 under the Securities Act (§ 230.411 of this chapter), Rule 12b–23 under the Exchange Act (§ 240.12b–23 of this chapter), or Rule 0–4 under the Investment Company Act (§ 270.0–4 of this chapter) must submit such registration statement or report in HTML and must include an active hyperlink to such incorporated information when required by those rules. A hyperlink is not required if the incorporated information is filed in paper pursuant to a temporary or continuing hardship exemption under Rules 201 or 202 of Regulation S–T (§ 232.201 or § 232.202) or pursuant to Rule 311 of Regulation S–T (§ 232.311).

Instruction 1 to paragraph (e) of Rule 105. No hyperlink is required for any information incorporated by reference that has not been filed with the Commission in electronic format.

Instruction 2 to paragraph (e) of Rule 105. In the case of a registration statement that is not yet effective, an electronic filer must correct an inaccurate or nonfunctioning hyperlink by filing an amendment to such registration statement.

* * * * *

■ 23. Revise the first sentence of paragraph (b) of § 232.303 to read as follows:

§ 232.303 Incorporation by reference.

* * * * *

(b) If a filer incorporates by reference into an electronic filing any portion of an annual or quarterly report to security holders, it must also file the portion of the annual or quarterly report to security holders in electronic format as an exhibit to the filing, as required by Regulation S–K Item 601(b)(13) (§ 229.601(b)(13) of this chapter). * * *

■ 24. Add § 232.406 to read as follows:

* * * * *

§ 232.406 Cover Page XBRL Data Tagging.

Electronic filers submitting Forms 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), 8–K (§ 249.308 of this chapter), 20–F (§ 249.220f of this chapter) and 40–F (§ 249.240f of this chapter) must tag in Inline XBRL electronic format, in the manner provided by the EDGAR Filer Manual, all of the information provided by the electronic filer on the cover page of these forms.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 25. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d),78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 26. Amend Form S–1 (referenced in § 239.11) by revising the last sentence of Instruction V. under ''General Instructions'', the first paragraph of Instruction VII. under ''General Instructions'' and Item 3 to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

V. Registration of Additional Securities

* * * *See* Rule 439(b) under the Securities Act (17 CFR 230.439(b)).

* * * * *

VII. Eligibility To Use Incorporation by Reference

If a registrant meets the following requirements in paragraphs A–F immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Items 3 through 11 of this Form in accordance with Item 11A and Item 12 of this Form. Notwithstanding the foregoing, in the financial statements, incorporating by reference or cross-referencing to information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules. * * *

* * * * *

Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.

Furnish the information required by Items 105 and 503 of Regulation S–K

(§ 229.105 and § 229.503 of this chapter).

* * * * *

■ 27. Amend Form S–3 (referenced in § 239.13) by revising the last sentence of Instruction IV.A. under ''General Instructions'', Item 3, and paragraph (d) of Item 12 to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

IV. Registration of Additional Securities and Additional Classes of Securities

A. Registration of Additional Securities Pursuant to Rule 462(b).

* * * *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.

Furnish the information required by Items 105 and 503 of Regulation S–K (§ 229.105 and § 229.503 of this chapter).

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) Any information required in the prospectus in response to Item 3 through Item 11 of this Form may be included in the prospectus through documents filed pursuant to Section 13(a), 14, or 15(d) of the Exchange Act that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement. Notwithstanding the foregoing, in the financial statements, incorporating by reference or cross-referencing to information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules.

* * * * *

■ 28. Amend Form S–6 (referenced in § 239.16) by revising ''Instructions as to Exhibits'' to add a paragraph to read as follows:

Note: The text of Form S–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–6

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

* * * * *

■ 29. Amend Form S–11 (referenced in § 239.18) by revising the last sentence of Instruction G. under ''General Instructions'', the first paragraph of instruction H. under ''General Instructions'' and Item 3(a) to read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–11

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

GENERAL INSTRUCTIONS

* * * * *

G. Registration of Additional Securities

* * * Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

H. Eligibility to Use Incorporation by Reference

If a registrant meets the following requirements in paragraphs 1–6 immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Items 3 through 28 of this Form in accordance with Item 28A and Item 29 of this Form. Notwithstanding the foregoing, in the financial statements, incorporating by reference or cross-referencing to information outside of the financial statement is not permitted unless otherwise specifically permitted or required by the Commission's rules. * * *

* * * * *

Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.

(a) Furnish the information required by Items 105 and 503 of Regulation S–K (§ 229.105 and § 229.503 of this chapter).

* * * * *

■ 30. Amend Form N–14 (referenced in § 239.23) by:

■ a. Revising the third paragraph of General Instruction G; and

■ b. Revising the Instruction to Item 16 to add a paragraph to read as follows:

Note: The text of Form N–14 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–14

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Incorporation by Reference and Delivery of Prospectuses or Reports Filed with the Commission

* * * * *

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus) and rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents).

* * * * *

Item 16. Exhibits

* * * * *

Instruction:

* * * * *

Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

* * * * *

■ 31. Amend Form S–4 (referenced in § 239.25) by revising the last sentence of Instruction K. under ''General

Instructions'' and the first sentence of Item 3 to read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

K. Registration of Additional Securities.

* * * Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information.

Provide in the forepart of the prospectus a summary containing the information required by Items 105 and 503 of Regulation S–K (§ 229.105 and § 229.503 of this chapter) and the following:

* * * * *

■ 32. Amend Form F–1 (referenced in § 239.31) by revising the last sentence of Instruction V. under ''General Instructions'', the first paragraph of instruction VI. under ''General Instructions'' and Item 3 to read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

V. Registration of Additional Securities

* * * *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

VI. Eligibility to Use Incorporation by Reference

If a registrant meets the following requirements immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Item 3 and Item 4 of this Form in accordance with Item 4A and Item 5 of this Form. Notwithstanding the foregoing, in the financial statements, incorporating by reference or cross-referencing to information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules.

* * * * *

Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.

Furnish the information required by Items 105 and 503 of Regulation S–K (§ 229.105 and § 229.503 of this chapter).

* * * * *

■ 33. Amend Form F–3 (referenced in § 239.33) by revising the last sentence of Instruction IV.A. under ''General Instructions'' and Item 3 to read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

IV. Registration of Additional Securities and Additional Classes of Securities

A. Registration of Additional Securities Pursuant to Rule 462(b).

* * * *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.

Furnish the information required by Items 105 and 503 of Regulation S–K (§ 229.105 and § 229.503 of this chapter).

* * * * *

■ 34. Amend Form F–4 (referenced in 239.34) by revising the last sentence of Instruction H. under ''General Instructions'' and Item 3 to read as follows:

Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

H. * * * *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information.

Provide in the forepart of the prospectus a summary containing the information required by Items 105 and 503 of Regulation S–K (§ 229.105 and § 229.503 of this chapter) and the following:

* * * * *

■ 35. Revise Item 3 of Form F–7 (referenced in § 239.37) to read as follows:

Note: The text of Form F–7 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–7

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

* * * * *

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b)

under the Exchange Act. For information that you are incorporating by reference, identify the document where the information was originally filed or submitted and the specific location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document. If any information is incorporated by reference into the prospectus, the prospectus must provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

* * * * *

■ 36. Revise Item 3 of Form F–8 (referenced in § 239.38) to read as follows:

Note: The text of Form F–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

* * * * *

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. For information that you are incorporating by reference, identify the document where the information was originally filed or submitted and the specific location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document. If any information is incorporated by reference into the prospectus, the prospectus must provide the name, address, and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

* * * * *

■ 37. Revise Item 4 of Form F–10 (referenced in § 239.40) to read as follows:

Note: The text of Form F–10 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–10

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

* * * * *

Item 4. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. For information that you are incorporating by reference, identify the document where the information was originally filed or submitted and the specific location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document. If any information is incorporated by reference into the prospectus, the prospectus must provide the name, address, and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

* * * * *

■ 38. Revise Item 3 of Form F–80 (referenced in § 239.41) to read as follows:

Note: The text of Form F–80 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM F–80

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

* * * * *

Item 3 Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. For information that you are incorporating by reference, identify the document where the information was originally filed or submitted and the specific location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document. If any information is incorporated by reference into the prospectus, the prospectus must provide the name, address, and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

* * * * *

■ 39. Amend Form SF–1 (referenced in § 239.44) by revising the last sentence of Instruction III. under ''General Instructions'' and the last sentence of Item 2 to read as follows:

Note: The text of Form SF–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM SF–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

III. Registration of Additional Securities

* * * *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Furnish the information required by Items 105 and 503 of Regulation S–K (17 CFR 229.105 and 17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

* * * * *

■ 40. Amend Form SF–3 (referenced in § 239.45) by revising the last sentence of Instruction III. under ''General Instructions'' and the last sentence of Item 2 to read as follows:

Note: The text of Form SF–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM SF–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

III. Registration of Additional Securities Pursuant to Rule 462(b).

* * * *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Furnish the information required by Items 105 and 503 of Regulation S–K (17 CFR 229.105 and 17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 41. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*-4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 42. Revise § 240.12b–13 to read as follows:

§ 240.12b–13 Preparation of statement or report.

Except as provided by the appropriate form, the statement or report must contain the numbers and captions of all items of such form. The text of the items may be omitted if the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or instructions thereto. Where any item requires information to be given in tabular form, it must be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, must be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect must be made.

■ 43. Revise § 240.12b–23 to read as follows:

§ 240.12b–23 Incorporation by reference.

(a) *Registration statement or report.* Except as provided by this section or in the appropriate form, information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report.

(b) *Financial information.* Except as provided in the Commission's rules, financial information required to be given in comparative form for two or more fiscal years or periods must not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given. In the financial statements, incorporating by reference, or cross-referencing to, information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the Commission's rules.

(c) *Exhibits.* Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may be incorporated by reference as an exhibit to any statement or report filed with the Commission by the same or any other person. Any document or part thereof filed with an exchange pursuant to the Act may be incorporated by reference as an exhibit to any statement or report filed with the exchange by the same or any other person. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant must file with the reference a statement containing the text of any such modification and the date thereof.

(d) *Hyperlinks.* You must include an active hyperlink to information incorporated into a registration statement or report by reference if such information is publicly available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') at the time the registration statement or form is filed. For hyperlinking to exhibits, please refer to Item 601 of Regulation S–K (§ 229.601 of this chapter) or the appropriate form.

(e) *General.* Include an express statement clearly describing the specific location of the information you are incorporating by reference. The statement must identify the document where the information was originally filed or submitted and the location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Information must not be incorporated by reference in any case where such incorporation would render the disclosure incomplete, unclear, or confusing. For example, unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document.

§ 240.12b–32 [Removed and reserved].

■ 44. Remove and reserve § 240.12b–32.

■ 45. Revise the first sentence of Note D.1 of § 240.14a–101 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

D. * * *

1. Disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to

such disclosure by reference to a third document. * * *

* * * * *

■ 46. Remove and reserve paragraph (e) of § 240.16a–3.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 47. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

■ 48. Remove and reserve paragraph (c) of General Instruction 3 to Form 3 (referenced in § 249.103).

■ 49. Remove and reserve paragraph (c) of General Instruction 2 to Form 4 (referenced in § 249.104).

■ 50. Remove and reserve paragraph (c) of General Instruction 2 to Form 5 (referenced in § 249.105).

■ 51. Amend Form 8–A (referenced in § 249.208a) by revising the Instructions as to Exhibits to read as follows:

Note: The text of Form 8–A does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8–A

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

INSTRUCTIONS FOR EXHIBITS

If the securities to be registered on this form are to be registered on an exchange on which other securities of the registrant are registered, or are to be registered pursuant to Section 12(g) of the Act, copies of all constituent instruments defining the rights of the holders of each class of such securities, including any contracts or other documents which limit or qualify the rights of such holders, must be filed as exhibits with each copy of the registration statement filed with the Commission or with an exchange, subject to Rule 12b–23(c) regarding incorporation of exhibits by reference.

■ 52. Amend Form 10 (referenced in 249.210) by revising the first sentence in Item 1A and Instruction C(a) under ''General Instructions'' to read as follows:

Note: The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

INFORMATION REQUIRED IN REGISTRATION STATEMENT

* * * * *

Item 1A. Risk Factors.

Set forth, under the caption ''Risk Factors,'' where appropriate, the risk factors described in Item 105 of Regulation S–K (§ 229.105 of this chapter) applicable to the registrant.

* * *

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Registration Statement.

(a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the registration statement on paper meeting the requirements of Rule 12b–12 [17 CFR 240.12b–12]. The numbers or captions of items are not required unless expressly required by this form or the referenced disclosure requirements. The text of the items may be omitted. Otherwise, the answers to the items must be prepared in the manner specified in Rule 12b–13 [17 CFR 240.12b–13].

* * * * *

■ 53. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Adding a field to the cover page to include trading symbol(s);

■ b. Revising Instruction C(a) under ''General Instructions'';

■ c. Adding Instruction 6 under ''Instructions to Item 5'';

■ d. Revising Instruction 1(b) under ''Instructions to Item 10'';

■ e. Revising Instructions 1 and 2 under ''Instructions to Item 12'';

■ f. Revising the introductory text, Instruction 4(a) and Instruction 8 and adding Instructions 2(d) and 104 under ''Instructions As To Exhibits'' to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 20–F

* * * * *

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class	Trading symbol(s)	Name of each exchange on which registered

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. How to Prepare Registration Statements and Reports on This Form.

(a) Do not use this Form as a blank form to be filled in; use it only as a guide in the preparation of the registration statement or annual report. General Instruction E states which items must be responded to in a registration statement and which items must be responded to in an annual report. The number or captions of items are not required unless expressly required by this form. You may also omit the text following each caption in this Form, which describes what must be disclosed under each item. Omit the text of all instructions in this Form. If an item is inapplicable or the answer to the item is in the negative, respond to the item by making a statement to that effect.

* * * * *

Item 5. Operating and Financial Review and Prospects

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Instructions to Item 5:

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6. Generally, the discussion shall cover the periods covered by the financial statements and the registrant may use any format that in the registrant's judgment enhances a reader's understanding.

For registrants providing financial statements covering three years in a filing, disclosure about the earliest year would not be required if (i) that disclosure is not material to an understanding of the registrant's financial condition, changes in financial condition and results of operations and (ii) the registrant has filed its prior year Form 20–F on EDGAR containing an Operating and Financial Review and Prospects discussion of the earliest of the three years included in the financial statements of the current filing.

* * * * *

Item 10. Additional Information

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Instructions to Item 10:

* * * * *

1 * * *

(b) If the information called for by Item 10.B has been reported previously in a registration statement on Form 20-F or a registration statement filed under the Securities Act and has not changed, you may incorporate that information by a specific reference in the annual report to the previous registration statement or, to the extent that this information has been provided in the exhibit required by instruction 2(d) of the Instructions as to Exhibits, you may refer to the exhibit for this information.

* * * * *

Item 12. Description of Securities Other than Equity Securities

* * * * *

Instructions to Item 12:

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1. If you are using the form as an annual report, provide the information required by Item 12.D.3 and Item 12.D.4 under this Item of your annual report and provide the remainder of the information required by this Item in an exhibit to such report pursuant to paragraph 2(d) of Instructions as to Exhibits.

2. You do not need to include any information in a registration statement, prospectus, or annual report on Form 20–F in response to Item 305(a)(2) of the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.,* as amended, if the information is not otherwise required by this Item or Instruction 2(d) under Instructions as to Exhibits of this Form.

INSTRUCTIONS AS TO EXHIBITS

File the exhibits listed below as part of an Exchange Act registration statement or report. Exchange Act Rule 12b–23(c) explains the circumstances in which you may incorporate exhibits by reference. Exchange Act Rule 24b–2 explains the procedure to be followed in requesting confidential treatment of information required to be filed.

Previously filed exhibits may be incorporated by reference. If any previously filed exhibits have been amended or modified, file copies of the amendment or modification or copies of the entire exhibit as amended or modified.

If the Form 20–F registration statement or annual report requires the inclusion, as an exhibit or attachment, of a document that is in a foreign language, you must provide instead either an English translation or an English summary of the foreign language document in accordance with Exchange Act Rule 12b–12(d) (17 CFR 240.12b–12(d)) for both electronic and paper filings. You may submit a copy of the unabridged foreign language document along with the English translation or summary as permitted by Regulation S–T Rule 306(b) (17 CFR 232.306(b)) for electronic filings or by Exchange Act Rule 12b–12(d)(4) (17 CFR 240.12b–12(d) (4)) for paper filings.

Include an exhibit index in each registration statement or report you file, immediately preceding the exhibits you are filing. The exhibit index must list each exhibit according to the number assigned to it below. If an exhibit is incorporated by reference, note that fact in the exhibit index. For paper filings, the pages of the manually signed original registration statement should be numbered in sequence, and the exhibit index should give the page number in the sequential numbering system where each exhibit can be found.

Schedules (or similar attachments) to the exhibits required by this Form 20–F are not required to be filed unless such schedules contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. In addition, the registrant must provide a copy of any omitted schedule to the Commission staff upon request.

The registrant may redact information from exhibits required to be filed by this Form 20–F if disclosure of that that information would constitute a clearly unwarranted invasion of personal privacy (*e.g.,* disclosure of bank account numbers, social security numbers, home addresses and similar information). The registrant is not required to undertake or provide to the Commission upon request a materiality or competitive harm analysis of this redacted information.

* * * * *

2 * * *

(d) If a registrant is filing an annual report under Exchange Act Section 13(a) or 15(d), the registrant must provide as an exhibit a description of the rights of each class of securities that is registered under Section 12 of the Exchange Act as of the end of the period covered by the report with which the exhibit is filed. The description must include information for the securities comparable to that required by Item 9.A.3, A.5, A.6, and A.7, Item 10.B.3, B.4, B.6, B.7, B.8, B.9, and B.10, and Item 12.A, 12.B, 12.C, and 12.D.1 and 12.D.2 of Form 20–F (collectively, the ''Description of Securities''). However, for purposes of this paragraph 2(d), all references in those Items to securities to be or being registered, offered or sold will mean securities that are registered as of the end of the period covered by the report with which the exhibit is filed. In addition, for purposes of this Item, the disclosure will be required for classes of securities that have not been retired by the end of the period covered by the report. A registrant may incorporate by reference and provide an active hyperlink to a prior periodic filing containing the disclosure required by this paragraph 2(d) so long as there has not been any change to the information called for by the Description of Securities since the filing date of the linked filing. Such hyperlink will be deemed to satisfy the requirements of this paragraph 2(d) for the current filing.

* * * * *

4.(a) Every contract not made in the ordinary course of business that is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or report. In addition, for newly reporting registrants, every contract not made in the ordinary course of business that is material to the registrant and that was entered into not more than two years before the date on which such registrant:

(i) first files a registration statement or report; or

(ii) completes a transaction that had the effect of causing it to cease being a public shell company.

The only contracts that must be filed are those to which the registrant or a subsidiary of the registrant is a party or

has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

The registrant may redact provisions or terms of exhibits required to be filed by this Form 20–F if those provisions or terms are both (i) not material and (ii) competitively harmful to the registrant if publicly disclosed. If it does so, the registrant should mark the exhibit or exhibits to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both (i) not material and (ii) competitively harmful to the registrant if publicly disclosed. The registrant also must indicate by brackets where the information is omitted from the filed version of the exhibit.

If requested by the Commission staff, the registrant must provide an unredacted paper copy of the exhibit on a supplemental basis. The Commission staff also may request the registrant to provide its materiality and competitive harm analyses on a supplemental basis. Upon evaluation of the registrant's supplemental materials, the Commission staff may request the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's materiality and competitive harm analyses.

The registrant may request confidential treatment of the supplemental material submitted to the Commission or the staff pursuant to Rule 83 (17 CFR 200.83) while it is in the possession of the Commission staff. After reviewing the supplemental information, the Commission staff will return or destroy it at the request of the registrant, if the registrant complies with the procedures outlined in Rules 418 or 12b–4 (17 CFR 230.418 or 17 CFR 240.12b–4).

Note: A ''newly reporting registrant'' is (i) any registrant filing a registration statement that, at the time of such filing, is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, whether or not such registrant has ever previously been subject to the reporting requirements of Section 13(a) or 15(d), (ii) any registrant that has not filed an annual report since the revival of a previously suspended reporting obligation, and (iii) any registrant that (a) was a shell company, other than a business combination related shell company, as defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before completing a transaction that has the effect of causing it to cease being a shell company and (b) has not filed a Form 20–F since the completion of such transaction. For example, newly reporting registrants would include (i) a registrant that is filing its first registration statement under the Securities Act or the Exchange Act, and (ii) a registrant that was a public shell company, other than a business combination related shell company, and completes a reverse merger transaction causing it to cease being a shell company.

* * * * *

8. List the following information for the registrant and each of its subsidiaries: the name, the legal entity identifier (if any), the state or other jurisdiction of incorporation or organization, and the names under which the entity does business. This list may be incorporated by reference from another filed document which includes a complete and accurate list. ''Legal entity identifier'' means, with respect to any registrant or its subsidiaries, the legal entity identifier as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation. You may omit the names of subsidiaries that, in the aggregate, would not be a ''significant subsidiary'' as defined in rule 1–02(w) of Regulation S–X as of the end of the year covered by the report. You may omit the names of multiple wholly owned subsidiaries carrying on the same line of business, such as chain stores or service stations, if you give the name of the immediate parent company, the line of business and the number of omitted subsidiaries broken down by U.S. and foreign operations.

* * * * *

102 and 103 [Reserved]

104. *Cover Page Interactive Data File.* If the Form 20–F is being used as an annual report, a Cover Page Interactive Data File (as defined in 17 CFR 232.11) as required by Rule 406 of Regulation S–T [17 CFR 232.406], and in the manner provided by the EDGAR Filer Manual.

■ 54. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Adding a field to the cover page to include trading symbol(s); and

■ b. Adding paragraph B.17 under ''General Instructions'' to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 40–F

* * * * *

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class	Trading symbol(s)	Name of each exchange on which registered

* * * * *

B. Information To Be Filed on this Form

* * * * *

(17) Cover Page Interactive Data File. If the Form 40–F is being used as an annual report, a Cover Page Interactive Data File (as defined in 17 CFR 232.11) as required by Rule 406 of Regulation S–T [17 CFR 232.406], in the manner provided by the EDGAR Filer Manual and listed as exhibit 104.

* * * * *

■ 55. Amend Form 8–K (referenced in § 249.308) by adding a field to the cover page for securities registered pursuant to Section 12(b) of the Exchange Act, the title of each class of such securities, trading symbol(s) and name of each exchange on which registered:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8–K

* * * * *

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered

* * * * *

■ 56. Amend Form 10–Q (referenced in § 249.308a) by adding a field to the cover page for securities registered pursuant to Section 12(b) of the Exchange Act, the title of each class of such securities, trading symbol(s) and name of each exchange on which registered:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–Q

* * * * *

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered

* * * * *

■ 57. Amend Form 10–K (referenced in § 249.310) by:

■ a. Revising Instruction (C)(1) and the last sentence of Instruction (G)(3) under ''General Instructions'', the first sentence in Item 1A, and paragraph (a) under ''Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act'';

■ b. Removing the second sentence of Instruction (G)(4) under ''General Instructions'', the checkbox that relates to disclosure under Item 405, and the instruction to Item 10; and

■ c. Adding a field to the cover page to include trading symbol(s) to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Report.

(1) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12. Except as provided in this instruction and General Instruction G, the answers to the items must be prepared in the manner specified in Rule 12b–13. The numbers or captions of items are not required unless expressly required by this form or the referenced disclosure requirements.

* * * * *

G. Information to be Incorporated by Reference.

* * * * *

(3) * * * See the Instruction to Item 401 of Regulation S–K (§ 229.401 of this chapter).

* * * * *

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered

* * * * *

Item 1A. Risk Factors. Set forth, under the caption ''Risk Factors,'' where appropriate, the risk factors described in Item 105 of Regulation S–K (§ 229.105 of this chapter) applicable to the registrant.

* * *

* * * * *

Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference, every registrant which files an annual report on this Form pursuant to Section 15(d) of the Act must furnish to the Commission for its information, at the time of filing its report on this Form, four copies of the following: * * *

* * * * *

■ 58. Amend Form 10–D (referenced in § 249.312 of this chapter) by:

■ a. Removing and reserving General Instruction D(2)(a); and

■ b. Revising General Instruction D(2)(d) to read as follows:

Note: The text of Form 10–D does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–D

ASSET–BACKED ISSUER DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

* * * * *

(d) Exchange Act Rules 12b–23 (17 CFR 240.12b–23) (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Act).

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1934

■ 59. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 60. Revise § 270.0–4 to read as follows:

§ 270.0–4 Incorporation by reference.

(a) *Registration statements and reports.* Except as provided by this section or in the appropriate form, information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report. Where an item requires a summary or outline of the provisions of any document, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Financial information.* Except as provided in the Commission's rules, financial information required to be given in comparative form for two or more fiscal years or periods must not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given. In the financial statements, incorporating by reference, or cross-referencing to, information provided pursuant to the non-financial information disclosure requirements is not permitted unless otherwise specifically permitted or required by the Commission's rules.

(c) *Exhibits.* Any document or part thereof, including any financial statement or part thereof, filed with the Commission pursuant to any Act administered by the Commission may be incorporated by reference as an exhibit to any registration statement, application, or report filed with the Commission by the same or any other person. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant must file with the reference a statement containing the text of any such modification and the date thereof.

(d) *Hyperlinks.* Include an active hyperlink to information incorporated into a registration statement, application, or report by reference if such information is publicly available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') at the time the registration statement, application, or report is filed. For hyperlinking to exhibits, please refer to the appropriate form.

(e) *General.* Include an express statement clearly describing the specific location of the information you are incorporating by reference. The statement must identify the document where the information was originally filed or submitted and the location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Information must not be incorporated by reference in any case where such incorporation would render the disclosure incomplete, unclear, or confusing. For example, unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document.

§ 270.8b–23 [Removed and reserved].

■ 61. Remove and reserve § 270.8b–23.

§ 270.8b–24 [Removed and reserved].

■ 62. Remove and reserve § 270.8b–24.

§ 270.8b–32 [Removed and reserved].

■ 63. Remove and reserve § 270.8b–32.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1934

■ 64. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78(o)(d), 80a–8, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 65. Amend Form N–5 (referenced in § 274.5 of this chapter) by revising ''Instructions as to Exhibits'' to add a paragraph to read as follows:

Note: The text of Form N–5 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–5

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

* * * * *

■ 66. Amend Form N–1A (referenced in § 274.11A of this chapter) by:

■ a. Revising General Instruction D.2; and

■ b. Revising the Instruction to Item 28 to read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–1A

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GENERAL INSTRUCTIONS

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D. Incorporation by Reference

* * * * *

2. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0–4 [17 CFR 270.0–4] (additional rules on incorporation by reference for Funds).

* * * * *

Item 28. Exhibits

* * * * *

Instruction

Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed

on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

A Fund that is a Feeder Fund also must file a copy of all codes of ethics applicable to the Master Fund.

* * * * *

■ 67. Amend Form N–2 (referenced in § 274.11a–1 of this chapter) by:
■ a. Revising General Instruction F; and
■ b. Revising the Instructions to Item 25.2 to add Instruction 4 to read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–2

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GENERAL INSTRUCTIONS

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F. Incorporation by Reference

Incorporation by reference permits a Registrant to include documents and exhibits filed previously with the Commission as part of the registration statement by making reference to where, and under what designation, these documents can be found in previous filings. A Registrant may incorporate all or part of the Statement of Additional Information (the ''SAI'') into the prospectus delivered to investors without physically delivering the SAI with the prospectus, so long as the SAI is available to investors upon request at no charge and any information or documents incorporated by reference into the SAI are provided along with the SAI, except to the extent provided by paragraph F.3 below.

In general, a Registrant may incorporate by reference, in response to any item of Form N–2 not required to be included in the prospectus, any information contained elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

A Registrant may incorporate by reference into the prospectus or the SAI in response to Item 4.1 or 24 of this form the information contained in Form N–CSR [17 CFR 249.331 and 274.128] or any report to shareholders meeting the requirements of Section 30(e) of the 1940 Act [15 U.S.C. 80a–29(e)] and Rule 30e–1 [17 CFR 270.30e–1] thereunder (and a Registrant that has elected to be regulated as a business development company may so incorporate into Items 4.2, 8.6.c, or 24 of this form the information contained in its annual report under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (the ''Exchange Act'')), provided:

1. The material incorporated by reference is prepared in accordance with, and covers the periods specified by, this form.

2. The Registrant states in the prospectus or the SAI, at the place where the information required by Items 4.1, 4.2, 8.6.c, or 24 of this form would normally appear, that the information is incorporated by reference from a report to shareholders or a report on Form N–CSR. (The Registrant also may describe briefly, in either the prospectus, the SAI, or Part C of the registration statement (in response to Item 25.1) those portions of the report to shareholders or report on Form N–CSR that are not incorporated by reference and are not a part of the registration statement.)

3. The material incorporated by reference is provided with the prospectus and/or the SAI to each person to whom the prospectus and/or the SAI is sent or given, unless the person holds securities of the Registrant and otherwise has received a copy of the material. (The Registrant must state in the prospectus and/or the SAI that it will furnish, without charge, a copy of such material on request and provide the name, address, and telephone number of the person to contact.)

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0–4 [17 CFR 270.0–4] (additional rules on incorporation by reference for investment companies).

* * * * *

Item 25. Financial Statements and Exhibits

* * * * *

2. Exhibits:

* * * * *

Instructions

* * * * *

4. Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

* * * * *

■ 68. Amend Form N–3 (referenced in § 274.11b of this chapter) by:
■ a. Revising General Instruction G; and
■ b. Revising the Instructions to Item 29(b) to add Instruction 3 to read as follows:

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–3

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GENERAL INSTRUCTIONS

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G. Incorporation by Reference

A Registrant may, at its discretion, incorporate all or part of the Statement of Additional Information into the prospectus, without physically delivering the Statement of Additional Information to investors with the prospectus. But the Statement of Additional Information must be available to the investor upon request at no charge and any information or documents incorporated by reference into the Statement of Additional Information must be provided along with the Statement of Additional Information.

In general, a Registrant may incorporate by reference, in the answer to any item of Form N–3 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports led with the Commission.

Subject to these rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to Items 4(a) or 28 of Form N–3 the information in Form N–CSR [17 CFR 249.331 and 274.128] or any report to contract owners meeting the requirements of Section 30(e) of the 1940 Act [15 U.S.C. 80a–29(e)] and Rule 30e–1 [17 CFR 270.30e–1] provided:

1. The material incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form.

2. The Registrant states in the prospectus or the Statement of Additional Information, at the place where the information would normally appear, that the information is incorporated by reference from a report to security holders or a report on Form N–CSR. The Registrant may also describe, in either the prospectus, the Statement of Additional Information, or Part C of the Registration Statement (in response to Item 29(a)), any parts of the report to security holders or the report on Form N–CSR that are not

incorporated by reference and are not a part of the Registration Statement.

3. The material incorporated by reference is provided with the prospectus or the Statement of Additional Information to each person to whom the prospectus or the Statement of Additional Information is given, unless the person holds securities of the Registrant and otherwise has received a copy of the material. However, Registrant must state in the prospectus or the Statement of Additional Information that it will furnish, without charge, another copy of such report on request and the name, address, and telephone number of the person to contact.

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0–4 [17 CFR 270.0–4] (additional rules on incorporation by reference for investment companies).

* * * * *

Item 29. Financial Statements and Exhibits

* * * * *

(b) Exhibits:

* * * * *

Instructions

* * * * *

3. Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

* * * * *

■ 69. Amend Form N–4 (referenced in § 274.11c of this chapter) by:

■ a. Revising General Instruction G; and

■ b. Revising the Instructions to Item 24(b) to add Instruction 3 to read as follows:

Note: The text of Form N–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–4

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Incorporation by Reference

A Registrant may, at its discretion, incorporate all or part of the Statement of Additional Information into the prospectus, without physically delivering the Statement of Additional Information to investors with the prospectus. But the Statement of Additional Information must be available to the investor upon request at no charge and any information or documents incorporated by reference into the Statement of Additional Information must be provided along with the Statement of Additional Information.

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0–4 [17 CFR 270.0–4] (additional rules on incorporation by reference for investment companies).

In general, a Registrant may incorporate by reference, in the answer to any item of Form N–4 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports led with the Commission.

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

(b) Exhibits:

* * * * *

Instructions:

* * * * *

3. Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

* * * * *

■ 70. Amend Form N–6 (referenced in § 274.11d of this chapter) by:

■ a. Revising General Instruction D.2; and

■ b. Revising Item 26 to read as follows:

Note: The text of Form N–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–6

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GENERAL INSTRUCTIONS

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B. Filing and Use of Form N–6

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4. What rules apply to the filing of a registration statement on Form N–6?

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D. Incorporation by Reference

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2. General Requirements:

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0–4, [17 CFR 270.0–4] (additional rules on incorporation by reference for investment companies).

* * * * *

Item 26. Exhibits

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material. Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

(a) * * *

* * * * *

■ 71. Amend Form N–CSR (referenced in § 274.128 of this chapter) by:

■ a. Revising General Instruction D; and

■ b. Revising the Instruction to Item 12 to read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

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GENERAL INSTRUCTIONS

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D. Incorporation by Reference

A registrant may incorporate by reference information required by Items 4, 5, and 12(a)(1). No other Items of the Form shall be answered by incorporating any information by reference. The information required by Items 4 and 5 may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A (17 CFR 240.14a–1 *et seq.*)) or definitive information statement (filed or to be filed pursuant to Regulation 14C (17 CFR 240.14c–1 *et seq.*)) involving the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by an annual report on this Form. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); Rule 12b–23 under the Exchange Act (17 CFR 240.12b–23) (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Exchange Act); and Rule 0–4 (17 CFR 270.0–4) (additional rules on incorporation by reference for investment companies).

* * * * *

Item 12. Exhibits.

* * * * *

Instruction to Item 12.

Letter or number the exhibits in the sequence that they appear in this item. Each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the report or, if the exhibit is incorporated by reference an active hyperlink to the exhibit separately filed on EDGAR. If the report is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 72. The authority citation for Part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

73. Revise § 275.0–6 to read as follows:

§ 275.0–6 Incorporation by reference in applications.

(a) *Exhibits.* Any document or part thereof, including any financial statement or part thereof, filed with the Commission pursuant to any Act administered by the Commission may be incorporated by reference as an exhibit to any application filed with the Commission by the same or any other person. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant must file with the reference a statement containing the text of any such modification and the date thereof.

(b) *General.* Include an express statement clearly describing the specific location of the information you are incorporating by reference. The statement must identify the document where the information was originally filed or submitted and the location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Information must not be incorporated by reference in any case where such incorporation would render the disclosure incomplete, unclear, or confusing. For example, unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document.

(c) *Definition of Application.* For purposes of this rule, an ''application'' means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

By the Commission.

Dated: October 11, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–22374 Filed 11–1–17; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 82 Thursday,
No. 211 November 2, 2017

Part III

Department of Health and Human Services

45 CFR Parts 147, 153, et al.
Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 147, 153, 154, 155, 156, 157, and 158

[CMS–9930–P]

RIN 0938–AT12

Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth payment parameters and provisions related to the risk adjustment and risk adjustment data validation programs; cost-sharing parameters and cost-sharing reductions; and user fees for Federally-facilitated Exchanges and State-based Exchanges on the Federal platform. It proposes changes that would enhance the role of States as related to essential health benefits (EHB) and qualified health plan (QHP) certification; and would provide States with additional flexibility in the operation and establishment of Exchanges, including the Small Business Health Options Program (SHOP) Exchanges. It includes proposed changes to standards related to Exchanges; the required functions of the SHOPs; actuarial value for stand-alone dental plans; the rate review program; the medical loss ratio program; eligibility and enrollment; exemptions; and other related topics.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 27, 2017.

ADDRESSES: In commenting, please refer to file code CMS–9930–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9930–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9930–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION, CONTACT: Lindsey Murtagh, (301) 492–4106, Rachel Arguello, (301) 492–4263, or Alper Ozinal, (301) 492–4178, for general information.

Krutika Amin, (301) 492–5153, for matters related to risk adjustment, and Federally-facilitated Exchange and State-based Exchange on the Federal platform user fees.

Adrianne Patterson, (410) 786–0686 or Abigail Walker, (410) 786–1725, for matters related to sequestration and administrative appeals of financial transfers.

Melissa Jaffe, (301) 492–4129 or Adam Shaw, (410) 786–1091, for matters related to risk adjustment data validation.

Lisa Cuozzo, (410)–786–1746, for matters related to rate review.

Jenny Chen, (301)–492–5156, for matters related to establishing a State-based Exchange, and State-based Exchanges on the Federal platform.

Emily Ames, (301) 492–4246, for matters related to Navigators and non-Navigator assistance personnel.

Elissa Dines, (301) 492–4388, for matters related to employer-sponsored coverage verification.

Kendra May, (301) 492–4477, for matters related to the requirement to file an income tax return and reconcile APTC and terminations.

Carolyn Kraemer, (301) 492–4197, for matters related to special enrollment periods under part 155.

Amanda Brander, (202) 690–7892, for matters related to exemptions from the shared responsibility payment.

Terence Kane, (301) 492–4449, for matters related to income inconsistencies.

Jacob Schnur, (410) 786–7703, for matters related to direct enrollment.

Laura Eldon, (301) 492–4372, for matters related to the Federally-facilitated SHOP.

Shilpa Gogna, (301) 492–4257, for matters related to SHOP in State-based Exchanges.

Leigha Basini, (301) 492–4380, Rebecca Zimmermann, (301) 492–4396, or Allison Yadsko, (410) 786–1740, for matters related to standardized options, essential health benefits, stand-alone dental plans and other standards for QHP issuers.

Pat Meisol, (410) 786–1917, for matters related to cost-sharing reductions, and the premium adjustment percentage.

Christina Whitefield, (301) 492–4172, for matters related to the medical loss ratio program.

Cam Moultrie Clemmons, (206) 615–2338, for matters related to minimum essential coverage.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard,

Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Acronyms

Because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

APTC Advance payments of the premium tax credit
AV Actuarial value
CBO Congressional Budget Office
CFR Code of Federal Regulations
CHIP Children's Health Insurance Program
CMP Civil money penalties
CMS Centers for Medicare & Medicaid Services
Code Internal Revenue Code of 1986 (26 U.S.C. 1, *et seq.*)
EDGE External Data Gathering Environment
EHB Essential health benefits
FFE Federally-facilitated Exchange
FF–SHOP Federally-facilitated Small Business Health Options Program
FPL Federal poverty level
FR Federal Register
FTI Federal tax information
HCC Hierarchical condition category
HHS United States Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
ICR Information collection requirements
IRS Internal Revenue Service
MEC Minimum essential coverage
MLR Medical loss ratio
NAIC National Association of Insurance Commissioners
NHEA National Health Expenditure Accounts
OIG Office of the Inspector General
OMB Office of Management and Budget
PHS Act Public Health Service Act
PMPM Per member per month
Patient Protection and Affordable Care Act or PPACA The collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended
PRA Paperwork Reduction Act of 1995
PTC Premium tax credit
QIA Quality improvement activities
QHP Qualified health plan
RBC Risk-based capital
RXCs Prescription drug utilization factors
SADPs Stand-alone dental plans
SBE State-based Exchange
SBE–FP State-based Exchange on the Federal platform
SHOP Small Business Health Options Program
SSA Social Security Administration

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I. Executive Summary

American Health Benefit Exchanges, or ''Exchanges'' (also called ''Marketplaces'') are entities established under the Patient Protection and Affordable Care Act (PPACA) through which qualified individuals and qualified employers can purchase health insurance coverage. Many individuals who enroll in qualified health plans (QHPs) through individual market Exchanges are eligible to receive a premium tax credit (PTC) to reduce their costs for health insurance premiums, and receive reductions in required cost-sharing payments to reduce out-of-pocket expenses for healthcare services. The PPACA also established the risk adjustment program, which is intended to mitigate the potential impact of adverse selection and stabilize the price of health insurance in the individual and small group markets, both on and off Exchanges.

Over time, issuer exits and increasing insurance rates have threatened the stability of the individual and small group Exchanges in many geographic areas. In previous rulemaking, we established provisions and parameters to implement many PPACA provisions and programs. In this proposed rule, we propose to amend these provisions and parameters, with a focus on enhancing the role of States in these programs and providing States with additional flexibilities, reducing unnecessary regulatory burden on stakeholders, empowering consumers, and improving affordability.

On January 20, 2017, the President issued an Executive Order which stated that, to the maximum extent permitted by law, the Secretary of HHS and heads of all other executive departments and agencies with authorities and responsibilities under the PPACA should exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the PPACA that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications. In this proposed rule, we are proposing, within the limitations of the current statute, to reduce fiscal and regulatory burdens across different program areas, and to support innovative health insurance models.

We propose several changes that would significantly expand the role of States in the administration of the PPACA. We propose to provide States with additional flexibility in the definition of essential health benefits (EHBs) and outline potential future directions for defining EHBs. In addition to granting States more flexibility regulating their markets, we believe this change would permit States to modify EHBs to increase affordability of health insurance in the individual and small group markets. We also propose to explore additional ways to support State-based Exchanges (SBEs) in adopting innovative approaches to

operating and sustaining their Exchanges, and to make the State-based Exchanges on the Federal platform (SBE–FP) model a more appealing and viable model for States. We propose that States assume a larger role in the QHP certification process for the Federally-facilitated Exchanges (FFEs). This would confirm States' traditional role in overseeing their health insurance markets, and reduce the issuer burden associated with having to comply with duplicative State and Federal reviews.

This proposed rule also contains several policies that would provide States with greater flexibility. We propose to provide States with significantly more flexibility in how they operate a Small Business Health Options Program (SHOP), permitting them to operate these Exchanges more efficiently, potentially benefitting States, issuers, employers and employees. We propose changes that would allow for a more efficient SHOP, such that employers and employees could enroll in SHOP coverage by working with a QHP issuer or SHOP-registered agent or broker. Additionally, we propose to provide States more flexibility regarding risk adjustment transfers in their markets. We also propose to make it easier for States to apply for and be granted an adjustment to the individual market medical loss ratio (MLR) standard in their State. We believe this change would provide States with an additional tool to help stabilize and provide relief in their individual markets. Additionally, we seek comment related to the inclusion of Federal and State taxes in MLR and rebate calculation, and we propose other changes to the MLR program to reduce the burden on issuers.

Risk adjustment continues to be a core program for stabilizing the individual and small group markets both on and off Exchanges, and we propose recalibrated parameters for the HHS risk adjustment methodology. We also propose several changes related to the risk adjustment data validation program that are intended to ensure the integrity of the results of risk adjustment, while alleviating issuer burden associated with participating in risk adjustment data validation.

As we do every year in the HHS notice of benefit and payment parameters, we propose updated parameters applicable in the individual and small group markets. We propose the user fee rate for issuers participating on FFEs and SBE–FPs for 2019 to be 3.5 and 3.0 percent of premiums, respectively. We propose to update the premium adjustment percentage for 2019, which is used to set the rate of increase for several parameters detailed in the PPACA, including the maximum annual limitation on cost sharing for 2019, the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code, and the assessable payment amounts under section 4980H(a) and (b) of the Code. We propose to update the maximum annual limitations on cost sharing for the 2019 benefit year for cost-sharing reduction plan variations. We also propose changes to the cost-sharing reduction reconciliation process.

We propose a number of changes related to rate review that are intended to provide States with greater flexibility in the rate filing process and reduce regulatory burden. Specifically, we propose to exempt student health insurance coverage from Federal rate review requirements, and to provide States with more flexibility regarding timing of the rate review process established under 45 CFR part 154. We also propose to modify the 10 percent threshold for reasonableness review to a 15 percent default threshold, with States continuing to have the flexibility to establish a different threshold.

Recognizing that Exchanges, including the FFEs, face resource constraints, we also propose changes to the requirements regarding Navigators, and the requirements regarding non-Navigator assistance personnel subject to § 155.215, to enable Exchanges to more easily operate these programs with limited resources. Similarly, we also propose to allow an agent, broker or issuer participating in direct enrollment to have its selected third-party entity conduct operational readiness reviews, rather than requiring those reviews to be conducted by entities approved by HHS.

In this proposed rule, we propose relatively minor adjustments to our programs and rules as we do each year. We propose a number of incremental amendments to our policies around coverage, eligibility, enrollment, and affordability exemptions.

We continue to be very interested in exploring ways to improve Exchange program integrity. In this rule, we seek comment on a number of program integrity items, including whether we should consider shortening the length of time the Exchanges are authorized to obtain enrollee tax information, as well as ways to prompt more timely consumer reporting of changes in circumstances during the benefit year that may impact an individual's eligibility for coverage and financial assistance. In addition, we ask for comment on any additional program integrity improvements that have not been outlined in this rule, but could be beneficial in a future rulemaking.

Finally, we note that we intend to consider proposals in future rulemaking that would help reduce drug costs and promote drug price transparency. We also note that we intend to provide guidance on other aspects of Exchange eligibility in the near future. In particular, we intend to reconsider the appropriate thresholds for changes in income that will trigger a data matching inconsistency, processes for denying eligibility for advance subsidies for individuals who fail to reconcile advance payments of the premium tax credit (APTC) on their Federal income tax return, processes for matching enrollment data with the Medicare and Medicaid programs, and the appropriate manner of recalculating APTC following a midyear change in eligibility, and seek comments on each of these issues as we prepare proposed rules on these topics.

Instituting strong program safeguards to ensure that only individuals who are eligible are enrolled in Exchange coverage, and that they are only receiving the amount of financial assistance they are eligible for, is essential to ensuring that the Exchanges operate as intended, and is also a key priority for the Administration. We have already taken action to strengthen safeguards around Exchange eligibility, most recently through the implementation of the Special Enrollment Verification initiative; however, we continue to be interested in exploring ways to further safeguard Federal tax dollars flowing through Exchanges.

II. Background

A. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the ''Patient Protection and Affordable Care Act'' or ''PPACA.''

Subtitles A and C of title I of the PPACA reorganized, amended, and added to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 2701 of the PHS Act, as added by the PPACA, restricts the variation in premium rates charged by a health insurance issuer for non-grandfathered

health insurance coverage in the individual or small group market to certain specified factors. These factors are family size, rating area, age and tobacco use.

Section 2701 of the PHS Act operates in coordination with section 1312(c) of the PPACA. Section 1312(c) of the PPACA generally requires a health insurance issuer to consider all enrollees in all health plans (except for grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. States have the option to merge the individual market and small group market risk pools under section 1312(c)(3) of the PPACA.

Section 2702 of the PHS Act, as added by the PPACA, requires health insurance issuers that offer health insurance coverage in the group or individual market in a State to offer coverage to and accept every employer and individual in the State that applies for such coverage unless an exception applies.[1]

Section 2703 of the PHS Act, as added by the PPACA, and sections 2712 and 2741 of the PHS Act, as added by HIPAA prior to the enactment of the PPACA, require health insurance issuers that offer health insurance coverage in the group or individual market to renew or continue in force such coverage at the option of the plan sponsor or individual unless an exception applies.

Section 2718 of the PHS Act, as added by the PPACA, generally requires health insurance issuers to submit an annual MLR report to HHS, and provide rebates to enrollees if the issuers do not achieve specified MLR thresholds.

Section 2794 of the PHS Act, as added by the PPACA, directs the Secretary of HHS (the Secretary), in conjunction with the States, to establish a process for the annual review of ''unreasonable increases in premiums for health insurance coverage.'' [2] The law also requires health insurance issuers to submit to the Secretary and the applicable State justifications for unreasonable premium increases prior to the implementation of the increases. Section 2794(b)(2) of the PHS Act further specifies that beginning with plan years starting in 2014, the Secretary, in conjunction with the States, will monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.

Section 1252 of the PPACA provides that any standard or requirement adopted by a State under title I of the PPACA, or any amendment made by title I of the PPACA, is to be applied uniformly to all health plans in each insurance market to which the standard and requirement apply.

Section 1302 of the PPACA provides for the establishment of an essential health benefits package that includes coverage of EHB (as defined by the Secretary), cost-sharing limits, and actuarial value requirements. The law directs that EHBs be equal in scope to the benefits provided under a typical employer plan, and that they cover at least the following 10 general categories: Ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

Section 1301(a)(1)(B) of the PPACA directs all issuers of QHPs to cover the EHB package described in section 1302(a) of the PPACA, including coverage of the services described in section 1302(b) of the PPACA, to adhere to the cost-sharing limits described in section 1302(c) of the PPACA and to meet the AV levels established in section 1302(d) of the PPACA. Section 2707(a) of the PHS Act, which is effective for plan or policy years beginning on or after January 1, 2014, extends the coverage of the EHB package to non-grandfathered individual and small group health insurance coverage, irrespective of whether such coverage is offered through an Exchange. In addition, section 2707(b) of the PHS Act directs non-grandfathered group health plans to ensure that cost sharing under the plan does not exceed the limitations described in sections 1302(c)(1) of the PPACA.

Section 1302(d) of the PPACA describes the various levels of coverage based on actuarial value (AV). Consistent with section 1302(d)(2)(A) of the PPACA, AV is calculated based on the provision of EHB to a standard population. Section 1302(d)(3) of the PPACA directs the Secretary to develop guidelines that allow for *de minimis* variation in AV calculations.

Section 1311(b)(1)(B) of the PPACA directs that the Small Business Health Options Program assist qualified small employers in facilitating the enrollment of their employees in QHPs offered in the small group market. Sections 1312(f)(1) and (2) of the PPACA define qualified individuals and qualified employers. Under section 1312(f)(2)(B) of the PPACA, beginning in 2017, States have the option to allow issuers to offer QHPs in the large group market through an Exchange.[3] Section 1312(a)(2) of the PPACA provides that in a SHOP, a qualified employer may select a level of coverage, and that employees may then, in turn, choose SHOP plans within the level selected by the qualified employer.

Section 1311(c)(1)(B) of the PPACA requires the Secretary to establish minimum criteria for provider network adequacy that a health plan must meet to be certified as a QHP.

Section 1311(c)(5) of the PPACA requires the Secretary to continue to operate, maintain, and update the Internet portal developed under section 1103 of the PPACA to provide information to consumers and small businesses on affordable health insurance coverage options.

Sections 1311(d)(4)(K) and 1311(i) of the PPACA direct all Exchanges to establish a Navigator program.

Section 1311(c)(6)(C) of the PPACA establishes special enrollment periods and section 1311(c)(6)(D) of the PPACA establishes the monthly enrollment period for Indians, as defined by section 4 of the Indian Health Care Improvement Act.

Section 1312(e) of the PPACA directs the Secretary to establish procedures under which a State may permit agents and brokers to enroll qualified individuals and qualified employers in QHPs through an Exchange and to assist individuals in applying for financial assistance for QHPs sold through an Exchange.

Section 1321(a) of the PPACA provides broad authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs and other components of title I of the PPACA. Section 1321(a)(1) of the PPACA directs the Secretary to issue regulations that set standards for meeting the requirements of title I of the PPACA with respect to, among other

[1] Before enactment of the Patient Protection and Affordable Care Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended the PHS Act (formerly section 2711) to generally require guaranteed availability of coverage for employers in the small group market.

[2] The implementing regulations in part 154 limit the scope of the requirements under section 2794 of the PHS Act to health insurance issuers offering health insurance coverage in the individual market or small group market. See Rate Increase Disclosure and Review; Final Rule, 76 FR 29964, 29966 (May 23, 2011).

[3] If a State elects this option, the rating rules in section 2701 of the PHS Act and its implementing regulations will apply to all coverage offered in such State's large group market (except for self-insured group health plans) pursuant to section 2701(a)(5) of the PHS Act.

things, the establishment and operation of Exchanges.

Sections 1313 and 1321 of the PPACA provide the Secretary with the authority to oversee the financial integrity of State Exchanges, their compliance with HHS standards, and the efficient and non-discriminatory administration of State Exchange activities. Section 1321 of the PPACA provides for State flexibility in the operation and enforcement of Exchanges and related requirements.

When operating an FFE under section 1321(c)(1) of the PPACA, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) of the PPACA to collect and spend user fees. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. Office of Management and Budget (OMB) Circular A–25 Revised establishes Federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

Section 1321(c)(2) of the PPACA authorizes the Secretary to enforce the Exchange standards using civil money penalties (CMPs) on the same basis as detailed in section 2723(b) of the PHS Act. Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in Part A of title XXVII of the PHS Act when a State fails to substantially enforce these provisions

Section 1321(d) of the PPACA provides that nothing in title I of the PPACA should be construed to preempt any State law that does not prevent the application of title I of the PPACA. Section 1311(k) of the PPACA specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations issued by the Secretary.

Section 1343 of the PPACA establishes a permanent risk adjustment program to provide increased payments to health insurance issuers that attract higher-risk populations, such as those with chronic conditions, funded by payments from those that attract lower-risk populations; thereby, reducing incentives for issuers to avoid higher-risk enrollees.

Section 1402 of the PPACA provides for, among other things, reductions in cost sharing for essential health benefits for qualified low- and moderate-income enrollees in silver level health plans offered through the individual market Exchanges. This section also provides for reductions in cost sharing for Indians enrolled in QHPs at any metal level.

Section 5000A of the Code, as added by section 1501(b) of the PPACA, requires all applicable individuals to maintain minimum essential coverage (MEC) for each month or make an individual shared responsibility payment. Section 5000A(f) of the Code defines MEC as any of the following: (1) Coverage under a specified government sponsored program; (2) coverage under an eligible employer-sponsored plan; (3) coverage under a health plan offered in the individual market within a State; and (4) coverage under a grandfathered health plan. Section 5000A(f)(1)(E) of the Code authorizes the Secretary of HHS, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as MEC.

The Protecting Affordable Coverage for Employees Act (Pub. L. 114–60) amended section 1304(b) of the PPACA and section 2791(e) of the PHS Act to amend the definition of small employer in these statutes to mean, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 50 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. It also amended these statutes to make conforming changes to the definition of large employer, and to provide that a State may treat as a small employer, with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year.

1. Premium Stabilization Programs [4]

In the July 15, 2011 **Federal Register** (76 FR 41929), we published a proposed rule outlining the framework for the premium stabilization programs. We implemented the premium stabilization programs in a final rule, published in the March 23, 2012 **Federal Register** (77 FR 17219) (Premium Stabilization Rule). In the December 7, 2012 **Federal Register** (77 FR 73117), we published a proposed rule outlining the benefit and payment parameters for the 2014 benefit year to expand the provisions related to the premium stabilization programs and set forth payment parameters in those programs (proposed 2014 Payment Notice). We published the 2014 Payment Notice final rule in the March 11, 2013 **Federal Register** (78 FR 15409).

In the December 2, 2013 **Federal Register** (78 FR 72321), we published a proposed rule outlining the benefit and payment parameters for the 2015 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2015 Payment Notice). We published the 2015 Payment Notice final rule in the March 11, 2014 **Federal Register** (79 FR 13743).

In the November 26, 2014 **Federal Register** (79 FR 70673), we published a proposed rule outlining the benefit and payment parameters for the 2016 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2016 Payment Notice). We published the 2016 Payment Notice final rule in the February 27, 2015 **Federal Register** (80 FR 10749).

In the December 2, 2015 **Federal Register** (80 FR 75487), we published a proposed rule outlining the benefit and payment parameters for the 2017 benefit year to expand the provisions related to the premium stabilization programs, setting forth certain oversight provisions and establishing the payment parameters in those programs (proposed 2017 Payment Notice). We published the 2017 Payment Notice final rule in the March 8, 2016 **Federal Register** (81 FR 12203).

In the September 6, 2016 **Federal Register** (81 FR 61455), we published a proposed rule outlining the benefit and payment parameters for the 2018 benefit year, and to further promote stable premiums in the individual and small group markets. We proposed updates to the risk adjustment methodology, new policies around the use of external data for recalibration of our risk adjustment models, and amendments to the risk adjustment data validation process (proposed 2018 Payment Notice). We published the 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058).

2. Program Integrity

In the June 19, 2013 **Federal Register** (78 FR 37031), we published a proposed rule that proposed certain program integrity standards related to Exchanges and the premium stabilization programs (proposed Program Integrity Rule). The provisions of that proposed rule were finalized in two rules, the ''first Program Integrity Rule'' published in the August

[4] By premium stabilization program, we are referring to the risk adjustment, risk corridors and reinsurance programs established by the PPACA.

30, 2013 **Federal Register** (78 FR 54069) and the ''second Program Integrity Rule'' published in the October 30, 2013 **Federal Register** (78 FR 65045).

3. Exchanges

We published a request for comment relating to Exchanges in the August 3, 2010 **Federal Register** (75 FR 45584). We issued initial guidance to States on Exchanges on November 18, 2010. We proposed a rule in the July 15, 2011 **Federal Register** (76 FR 41865) to implement components of the Exchanges, and a rule in the August 17, 2011 **Federal Register** (76 FR 51201) regarding Exchange functions in the individual market and SHOP, eligibility determinations, and Exchange standards for employers. A final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges was published in the March 27, 2012 **Federal Register** (77 FR 18309) (Exchange Establishment Rule).

We established additional standards for SHOP in the 2014 Payment Notice and in the Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 interim final rule, published in the March 11, 2013 **Federal Register** (78 FR 15541). The provisions established in the interim final rule were finalized in the second Program Integrity Rule. We also set forth standards related to Exchange user fees in the 2014 Payment Notice. We established an adjustment to the FFE user fee in the Coverage of Certain Preventive Services Under the Affordable Care Act final rule, published in the July 2, 2013 **Federal Register** (78 FR 39869) (Preventive Services Rule).

In a final rule published in the July 17, 2013 **Federal Register** (78 FR 42823), we established standards for Navigators and non-Navigator assistance personnel in FFEs and for non-Navigator assistance personnel funded through an Exchange establishment grant. This final rule also established a certified application counselor program for Exchanges and set standards for that program.

In an interim final rule, published in the May 11, 2016 **Federal Register** (81 FR 29146), we made amendments to the parameters of certain special enrollment periods (2016 Interim Final Rule). We finalized these in the 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058). In the April 18, 2017 Market Stabilization final rule **Federal Register** (82 FR 18346), we amended standards relating to special enrollment periods and QHP certification.

4. Essential Health Benefits and Actuarial Value

On December 16, 2011, HHS released a bulletin [5] (the EHB Bulletin) that outlined an intended regulatory approach for defining EHB, including a benchmark-based framework. HHS also published a bulletin that outlined its intended regulatory approach to calculations of AV on February 24, 2012.[6] A proposed rule relating to EHBs and AVs was published in the November 26, 2012 **Federal Register** (77 FR 70643). We established requirements relating to EHBs and AVs in the Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, which was published in the February 25, 2013 **Federal Register** (78 FR 12833) (EHB Rule). In the April 18, 2017 Market Stabilization final rule (82 FR 18346), we expanded the de minimis range applicable to plan metal levels.

5. Minimum Essential Coverage

In the February 1, 2013 **Federal Register** (78 FR 7348), we published a proposed rule that designates other health benefits coverage as MEC and outlines substantive and procedural requirements that other types of coverage must fulfill in order to be recognized as MEC. The provisions were finalized in the July 1, 2013 **Federal Register** (78 FR 39494).

In the November 26, 2014 **Federal Register** (79 FR 70674), we published a proposed rule seeking comments on whether State high risk pools should be permanently designated as MEC or whether the designation should be time-limited. In the February 27, 2015 **Federal Register** (80 FR 10750), we designated State high risk pools established on or before November 26, 2014 as MEC.

6. Market Rules

A proposed rule relating to the 2014 health insurance market rules was published in the November 26, 2012 **Federal Register** (77 FR 70584). A final rule implementing the health insurance market rules was published in the February 27, 2013 **Federal Register** (78 FR 13406) (2014 Market Rules).

A proposed rule relating to Exchanges and Insurance Market Standards for 2015 and Beyond was published in the March 21, 2014 **Federal Register** (79 FR 15808) (2015 Market Standards Proposed Rule). A final rule implementing the Exchange and Insurance Market Standards for 2015 and Beyond was published in the May 27, 2014 **Federal Register** (79 FR 30240) (2015 Market Standards Rule). The 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058) provided additional guidance on guaranteed availability and guaranteed renewability. In the April 18, 2017 Market Stabilization final rule (82 FR 18346), we released further guidance related to guaranteed availability.

7. Rate Review

A proposed rule to establish the rate review program was published in the December 23, 2010 **Federal Register** (75 FR 81003). A final rule with comment period implementing the rate review program was published in the May 23, 2011 **Federal Register** (76 FR 29963) (Rate Review Rule). The provisions of the Rate Review Rule were amended in final rules published in the September 6, 2011 **Federal Register** (76 FR 54969), the February 27, 2013 **Federal Register** (78 FR 13405), the May 27, 2014 **Federal Register** (79 FR 30239), the February 27, 2015 **Federal Register** (80 FR 10749), the March 8, 2016 **Federal Register** (81 FR 12203) and the December 22, 2016 **Federal Register** (81 FR 94058).

8. Medical Loss Ratio

We published a request for comment on section 2718 of the PHS Act in the April 14, 2010 **Federal Register** (75 FR 19297), and published an interim final rule with a 60-day comment period relating to the MLR program on December 1, 2010 (75 FR 74863). A final rule with a 30-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76573). An interim final rule with a 60-day comment period was published in the December 7, 2011 **Federal Register** (76 FR 76595). A final rule was published in the **Federal Register** on May 16, 2012 (77 FR 28790). The medical loss ratio program requirements were amended in final rules published in the March 11, 2014 **Federal Register** (79 FR 13743), the May 27, 2014 **Federal Register** (79 FR 30339), the February 27, 2015 **Federal Register** (80 FR 10749), the March 8, 2016 **Federal Register** (81 FR 12203), and the December 22, 2016 **Federal Register** (81 FR 94183).

B. Stakeholder Consultation and Input

HHS has consulted with stakeholders on policies related to the operation of Exchanges, including the SHOP, and the premium stabilization programs. We

[5] ''Essential Health Benefits Bulletin.'' December 16, 2011. Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential_health_benefits_bulletin.pdf.*

[6] ''Actuarial Value and Cost-Sharing Reductions Bulletin.'' February 24, 2012. Available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/Av-csr-bulletin.pdf.*

have held a number of listening sessions with consumers, providers, employers, health plans, and the actuarial community to gather public input. We have solicited input from State representatives on numerous topics, particularly essential health benefits, QHP certification and Exchange establishment. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with States through the Exchange Establishment grant and Exchange Blueprint approval processes, and meetings with Tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We considered all public input we received as we developed the policies in this proposed rule.

HHS also received several thousand unique comments in response to a request for information, entitled ''Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act and Improving Healthcare Choices to Empower Patients'', published in the June 12, 2017 **Federal Register** (82 FR 26885) (Request for Information). Review of these comments is ongoing, and we anticipate continuing to address comments in future rulemaking and guidance.

C. Structure of Proposed Rule

The regulations outlined in this proposed rule would be codified in 45 CFR parts 147, 153, 154, 155, 156, 157, and 158.

The proposed regulations in part 147 would amend the rules regarding fair health insurance premiums and guaranteed availability to reflect proposed changes related to the SHOPs and special enrollment periods.

The proposed regulations in part 153 propose to recalibrate the risk adjustment models consistent with the methodology finalized for the 2018 benefit year with slight modifications to the drug classes included in the 2019 benefit year adult models and the incorporation of blended MarketScan® and the most recent enrollee-level External Data Gathering Environment (EDGE) data. The proposed regulations address high-cost risk pooling, where we are proposing to implement the same parameters that applied to the 2018 benefit year to the 2019 benefit year. The proposed regulations in part 153 also include the risk adjustment user fee and modifications to risk adjustment data validation. We also propose State flexibility to the risk adjustment transfers starting for the 2019 benefit year.

The proposed regulations in part 154 propose certain modifications to enhance State flexibility for the rate review program. We propose to exempt student health insurance coverage from Federal rate review requirements. We propose to raise the default threshold for review of reasonableness in the rate review process from 10 percent to 15 percent. We also propose to allow States with Effective Rate Review Programs to set later submission deadlines for rate filings from issuers that offer non-QHPs only. In addition, we propose to change the notification period for States with Effective Rate Review Programs to notify HHS prior to posting rate increases (from 30 days to 5 business days).

The proposed regulations in part 155 include modifications to the functions of an Exchange, and a new approach to operational readiness reviews for direct enrollment partners which would allow agents, brokers, and issuers to select their own third-party entities for conducting those reviews. We propose modifications to the rules around verification of eligibility. We also propose to increase flexibility in the Navigator program by removing the requirement that each Exchange must have at least two Navigator entities, one of which must be a community and consumer focused non-profit, and to remove the standard requiring physical presence of the Navigator entity in the Exchange service area. We propose to modify the parameters around certain special enrollment periods. We propose to modify the effective date options for enrollee-initiated terminations, and amend the affordability exemption so that it may be based on the lowest cost Exchange plan if there is no bronze level plan sold through the Exchange in that rating area.

The proposed regulations in part 156 include changes to essential health benefits and the QHP certification process. The proposed regulations in part 156 set forth proposals related to cost sharing, including the premium adjustment percentage, the maximum annual limitation on cost sharing, and the reductions in the maximum annual limitation for cost-sharing plan variations for 2019. We propose to update the FFE and SBE–FP user fee rates for the 2019 benefit year for all issuers participating on the FFEs or SBE–FPs. The proposed regulations in part 156 would designate as MEC Children's Health Insurance Program (CHIP) buy-in programs that provide identical coverage to the State's CHIP program under title XXI of the Social Security Act. The regulations at part 156 also include proposals related to actuarial value for stand-alone dental plans (SADPs) and the administrative appeals right with respect to the amount of the advance payment of cost-sharing reductions.

The proposed amendments to the regulations in parts 155, 156, and 157 include proposals that would provide SHOPs with additional operational flexibility, and would modify the requirements for issuers, employers, and employees interacting with SHOPs.

The proposed amendments to the regulations in part 158 propose revisions related to reporting quality improvement activity expenses as part of the formula for calculating MLR, and revisions related to State requests for adjustment to the individual market MLR standard.

III. Provisions of the Proposed HHS Notice of Benefit and Payment Parameters for 2019

A. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

1. Fair Health Insurance Premiums (§ 147.102)

As discussed elsewhere in this proposed rule, we are proposing substantial changes to the requirements applicable to SHOPs to provide those programs with the flexibility to operate in a leaner fashion, a flexibility that we intend to utilize in the FF–SHOPs. As part of these changes and as discussed in the preamble to §§ 156.285 and 156.286, we are proposing that, effective on the effective date of the final rule, if finalized as proposed, the requirement in § 156.285(a)(4)(ii) regarding premium rating standards in the FF–SHOPs would not apply for plan years beginning on or after January 1, 2018. Therefore, we propose to delete from § 147.102(c)(3)(iii)(D) a reference to § 156.285(a)(4), and to replace the reference to FF–SHOPs with a reference to SHOPs generally, to reflect that, under the proposed approach for SHOPs, some SHOPs may want to prohibit issuers from offering average enrollee premiums. We seek comment on this proposal and on whether issuers offering coverage through SHOPs should always be required to offer average enrollee premiums, or do so only if required under applicable State law.

2. Guaranteed Availability of Coverage (§ 147.104)

As discussed elsewhere in this proposed rule, we are proposing substantial changes to the requirements applicable to SHOPs to provide them with the flexibility to operate in a leaner

fashion, a flexibility that we intend to utilize in the FF–SHOPs. Among those changes, we propose that, effective on the effective date of the final rule, if finalized as proposed, the requirements in § 156.285 would apply for plan years starting before January 1, 2018. We also propose a new § 156.286, which specifies those requirements contained in § 156.285 that, effective on the effective date of the final rule, if finalized as proposed, would continue to apply for plan years starting on or after January 1, 2018. Among those requirements is the requirement in § 156.285(e) which permits a QHP offered in the SHOP to apply group participation rules under certain circumstances. This provision is listed in proposed § 156.286(e). The marketwide regulations at § 147.104(b)(1)(i)(B) currently reference § 156.285(e), and we propose to add a reference to § 156.286(e), to clarify that, effective on the effective date of the final rule, if finalized as proposed, for plans years that start after January 1, 2018, QHPs offered in the SHOP may restrict the availability of coverage with respect to a group health plan that cannot comply with group participation rules, to an annual enrollment period of November 15 through December 15 of each calendar year.

These regulations also propose to remove the small group coverage effective dates that are found in the SHOP regulations at § 155.725 with respect to plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed. However, there are currently requirements in § 147.104(b)(1)(i)(C) that, by cross-referencing § 155.725, apply those same requirements marketwide, and we do not propose to remove that marketwide requirement. We propose changes to § 147.104 to reflect these proposed changes. Specifically, we propose to eliminate, from § 147.104(b)(1)(i)(C), the cross-reference to § 155.725. We propose in place of the cross-reference to explicitly specify in § 147.104(b)(1)(i)(C) those same coverage effective dates for coverage in the small group market, and for the large group market if such coverage is offered through a SHOP, that would be eliminated from the SHOP regulations under our proposal for § 155.725.

We propose to remove paragraph § 147.104(b)(1)(iii), along with the cross-reference to it in § 147.104(b)(1)(ii), as paragraph (b)(1)(iii) applies to plan selections made in 2013, and is therefore no longer necessary.

Section 147.104(b)(2)(i) extends several of the special enrollment periods that apply to issuers on the Exchange, to all issuers in the individual market. Although § 147.104(b)(2)(i) is intended to specify which special enrollment periods offered through the Exchange must also be offered by health insurance issuers with respect to coverage offered outside of an Exchange, the paragraph as currently written could be read to apply the exceptions to any coverage offered by a health insurance issuer in the individual market. We recognize the potential for confusion, as coverage offered through an Exchange is offered by ''a health insurance issuer in the individual market,'' but this coverage is subject to the special enrollment rule at § 155.420(d), which is intended to require special enrollment periods for triggers including those listed in the exceptions in paragraph (b)(2)(i). Therefore, for purposes of clarification, we propose to amend that phrase in § 147.104(b)(2)(i) to clarify that the exceptions in the paragraph only apply with respect to coverage offered outside of the Exchange in the individual market.

With respect to the subset of special enrollment periods in § 155.420 that apply off-Exchange, current regulations at § 147.104(b)(2)(ii) state that, in applying § 147.104(b)(2), a reference in § 155.420 to a ''QHP'' is deemed to refer to a plan, a reference to ''the Exchange'' is deemed to refer to the applicable State authority, and a reference to a ''qualified individual'' is deemed to refer to an individual in the individual market. As discussed in the preamble to § 155.420, we are proposing a change to § 155.420(a)(5) to exempt qualified individuals from the prior coverage requirement that applies to certain special enrollment periods if for at least 1 of the 60 days prior to the date of their qualifying event they lived in a service area where there were no QHPs offered through an Exchange. Section 155.420(a)(5) applies to qualifying individuals seeking off-Exchange coverage through an applicable special enrollment period, so we propose that this exception for individuals living in a service area where there were no QHPs offered through an Exchange would also apply.[7] However, in this instance the reference to ''QHP'' should not be deemed to refer to a plan for purposes of applying § 147.104(b)(2). Therefore, we propose to amend § 147.104(b)(2)(ii) to state that a reference in § 155.420 *(other than in § 155.420(a)(5))* to a ''QHP'' is deemed to refer to a plan, a reference to ''the Exchange'' is deemed to refer to the applicable State authority, and a reference to a ''qualified individual'' is deemed to refer to an individual in the individual market.

We seek comment on these proposals.

Among the special enrollment periods in § 155.420 that apply off-Exchange are those specified in § 155.420(d)(2)(i), under which a qualified individual gains a dependent or becomes a new dependent through marriage, birth, adoption, placement for adoption, or placement in foster care, or through a child support order or other court order. As applied to on-Exchange coverage under these special enrollment periods, an existing dependent may enroll in or change their QHP enrollment through these special enrollment periods when a qualified individual gains a dependent or becomes a new dependent under the circumstances described in § 155.420(d)(2)(i) and the requirement in § 155.420(a)(4)(i) that the new dependent must be allowed to enroll in the QHP in which the family is already enrolled is not applicable. Under the HIPAA special enrollment provisions that continue to apply to group health plans and health insurance issuers in connection with group health coverage, there are similar special enrollment periods when a child becomes a dependent of the employee through marriage, birth, adoption, or placement for adoption.[8] The HIPAA regulations specify that, under such circumstances, those special enrollment periods apply only to dependents *who become a dependent* through marriage, birth, adoption, or placement for adoption (that is, *new* dependents). We seek comment on whether, in the off-Exchange individual market, the special enrollment periods for when an individual gains a dependent or

[7] As stated in the preamble to § 155.420, the exception to the requirement to have previous coverage is intended to relieve individuals of that requirement when there was no *affordable* coverage (that is, coverage that could be purchased through an Exchange to which APTC might apply) available in their previous service area. We believe affordability is key to this exception, and therefore, that the scope of the exception should apply equally, regardless of whether the individual is seeking to purchase coverage inside *or* outside an Exchange during the special enrollment periods for which this exception applies; that is, the exception should apply if there was no such affordable coverage available in the individual's previous service area (regardless of whether or not any coverage was being actively marketed in that service area outside the Exchange). Also, when an individual seeks to purchase coverage outside an Exchange during such a special enrollment period, we believe it might be unreasonably difficult for an issuer to determine if at least one issuer was actively marketing coverage in the individual's previous service area outside the Exchange, as opposed to determining if at least one issuer was making coverage available in that service area specifically through an Exchange. We solicit comments on this approach.

[8] See § 146.117(b).

becomes a new dependent under the circumstances described in § 155.420(d)(2)(i) should apply to new *and* existing dependents (as is the case in the Exchanges when the requirement in § 155.420(a)(4)(i) that the new dependent must be allowed to enroll in the QHP in which the family is currently enrolled is not applicable), whether they should apply only to new dependents (consistent with the HIPAA group market regulations), or whether we should adopt some other approach, such as affording the special enrollment periods to some, but not all categories of existing dependents.

B. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment Under the Affordable Care Act

1. Sequestration

In accordance with the OMB Report to Congress on the Joint Committee Reductions for Fiscal Year 2018,[9] both the transitional reinsurance program and permanent risk adjustment program are subject to the fiscal year 2018 sequestration. The Federal government's 2018 fiscal year begins October 1, 2017. Although the 2016 benefit year is the final year of the transitional reinsurance program, HHS will continue to make reinsurance payments in the 2018 fiscal year, as the second contribution collection deadline for the 2016 benefit year is November 15, 2017. Therefore, the reinsurance program will be sequestered at a rate of 6.6 percent for payments made from fiscal year 2018 resources (that is, funds collected during the 2018 fiscal year). The risk adjustment program will also be sequestered at a rate of 6.6 percent for payments made from fiscal year 2018 resources (that is, funds collected during the 2018 fiscal year).

HHS, in coordination with the OMB, has determined that, under section 256(k)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, and the underlying authority for the reinsurance and risk adjustment programs, the funds that are sequestered in fiscal year 2018 from the reinsurance and risk adjustment programs will become available for payment to issuers in fiscal year 2019 without further Congressional action. If Congress does not enact deficit reduction provisions that replace the Joint Committee reductions, these programs would be sequestered in future fiscal years, and any sequestered funding would become available in the fiscal year following that in which it was sequestered.

2. Provisions and Parameters for the Risk Adjustment Program

In subparts D and G of part 153, we established standards for the administration of the risk adjustment program. The risk adjustment program is a permanent program created by section 1343 of the PPACA that transfers funds from lower risk, non-grandfathered plans to higher risk, non-grandfathered plans in the individual and small group markets, inside and outside the Exchanges. In accordance with § 153.310(a), a State that is approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf. HHS will be operating risk adjustment in every State beginning for the 2017 benefit year, and did not receive any applications from States to operate risk adjustment for the 2019 benefit year.

HHS continues to evaluate the risk adjustment program, including by reviewing comments received in response to the Request for Information, and intends to propose changes in a manner that promotes transparency, considers stakeholder feedback and provides adequate notice to issuers, while upholding the integrity and accuracy of the program.

a. Overview of the HHS Risk Adjustment Model (§ 153.320)

The HHS risk adjustment model predicts plan liability for an average enrollee based on that person's age, sex, and diagnoses (risk factors), producing a risk score. The HHS risk adjustment methodology utilizes separate models for adults, children, and infants to account for cost differences in each of these age groups. In each of the adult and child models, the relative risk assigned to an individual's age, sex, and diagnoses are added together to produce an individual risk score. Additionally, in the adult models, we added enrollment duration factors beginning for the 2017 benefit year, and prescription drug utilization factors (RXCs) beginning for the 2018 benefit year, in the calculation of enrollees' risk scores. Infant risk scores are determined by inclusion in one of 25 mutually exclusive groups, based on the infant's maturity and the severity of diagnoses. If applicable, the risk score for adults, children or infants is multiplied by a cost-sharing reductions adjustment.

The enrollment-weighted average risk score of all enrollees in a particular risk adjustment covered plan (also referred to as the plan liability risk score) within a geographic rating area is one of the inputs into the risk adjustment payment transfer formula, which determines the payment or charge that an issuer will receive or be required to pay for that plan. Thus, the HHS risk adjustment model predicts average group costs to account for risk across plans, which accords with the Actuarial Standards Board's Actuarial Standards of Practice for risk classification.

b. Proposed Updates to the Risk Adjustment Model (§ 153.320)

For the 2019 benefit year risk adjustment model, HHS will continue to incorporate the methodological improvements finalized in previous rulemaking, such as incorporating preventive services in our simulation of plan liability, using more granular trend rates to better reflect the growth in specialty drug expenditures and drugs generally as compared to medical and surgical expenditures, accounting for partial year enrollment in the adult models, including prescription drug utilization factors in the adult models, adjusting the risk adjustment model and transfers to account for high-cost enrollees, and removing a portion of the premiums in the transfer formula to account for a portion of administrative costs that do not vary with claims. For the 2019 benefit year, we propose to recalibrate the risk adjustment models using the methodology finalized for the 2018 benefit year, with small modifications to the drug classes included in the 2019 benefit year adult models, and incorporation of the 2016 benefit year EDGE data in the 2019 benefit year risk adjustment model recalibration.

We seek comment on these proposals.

i. Recalibration Using EDGE Data

To recalibrate the 2016, 2017 and 2018 benefit year risk adjustment models, we used the three most recent years of Truven MarketScan® data. This approach allowed for using the blended, or averaged, coefficients from 3 years of separately solved models, which promotes stability for the risk adjustment coefficients year-to-year, particularly for rare conditions with small sample sizes. We finalized in the 2018 Payment Notice the collection of enrollee-level EDGE data and the recalibration of the risk adjustment model for the 2019 benefit year using 2016 benefit year EDGE data. We believe that blending the coefficients calculated from the 2016 benefit year EDGE enrollee-level data with MarketScan® data will provide stability within the risk adjustment program and minimize

[9] Available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/sequestration_reports/2018_jc_sequestration_report_may2017_potus.pdf.*

volatility in changes to risk scores from the 2018 to 2019 benefit years due to differences in the datasets' underlying populations. As such, we propose blending 3 years of data to recalibrate the coefficients used in the risk adjustment model and, for the 2019 benefit year, blending separately solved coefficients from the 2016 benefit year EDGE enrollee-level data and the 2014 and 2015 MarketScan® data using the methodology that will be finalized in the 2019 Payment Notice final rule. Given the timing of the 2019 Payment Notice and the significant analysis necessary to develop the 2016 benefit year EDGE recalibration dataset, we are not able to incorporate the 2016 benefit year EDGE data in this proposed rule. Therefore, we use the 2014 and 2015 MarketScan® data for the coefficients in this proposed rule. We propose to finalize the 2019 benefit year blended coefficients with the separately solved models from the 2016 benefit year EDGE enrollee-level data with the 2014 and 2015 MarketScan® data. This approach is similar to our approach in previous years, in which we updated the final coefficients using data from the most recently available benefit year.[10] We expect to publish the final risk adjustment model coefficients for the 2019 benefit year in the final rule. However, we seek comment on whether we should publish the final risk adjustment model coefficients in guidance in the spring of 2018, prior to rate setting for the 2019 benefit year, similar to our approach for publishing the 2018 benefit year risk adjustment coefficients, if we need additional time to analyze the 2016 enrollee-level EDGE data. Under either approach, the final risk adjustment model coefficients for the 2019 benefit year would be determined using the methodology that we finalize in the 2019 Payment Notice final rule, and would be published either in the final rule or in guidance prior to the 2019 benefit year rate setting. Additionally, if we find significant demographic or distributional differences in the enrollee-level EDGE data compared to the MarketScan data, we seek comment on whether we should make adjustments to the risk adjustment recalibration model age-sex, HCC and RXC categories for the final 2019 benefit year. In such a case, we would make adjustments to the models to better align them with the enrollee-level EDGE data, to improve the prediction of plan liability. The risk adjustment model coefficients listed in Tables 2, 4, and 5 are blended coefficients using the 2014 and 2015 MarketScan® data.

We seek comment on our proposal to determine coefficients based on a blend of 2014 and 2015 MarketScan® data and 2016 enrollee-level EDGE data using the methodology that will be finalized in the 2019 Payment Notice final rule in the final rule or through guidance. We also seek comment on the proposed methodology to equally weight the separately solved model coefficients from the 2014 MarketScan®, 2015 MarketScan®, and 2016 enrollee-level EDGE data for the final coefficients, instead of using only the 2016 enrollee-level EDGE data to recalibrate the risk adjustment model coefficients for the 2019 benefit year.

ii. Prescription Drugs

In the 2018 Payment Notice, we finalized the inclusion of twelve RXCs that interact with diagnoses (hierarchical condition categories (HCCs)), or drug-diagnosis (RXC–HCC) pairs, in the adult risk adjustment models for the 2018 benefit year. Ten of the RXC–HCC pairs have three levels of incremental predicted costs (diagnosis-only, prescription drug-only, and both diagnosis and prescription drug), indicating that they can be used to impute a particular diagnosis. The 2018 benefit year risk adjustment adult models also included two RXC–HCC pairs that are used for severity-only—that is, they predict incremental costs for enrollees with the diagnosis-only, or with both the diagnosis and the prescription drug. For enrollees without the associated diagnoses documented for these severity-only RXC–HCC pairs, the presence of the drug alone would not lead to the imputation of additional plan liability costs attributed to the plan.

For the 2019 benefit year, we propose to remove the two severity-only RXCs (RXC 11: Ammonia Detoxicants, and RXC 12: Diuretics, Loop and Select Potassium-Sparing). Both severity-only RXCs have low average costs per enrollee per year and were constrained to the average cost of the drugs to avoid overcompensating issuers for these RXCs. Constraining these RXCs removed overprescribing or gaming incentives to prescribe a low-cost drug to receive a much larger risk adjustment payment. However, after constraints, the two severity-only RXCs have extremely small coefficients that no longer predict meaningful incremental plan risk associated with a severe health condition. Therefore, we propose eliminating these two RXCs from the model. We believe that the remaining RXCs do not engender significant gaming concerns due to the cost and side-effects of the drugs if prescribed without cause. As we noted in the 2018 Payment Notice, where the risk of unintended effects on provider prescribing behavior is low, we are continuing to include a small number of prescription drug classes as predictors of risk and plan liability. For the remaining RXCs, there is a high rate of presence of a diagnosis code in the associated HCC in the MarketScan® data, indicating a positive predictive value for using these RXCs to impute missing diagnoses. Additionally, as we have previously noted, we intend to monitor prescription drug utilization for unintended effects, and may propose to remove drug classes based on such evidence in future rulemaking. Table 1 contains the proposed list of prescription drug factors for the 2019 benefit year risk adjustment model. We will evaluate the effects of incorporating prescription drugs in the adult models to determine whether to continue, broaden or reduce the impact of this set of factors on the HHS risk adjustment models. Additionally, we note that commenters on the Request for Information support the inclusion of prescription drugs in the risk adjustment methodology.

We seek comment on this proposal.

TABLE 1—PROPOSED DRUG-DIAGNOSIS (RXC–HCC) PAIRS FOR THE 2019 ADULT MODEL

RXC	RXC label	HCC	HCC label	Proposed RXC use
RXC 01	Anti-HIV Agents	001	HIV/AIDS	imputation/severity.
RXC 02	Anti-Hepatitis C (HCV) Agents	037C, 036, 035, 034	Chronic Hepatitis C, Cirrhosis of Liver, End-Stage Liver Disease, and Liver Transplant Status/Complications.	imputation/severity.
RXC 03	Antiarrhythmics	142	Specified Heart Arrhythmias	imputation/severity.

[10] See, for example, 2018 Payment Notice final rule, 81 FR 94058 (December 22, 2016).

TABLE 1—PROPOSED DRUG-DIAGNOSIS (RXC–HCC) PAIRS FOR THE 2019 ADULT MODEL—Continued

RXC	RXC label	HCC	HCC label	Proposed RXC use
RXC 04	Phosphate Binders	184, 183, 187, 188	End Stage Renal Disease, Kidney Transplant Status, Chronic Kidney Disease, Stage 5, Chronic Kidney Disease, Severe (Stage 4).	imputation/severity.
RXC 05	Inflammatory Bowel Disease Agents.	048, 041	Inflammatory Bowel Disease, Intestine Transplant Status/Complications.	imputation/severity.
RXC 06	Insulin	019, 020, 021, 018	Diabetes with Acute Complications; Diabetes with Chronic Complications; Diabetes without Complication, Pancreas Transplant Status/Complications.	imputation/severity.
RXC 07	Anti-Diabetic Agents, Except Insulin and Metformin Only.	019, 020, 021, 018	Diabetes with Acute Complications, Diabetes with Chronic Complications, Diabetes without Complication, Pancreas Transplant Status/Complications.	imputation/severity.
RXC 08	Multiple Sclerosis Agents	118	Multiple Sclerosis	imputation/severity.
RXC 09	Immune Suppressants and Immunomodulators.	056, 057, 048, 041	Rheumatoid Arthritis and Specified Autoimmune Disorders, Systemic Lupus Erythematosus and Other Autoimmune Disorders, Inflammatory Bowel Disease, Intestine Transplant Status/Complications.	imputation/severity.
RXC 10	Cystic Fibrosis Agents	159, 158	Cystic Fibrosis, Lung Transplant Status/Complications	imputation/severity.

iii. High-Cost Risk Pool Adjustment

HHS finalized a high-cost risk pool adjustment in the 2018 Payment Notice to account for the incorporation of risk associated with high-cost enrollees in the risk adjustment model. Specifically, we finalized adjusting the risk adjustment model for high-cost enrollees beginning for the 2018 benefit year by excluding a percentage of costs above a certain threshold level in the calculation of enrollee-level plan liability risk scores so that risk adjustment factors are calculated without the high-cost risk, because the average risk associated with HCCs and RXCs is better accounted for without the inclusion of the high-cost enrollees. In addition, to account for issuers' risk associated with the high-cost enrollees, issuers will be compensated for a percentage of costs above the threshold. We set the threshold and percentage of costs at a level that would continue to incentivize issuers to control costs while improving the risk prediction of the risk adjustment model. Issuers with high-cost enrollees will receive a payment for the percentage of costs above the threshold in their respective transfers. Using claims data submitted to the EDGE server by issuers of risk adjustment covered plans, HHS will calculate the total amount of paid claims costs for high-cost enrollees based on the threshold and the coinsurance rate. HHS will then calculate a charge as a percentage of the issuers' total premiums in the individual (including catastrophic and non-catastrophic plans and merged market plans), or small group markets, which will be applied to the total transfer amount in that market, maintaining the balance of payments and charges within the risk adjustment program. In the 2018 Payment Notice, we finalized a threshold of $1 million and a coinsurance rate of 60 percent across all States for the individual (including catastrophic and non-catastrophic plans and merged market plans) and small group markets for the 2018 benefit year.

For the 2019 benefit year, we are proposing to maintain the same parameters that would apply to the 2018 benefit year. Therefore, we propose to maintain a $1 million threshold and 60 percent coinsurance rate for the high-cost risk pool for the 2019 benefit year risk adjustment program. We believe this threshold and coinsurance rate would result in total payments or charges nationally that are very small as a percentage of premiums for issuers, and will prevent States and issuers with very high-cost enrollees from bearing a disproportionate amount of unpredictable risk. We seek comment on the proposed parameters of the high-cost risk pool for the 2019 benefit year risk adjustment model.

Comments in response to the Request for Information noted the benefits of incorporating the high-cost risk pool in the risk adjustment methodology. We have also received feedback from stakeholders on the structure of the high-cost risk pool, including that the pool should be multi-tiered, with multiple thresholds and increased coinsurance as the thresholds increase to account for the reduced number of enrollees at higher thresholds where costs to an issuer are catastrophic. We seek comment on alternative methods for reimbursing issuers for exceptionally high-cost enrollees through the high-cost risk pool and improving the calculation of plan liability in the HHS-operated risk adjustment models for future benefit years.

c. List of Factors To Be Employed in the Risk Adjustment Model (§ 153.320)

The proposed factors resulting from the blended factors from the 2014 and 2015 MarketScan® data separately solved models (with the incorporation of the partial year enrollment adjustment and prescription drugs reflected in the adult models only) are shown in the Tables 2, 4, and 5. The adult, child, and infant models have been truncated to account for the high-cost enrollee pool payment parameters ($1 million threshold, 60 percent coinsurance) finalized in the 2018 Payment Notice. As discussed in the preceding section, we are proposing to keep the 2019 benefit year high-cost enrollee risk pool payment parameters the same as those finalized for the 2018 benefit year.

Table 2 contains factors for each adult model, including the age-sex, HCCs, RXCs and HCC–RXC interaction coefficients. As we have previously noted,[11] some interactions of RXCs and HCCs have negative coefficients; however, this does not mean that an enrollee's risk score decreases due to the presence of an RXC, an HCC, or both.

Table 3 contains the HHS HCCs in the severity illness indicator variable. Table 4 contains the factors for each child model. Table 5 contains the factors for each infant model. Tables 6 and 7 contain the HCCs included in the infant model maturity and severity categories, respectively.

[11] 2018 Benefit Year Final HHS Risk Adjustment Model Coefficients. April 18, 2017. Available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/2018-Benefit-Year-Final-HHS-Risk-Adjustment-Model-Coefficients.pdf*.

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR [A]

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
	Demographic Factors					
	Age 21–24, Male	0.174	0.138	0.094	0.052	0.050
	Age 25–29, Male	0.151	0.116	0.073	0.030	0.028
	Age 30–34, Male	0.191	0.147	0.093	0.039	0.036
	Age 35–39, Male	0.252	0.198	0.132	0.065	0.062
	Age 40–44, Male	0.321	0.258	0.182	0.104	0.101
	Age 45–49, Male	0.385	0.313	0.227	0.138	0.134
	Age 50–54, Male	0.510	0.428	0.328	0.222	0.217
	Age 55–59, Male	0.577	0.483	0.372	0.253	0.247
	Age 60–64, Male	0.647	0.538	0.411	0.271	0.264
	Age 21–24, Female	0.286	0.232	0.163	0.093	0.090
	Age 25–29, Female	0.323	0.261	0.185	0.104	0.100
	Age 30–34, Female	0.449	0.372	0.281	0.188	0.184
	Age 35–39, Female	0.540	0.454	0.355	0.257	0.253
	Age 40–44, Female	0.598	0.502	0.392	0.281	0.276
	Age 45–49, Female	0.607	0.506	0.390	0.268	0.263
	Age 50–54, Female	0.686	0.581	0.456	0.323	0.317
	Age 55–59, Female	0.674	0.565	0.436	0.294	0.288
	Age 60–64, Female	0.699	0.579	0.441	0.285	0.277
	Diagnosis Factors					
HCC001	HIV/AIDS	0.520	0.434	0.349	0.275	0.271
HCC002	Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	8.152	7.980	7.865	7.920	7.924
HCC003	Central Nervous System Infections, Except Viral Meningitis	5.518	5.438	5.379	5.405	5.407
HCC004	Viral or Unspecified Meningitis	4.063	3.867	3.741	3.677	3.676
HCC006	Opportunistic Infections	5.606	5.522	5.468	5.439	5.438
HCC008	Metastatic Cancer	21.369	20.985	20.694	20.753	20.756
HCC009	Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.	12.190	11.902	11.689	11.686	11.687
HCC010	Non-Hodgkin's Lymphomas and Other Cancers and Tumors	5.316	5.119	4.971	4.910	4.907
HCC011	Colorectal, Breast (Age < 50), Kidney, and Other Cancers	4.295	4.100	3.948	3.888	3.885
HCC012	Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors.	2.528	2.386	2.275	2.212	2.209
HCC013	Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors.	1.195	1.076	0.976	0.869	0.864
HCC018	Pancreas Transplant Status/Complications	4.522	4.340	4.216	4.238	4.239
HCC019	Diabetes with Acute Complications	0.624	0.555	0.490	0.416	0.412
HCC020	Diabetes with Chronic Complications	0.624	0.555	0.490	0.416	0.412
HCC021	Diabetes without Complication	0.624	0.555	0.490	0.416	0.412
HCC023	Protein-Calorie Malnutrition	11.390	11.380	11.365	11.434	11.438
HCC026	Mucopolysaccharidosis	2.122	2.025	1.949	1.887	1.884
HCC027	Lipidoses and Glycogenosis	2.122	2.025	1.949	1.887	1.884
HCC029	Amyloidosis, Porphyria, and Other Metabolic Disorders	2.122	2.025	1.949	1.887	1.884
HCC030	Adrenal, Pituitary, and Other Significant Endocrine Disorders	2.122	2.025	1.949	1.887	1.884
HCC034	Liver Transplant Status/Complications	10.018	9.924	9.866	9.856	9.856
HCC035	End-Stage Liver Disease	5.862	5.675	5.548	5.558	5.559
HCC036	Cirrhosis of Liver	2.158	2.040	1.962	1.918	1.916
HCC037_1	Chronic Viral Hepatitis C	0.430	0.327	0.283	0.259	0.258
HCC037_2	Chronic Hepatitis, Other/Unspecified	0.430	0.327	0.283	0.259	0.258
HCC038	Acute Liver Failure/Disease, Including Neonatal Hepatitis	4.242	4.105	4.008	3.986	3.985
HCC041	Intestine Transplant Status/Complications	29.207	29.126	29.062	29.112	29.112
HCC042	Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	9.688	9.465	9.302	9.321	9.323
HCC045	Intestinal Obstruction	5.465	5.238	5.087	5.089	5.090
HCC046	Chronic Pancreatitis	4.522	4.340	4.216	4.238	4.239
HCC047	Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption.	2.204	2.054	1.947	1.882	1.880
HCC048	Inflammatory Bowel Disease	2.094	1.926	1.795	1.702	1.698
HCC054	Necrotizing Fasciitis	5.492	5.329	5.207	5.219	5.220
HCC055	Bone/Joint/Muscle Infections/Necrosis	5.492	5.329	5.207	5.219	5.220
HCC056	Rheumatoid Arthritis and Specified Autoimmune Disorders	3.393	3.217	3.077	3.031	3.029
HCC057	Systemic Lupus Erythematosus and Other Autoimmune Disorders	1.032	0.923	0.831	0.726	0.720
HCC061	Osteogenesis Imperfecta and Other Osteodystrophies	2.586	2.421	2.290	2.217	2.213
HCC062	Congenital/Developmental Skeletal and Connective Tissue Disorders	2.586	2.421	2.290	2.217	2.213
HCC063	Cleft Lip/Cleft Palate	1.108	0.963	0.856	0.777	0.773
HCC066	Hemophilia	43.857	43.613	43.412	43.412	43.412
HCC067	Myelodysplastic Syndromes and Myelofibrosis	11.329	11.211	11.123	11.130	11.132
HCC068	Aplastic Anemia	11.329	11.211	11.123	11.130	11.132
HCC069	Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	7.452	7.322	7.217	7.188	7.187
HCC070	Sickle Cell Anemia (Hb-SS)	7.452	7.322	7.217	7.188	7.187
HCC071	Thalassemia Major	7.452	7.322	7.217	7.188	7.187
HCC073	Combined and Other Severe Immunodeficiencies	5.031	4.913	4.827	4.827	4.827
HCC074	Disorders of the Immune Mechanism	5.031	4.913	4.827	4.827	4.827
HCC075	Coagulation Defects and Other Specified Hematological Disorders	2.419	2.339	2.274	2.237	2.235
HCC081	Drug Psychosis	3.864	3.647	3.486	3.379	3.373
HCC082	Drug Dependence	3.864	3.647	3.486	3.379	3.373
HCC087	Schizophrenia	3.093	2.866	2.702	2.629	2.626
HCC088	Major Depressive and Bipolar Disorders	1.545	1.407	1.297	1.191	1.186
HCC089	Reactive and Unspecified Psychosis, Delusional Disorders	1.545	1.407	1.297	1.191	1.186
HCC090	Personality Disorders	1.055	0.948	0.846	0.736	0.731

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR [A]—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
HCC094	Anorexia/Bulimia Nervosa	2.381	2.241	2.130	2.064	2.061
HCC096	Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	2.057	1.952	1.870	1.810	1.807
HCC097	Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes.	0.845	0.758	0.679	0.599	0.595
HCC102	Autistic Disorder	1.055	0.948	0.846	0.736	0.731
HCC103	Pervasive Developmental Disorders, Except Autistic Disorder	1.055	0.948	0.846	0.736	0.731
HCC106	Traumatic Complete Lesion Cervical Spinal Cord	9.063	8.932	8.834	8.822	8.821
HCC107	Quadriplegia	9.063	8.932	8.834	8.822	8.821
HCC108	Traumatic Complete Lesion Dorsal Spinal Cord	7.368	7.239	7.144	7.121	7.120
HCC109	Paraplegia	7.368	7.239	7.144	7.121	7.120
HCC110	Spinal Cord Disorders/Injuries	5.019	4.833	4.698	4.663	4.662
HCC111	Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	2.107	1.911	1.772	1.707	1.705
HCC112	Quadriplegic Cerebral Palsy	0.433	0.289	0.181	0.108	0.107
HCC113	Cerebral Palsy, Except Quadriplegic	0.364	0.264	0.181	0.108	0.107
HCC114	Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies.	0.016	0.000	0.000	0.000	0.000
HCC115	Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.	5.116	4.991	4.900	4.882	4.881
HCC117	Muscular Dystrophy	2.109	1.970	1.873	1.783	1.778
HCC118	Multiple Sclerosis	8.046	7.788	7.595	7.579	7.578
HCC119	Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders.	2.109	1.970	1.873	1.783	1.778
HCC120	Seizure Disorders and Convulsions	1.423	1.288	1.183	1.100	1.096
HCC121	Hydrocephalus	4.823	4.717	4.628	4.597	4.596
HCC122	Non-Traumatic Coma, and Brain Compression/Anoxic Damage	8.085	7.965	7.866	7.861	7.860
HCC125	Respirator Dependence/Tracheostomy Status	27.074	27.045	27.016	27.096	27.100
HCC126	Respiratory Arrest	8.400	8.265	8.168	8.241	8.245
HCC127	Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.	8.400	8.265	8.168	8.241	8.245
HCC128	Heart Assistive Device/Artificial Heart	27.593	27.404	27.268	27.331	27.336
HCC129	Heart Transplant	27.593	27.404	27.268	27.331	27.336
HCC130	Congestive Heart Failure	2.847	2.758	2.693	2.686	2.686
HCC131	Acute Myocardial Infarction	8.501	8.214	8.005	8.114	8.120
HCC132	Unstable Angina and Other Acute Ischemic Heart Disease	4.515	4.281	4.129	4.132	4.133
HCC135	Heart Infection/Inflammation, Except Rheumatic	5.135	5.022	4.938	4.908	4.907
HCC142	Specified Heart Arrhythmias	2.365	2.241	2.148	2.080	2.077
HCC145	Intracranial Hemorrhage	7.686	7.448	7.279	7.270	7.270
HCC146	Ischemic or Unspecified Stroke	2.324	2.176	2.085	2.079	2.079
HCC149	Cerebral Aneurysm and Arteriovenous Malformation	3.171	3.011	2.895	2.840	2.837
HCC150	Hemiplegia/Hemiparesis	4.396	4.314	4.257	4.306	4.309
HCC151	Monoplegia, Other Paralytic Syndromes	2.634	2.522	2.444	2.414	2.413
HCC153	Atherosclerosis of the Extremities with Ulceration or Gangrene	9.113	9.051	9.004	9.096	9.101
HCC154	Vascular Disease with Complications	6.411	6.255	6.143	6.133	6.133
HCC156	Pulmonary Embolism and Deep Vein Thrombosis	3.132	2.995	2.895	2.850	2.848
HCC158	Lung Transplant Status/Complications	25.523	25.380	25.270	25.354	25.358
HCC159	Cystic Fibrosis	11.222	10.969	10.767	10.781	10.782
HCC160	Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	0.859	0.766	0.683	0.595	0.591
HCC161	Asthma	0.859	0.766	0.683	0.595	0.591
HCC162	Fibrosis of Lung and Other Lung Disorders	1.724	1.629	1.562	1.510	1.507
HCC163	Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.	5.920	5.866	5.827	5.835	5.836
HCC183	Kidney Transplant Status	7.636	7.438	7.304	7.276	7.276
HCC184	End Stage Renal Disease	31.427	31.237	31.086	31.232	31.238
HCC187	Chronic Kidney Disease, Stage 5	1.369	1.313	1.276	1.285	1.286
HCC188	Chronic Kidney Disease, Stage 4	1.369	1.313	1.276	1.285	1.286
HCC203	Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism.	1.219	1.074	0.947	0.745	0.733
HCC204	Miscarriage with Complications	1.219	1.074	0.947	0.745	0.733
HCC205	Miscarriage with No or Minor Complications	1.219	1.074	0.947	0.745	0.733
HCC207	Completed Pregnancy With Major Complications	3.243	2.827	2.608	2.399	2.398
HCC208	Completed Pregnancy With Complications	3.243	2.827	2.608	2.399	2.398
HCC209	Completed Pregnancy with No or Minor Complications	3.243	2.827	2.608	2.399	2.398
HCC217	Chronic Ulcer of Skin, Except Pressure	1.958	1.865	1.801	1.788	1.788
HCC226	Hip Fractures and Pathological Vertebral or Humerus Fractures	8.626	8.433	8.291	8.324	8.326
HCC227	Pathological Fractures, Except of Vertebrae, Hip, or Humerus	2.240	2.124	2.033	1.957	1.954
HCC251	Stem Cell, Including Bone Marrow, Transplant Status/Complications	23.527	23.526	23.520	23.544	23.544
HCC253	Artificial Openings for Feeding or Elimination	8.149	8.067	8.005	8.041	8.043
HCC254	Amputation Status, Lower Limb/Amputation Complications	3.928	3.819	3.740	3.770	3.772
	Interaction Factors					
SEVERE × HCC006	Severe illness × Opportunistic Infections	8.221	8.406	8.532	8.658	8.663
SEVERE × HCC008	Severe illness × Metastatic Cancer	8.221	8.406	8.532	8.658	8.663
SEVERE × HCC009	Severe illness × Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.	8.221	8.406	8.532	8.658	8.663
SEVERE × HCC010	Severe illness × Non-Hodgkin's Lymphomas and Other Cancers and Tumors.	8.221	8.406	8.532	8.658	8.663
SEVERE × HCC115	Severe illness × Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.	8.221	8.406	8.532	8.658	8.663
SEVERE × HCC135	Severe illness × Heart Infection/Inflammation, Except Rheumatic	8.221	8.406	8.532	8.658	8.663
SEVERE × HCC145	Severe illness × Intracranial Hemorrhage	8.221	8.406	8.532	8.658	8.663

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR [A]—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
SEVERE × G06	Severe illness × HCC group G06 (G06 is HCC Group 6 which includes the following HCCs in the blood disease category: 67, 68).	8.221	8.406	8.532	8.658	8.663
SEVERE × G08	Severe illness × HCC group G08 (G08 is HCC Group 8 which includes the following HCCs in the blood disease category: 73, 74).	8.221	8.406	8.532	8.658	8.663
SEVERE × HCC035	Severe illness × End-Stage Liver Disease	1.816	1.916	1.979	2.088	2.092
SEVERE × HCC038	Severe illness × Acute Liver Failure/Disease, Including Neonatal Hepatitis	1.816	1.916	1.979	2.088	2.092
SEVERE × HCC153	Severe illness × Atherosclerosis of the Extremities with Ulceration or Gangrene.	1.816	1.916	1.979	2.088	2.092
SEVERE × HCC154	Severe illness × Vascular Disease with Complications	1.816	1.916	1.979	2.088	2.092
SEVERE × HCC163	Severe illness × Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.	1.816	1.916	1.979	2.088	2.092
SEVERE × HCC253	Severe illness × Artificial Openings for Feeding or Elimination	1.816	1.916	1.979	2.088	2.092
SEVERE × G03	Severe illness × HCC group G03 (G03 is HCC Group 3 which includes the following HCCs in the musculoskeletal disease category: 54, 55).	1.816	1.916	1.979	2.088	2.092
	Enrollment Duration Factors					
	One month of enrollment	0.491	0.431	0.385	0.363	0.363
	Two months of enrollment	0.439	0.384	0.337	0.317	0.316
	Three months of enrollment	0.356	0.308	0.264	0.245	0.244
	Four months of enrollment	0.302	0.261	0.222	0.204	0.204
	Five months of enrollment	0.263	0.229	0.195	0.179	0.178
	Six months of enrollment	0.220	0.193	0.164	0.148	0.147
	Seven months of enrollment	0.217	0.191	0.164	0.148	0.147
	Eight months of enrollment	0.160	0.141	0.121	0.109	0.109
	Nine months of enrollment	0.121	0.107	0.095	0.088	0.088
	Ten months of enrollment	0.106	0.098	0.090	0.086	0.086
	Eleven months of enrollment	0.097	0.091	0.085	0.083	0.083
	Prescription Drug Factors					
RXC 01	Anti-HIV Agents	7.903	7.394	7.016	6.869	6.863
RXC 02	Anti-Hepatitis C (HCV) Agents	42.192	41.724	41.357	41.522	41.530
RXC 03	Antiarrhythmics	0.115	0.115	0.115	0.115	0.115
RXC 04	Phosphate Binders	0.640	0.640	0.640	0.640	0.640
RXC 05	Inflammatory Bowel Disease Agents	1.926	1.751	1.620	1.446	1.437
RXC 06	Insulin	1.520	1.384	1.235	1.059	1.049
RXC 07	Anti-Diabetic Agents, Except Insulin and Metformin Only	0.499	0.437	0.369	0.282	0.277
RXC 08	Multiple Sclerosis Agents	20.967	20.276	19.754	19.796	19.801
RXC 09	Immune Suppressants and Immunomodulators	12.856	12.303	11.895	11.956	11.959
RXC 10	Cystic Fibrosis Agents	10.619	10.340	10.149	10.250	10.255
RXC 01 × HCC001	Additional effect for enrollees with RxC 01 (Anti-HIV Agents) and HCC 001 (HIV/AIDS).	2.849	2.926	2.995	3.292	3.306
RXC 02 × HCC037_1, 036, 035, 034.	Additional effect for enrollees with RxC 02 (Anti-Hepatitis C (HCV) Agents) and (HCC 037_1 (Chronic Viral Hepatitis C) or 036 (Cirrhosis of Liver) or 035 (End-Stage Liver Disease) or 034 (Liver Transplant Status/Complications)).	3.993	4.162	4.267	4.300	4.301
RXC 03 × HCC142	Additional effect for enrollees with RxC 03 (Antiarrhythmics) and HCC 142 (Specified Heart Arrhythmias).	0.000	0.000	0.000	0.000	0.000
RXC 04 × HCC184, 183, 187, 188.	Additional effect for enrollees with RxC 04 (Phosphate Binders) and (HCC 184 (End Stage Renal Disease) or 183 (Kidney Transplant Status) or 187 (Chronic Kidney Disease, Stage 5) or 188 (Chronic Kidney Disease, Severe Stage 4)).	0.000	0.000	0.000	0.000	0.000
RXC 05 × HCC048, 041	Additional effect for enrollees with RxC 05 (Inflammatory Bowel Disease Agents) and (HCC 048 (Inflammatory Bowel Disease) or 041 (Intestine Transplant Status/Complications)).	−1.002	−0.915	−0.829	−0.721	−0.715
RXC 06 × HCC018, 019, 020, 021.	Additional effect for enrollees with RxC 06 (Insulin) and (HCC 018 (Pancreas Transplant Status/Complications) or 019 (Diabetes with Acute Complications) or 020 (Diabetes with Chronic Complications) or 021 (Diabetes without Complication)).	0.444	0.410	0.463	0.550	0.555
RXC 07 × HCC018, 019, 020, 021.	Additional effect for enrollees with RxC 07 (Anti-Diabetic Agents, Except Insulin and Metformin Only) and (HCC 018 (Pancreas Transplant Status/Complications) or 019 (Diabetes with Acute Complications) or 020 (Diabetes with Chronic Complications) or 021 (Diabetes without Complication)).	−0.174	−0.161	−0.129	−0.129	−0.130
RXC 08 × HCC118	Additional effect for enrollees with RxC 08 (Multiple Sclerosis Agents) and HCC 118 (Multiple Sclerosis).	−4.718	−4.268	−3.935	−3.822	−3.819
RXC 09 × HCC056 or 057 and 048 or 041.	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and (HCC 048 (Inflammatory Bowel Disease) or 041 (Intestine Transplant Status/Complications)) and (HCC 056 (Rheumatoid Arthritis and Specified Autoimmune Disorders) or 057 (Systemic Lupus Erythematosus and Other Autoimmune Disorders)).	−0.505	−0.528	−0.536	−0.574	−0.576
RXC 09 × HCC056	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and HCC 056 (Rheumatoid Arthritis and Specified Autoimmune Disorders).	−2.712	−2.470	−2.285	−2.173	−2.168
RXC 09 × HCC057	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and HCC 057 (Systemic Lupus Erythematosus and Other Autoimmune Disorders).	−0.434	−0.272	−0.144	0.012	0.020
RXC 09 × HCC048, 041	Additional effect for enrollees with RxC 09 (Immune Suppressants and Immunomodulators) and (HCC 048 (Inflammatory Bowel Disease) or 041 (Intestine Transplant Status/Complications)).	1.311	1.573	1.744	1.909	1.917

TABLE 2—PROPOSED ADULT RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR [A]—Continued

HCC or RXC No.	Factor	Platinum	Gold	Silver	Bronze	Catastrophic
RXC 10 × HCC159, 158	Additional effect for enrollees with RxC 10 (Cystic Fibrosis Agents) and (HCC 159 (Cystic Fibrosis) or 158 (Lung Transplant Status/Complications)).	29.675	29.853	29.949	29.967	29.967

[A] The proposed risk adjustment model factors for the 2019 benefit year include blended coefficients based on separately solved 2014 and 2015 MarketScan® data. We are proposing to finalize the 2019 benefit year risk adjustment model factors based on blended factors from separately solved models using the 2014 and 2015 MarketScan® data, and the 2016 benefit year enrollee-level EDGE data.

TABLE 3—HHS HCCS IN THE SEVERITY ILLNESS INDICATOR VARIABLE

Description
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock
Peritonitis/Gastrointestinal Perforation/Necrotizing Enter colitis
Seizure Disorders and Convulsions
Non-Traumatic Coma, Brain Compression/Anoxic Damage
Respirator Dependence/Tracheostomy Status
Respiratory Arrest
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes
Pulmonary Embolism and Deep Vein Thrombosis

TABLE 4—PROPOSED CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Demographic Factors					
Age 2–4, Male	0.194	0.139	0.077	0.023	0.020
Age 5–9, Male	0.130	0.091	0.043	0.004	0.002
Age 10–14, Male	0.199	0.156	0.099	0.056	0.054
Age 15–20, Male	0.268	0.218	0.156	0.102	0.100
Age 2–4, Female	0.147	0.100	0.047	0.007	0.005
Age 5–9, Female	0.104	0.069	0.029	0.002	0.001
Age 10–14, Female	0.189	0.147	0.095	0.057	0.055
Age 15–20, Female	0.298	0.239	0.167	0.100	0.097
Diagnosis Factors					
HIV/AIDS	5.744	5.340	5.034	4.949	4.944
Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock	13.174	13.022	12.922	12.938	12.940
Central Nervous System Infections, Except Viral Meningitis	7.345	7.194	7.085	7.094	7.095
Viral or Unspecified Meningitis	3.062	2.879	2.757	2.629	2.625
Opportunistic Infections	16.688	16.642	16.604	16.594	16.593
Metastatic Cancer	30.079	29.879	29.711	29.715	29.715
Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia	9.654	9.442	9.264	9.190	9.186
Non-Hodgkin's Lymphomas and Other Cancers and Tumors	8.104	7.883	7.707	7.615	7.611
Colorectal, Breast (Age <50), Kidney, and Other Cancers	2.866	2.706	2.572	2.460	2.454
Breast (Age 50+) and Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors	2.866	2.706	2.572	2.460	2.454
Thyroid Cancer, Melanoma, Neurofibromatosis, and Other Cancers and Tumors	1.218	1.090	0.977	0.858	0.852
Pancreas Transplant Status/Complications	21.519	21.274	21.082	21.114	21.116
Diabetes with Acute Complications	2.422	2.129	1.939	1.683	1.672
Diabetes with Chronic Complications	2.422	2.129	1.939	1.683	1.672
Diabetes without Complication	2.422	2.129	1.939	1.683	1.672
Protein-Calorie Malnutrition	11.421	11.335	11.264	11.302	11.304
Mucopolysaccharidosis	8.584	8.361	8.176	8.141	8.139
Lipidoses and Glycogenosis	8.584	8.361	8.176	8.141	8.139
Congenital Metabolic Disorders, Not Elsewhere Classified	8.584	8.361	8.176	8.141	8.139
Amyloidosis, Porphyria, and Other Metabolic Disorders	8.584	8.361	8.176	8.141	8.139
Adrenal, Pituitary, and Other Significant Endocrine Disorders	8.584	8.361	8.176	8.141	8.139
Liver Transplant Status/Complications	21.519	21.274	21.082	21.114	21.116
End-Stage Liver Disease	11.016	10.865	10.767	10.761	10.761
Cirrhosis of Liver	6.158	6.041	5.950	5.916	5.914
Chronic Viral Hepatitis C	6.888	6.742	6.621	6.604	6.604
Chronic Hepatitis, Other/Unspecified	1.679	1.571	1.470	1.385	1.381
Acute Liver Failure/Disease, Including Neonatal Hepatitis	10.719	10.579	10.476	10.479	10.480
Intestine Transplant Status/Complications	21.519	21.274	21.082	21.114	21.116

TABLE 4—PROPOSED CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis	10.481	10.202	9.989	9.995	9.996
Intestinal Obstruction	3.953	3.763	3.613	3.521	3.518
Chronic Pancreatitis	10.876	10.686	10.549	10.567	10.569
Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption	2.107	1.992	1.891	1.793	1.788
Inflammatory Bowel Disease	6.687	6.344	6.085	5.986	5.981
Necrotizing Fasciitis	3.868	3.678	3.524	3.459	3.456
Bone/Joint/Muscle Infections/Necrosis	3.868	3.678	3.524	3.459	3.456
Rheumatoid Arthritis and Specified Autoimmune Disorders	4.271	4.056	3.872	3.782	3.778
Systemic Lupus Erythematosus and Other Autoimmune Disorders	1.227	1.111	0.999	0.872	0.867
Osteogenesis Imperfecta and Other Osteodystrophies	1.364	1.258	1.162	1.079	1.075
Congenital/Developmental Skeletal and Connective Tissue Disorders	1.364	1.258	1.162	1.079	1.075
Cleft Lip/Cleft Palate	1.407	1.241	1.107	0.982	0.977
Hemophilia	55.787	55.354	55.012	54.989	54.988
Myelodysplastic Syndromes and Myelofibrosis	12.015	11.906	11.825	11.801	11.800
Aplastic Anemia	12.015	11.906	11.825	11.801	11.800
Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn	6.603	6.387	6.217	6.130	6.126
Sickle Cell Anemia (Hb-SS)	6.603	6.387	6.217	6.130	6.126
Thalassemia Major	6.603	6.387	6.217	6.130	6.126
Combined and Other Severe Immunodeficiencies	6.007	5.869	5.759	5.696	5.693
Disorders of the Immune Mechanism	6.007	5.869	5.759	5.696	5.693
Coagulation Defects and Other Specified Hematological Disorders	4.186	4.074	3.976	3.905	3.902
Drug Psychosis	5.541	5.318	5.157	5.092	5.090
Drug Dependence	5.541	5.318	5.157	5.092	5.090
Schizophrenia	4.669	4.332	4.086	3.973	3.968
Major Depressive and Bipolar Disorders	1.809	1.621	1.462	1.283	1.275
Reactive and Unspecified Psychosis, Delusional Disorders	1.681	1.507	1.356	1.179	1.171
Personality Disorders	0.678	0.582	0.476	0.338	0.332
Anorexia/Bulimia Nervosa	2.792	2.619	2.478	2.413	2.409
Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes	2.339	2.176	2.067	2.032	2.031
Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes	1.838	1.693	1.582	1.491	1.487
Autistic Disorder	1.513	1.364	1.228	1.070	1.063
Pervasive Developmental Disorders, Except Autistic Disorder	0.737	0.640	0.528	0.382	0.375
Traumatic Complete Lesion Cervical Spinal Cord	12.154	12.087	12.058	12.138	12.142
Quadriplegia	12.154	12.087	12.058	12.138	12.142
Traumatic Complete Lesion Dorsal Spinal Cord	10.641	10.489	10.347	10.348	10.348
Paraplegia	10.641	10.489	10.347	10.348	10.348
Spinal Cord Disorders/Injuries	3.473	3.289	3.147	3.055	3.051
Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease	7.137	6.947	6.796	6.711	6.706
Quadriplegic Cerebral Palsy	3.125	2.921	2.787	2.797	2.797
Cerebral Palsy, Except Quadriplegic	0.730	0.588	0.484	0.395	0.391
Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies	1.219	1.108	1.019	0.949	0.946
Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy	8.961	8.809	8.687	8.653	8.652
Muscular Dystrophy	2.675	2.515	2.397	2.310	2.307
Multiple Sclerosis	9.417	9.117	8.880	8.847	8.846
Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders	2.675	2.515	2.397	2.310	2.307
Seizure Disorders and Convulsions	1.887	1.743	1.611	1.470	1.463
Hydrocephalus	3.800	3.697	3.620	3.605	3.605
Non-Traumatic Coma, and Brain Compression/Anoxic Damage	5.359	5.248	5.156	5.116	5.114
Respirator Dependence/Tracheostomy Status	31.233	31.127	31.052	31.184	31.190
Respiratory Arrest	9.997	9.799	9.667	9.653	9.653
Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes	9.997	9.799	9.667	9.653	9.653
Heart Assistive Device/Artificial Heart	21.519	21.274	21.082	21.114	21.116
Heart Transplant	21.519	21.274	21.082	21.114	21.116
Congestive Heart Failure	5.652	5.562	5.482	5.438	5.435
Acute Myocardial Infarction	4.541	4.481	4.446	4.422	4.421
Unstable Angina and Other Acute Ischemic Heart Disease	4.541	4.481	4.446	4.422	4.421
Heart Infection/Inflammation, Except Rheumatic	11.390	11.285	11.206	11.181	11.179

TABLE 4—PROPOSED CHILD RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR—Continued

Factor	Platinum	Gold	Silver	Bronze	Catastrophic
Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders	5.172	5.012	4.857	4.735	4.729
Major Congenital Heart/Circulatory Disorders	1.451	1.360	1.244	1.128	1.122
Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders	0.894	0.810	0.707	0.612	0.609
Specified Heart Arrhythmias	3.536	3.385	3.253	3.178	3.175
Intracranial Hemorrhage	12.297	12.087	11.936	11.925	11.925
Ischemic or Unspecified Stroke	6.626	6.537	6.482	6.494	6.494
Cerebral Aneurysm and Arteriovenous Malformation	3.425	3.247	3.122	3.047	3.043
Hemiplegia/Hemiparesis	3.713	3.626	3.568	3.555	3.555
Monoplegia, Other Paralytic Syndromes	2.871	2.748	2.664	2.635	2.635
Atherosclerosis of the Extremities with Ulceration or Gangrene	10.177	9.954	9.794	9.715	9.712
Vascular Disease with Complications	15.267	15.144	15.047	15.063	15.063
Pulmonary Embolism and Deep Vein Thrombosis	12.509	12.400	12.319	12.358	12.360
Lung Transplant Status/Complications	21.519	21.274	21.082	21.114	21.116
Cystic Fibrosis	21.519	21.274	21.082	21.114	21.116
Chronic Obstructive Pulmonary Disease, Including Bronchiectasis	0.364	0.303	0.220	0.128	0.123
Asthma	0.364	0.303	0.220	0.128	0.123
Fibrosis of Lung and Other Lung Disorders	3.740	3.635	3.537	3.471	3.469
Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections	8.744	8.694	8.652	8.688	8.690
Kidney Transplant Status	13.420	13.163	12.976	12.979	12.978
End Stage Renal Disease	33.178	33.107	33.050	33.146	33.150
Chronic Kidney Disease, Stage 5	1.895	1.768	1.660	1.557	1.555
Chronic Kidney Disease, Severe (Stage 4)	1.895	1.768	1.660	1.557	1.555
Ectopic and Molar Pregnancy, Except with Renal Failure, Shock, or Embolism	1.049	0.899	0.765	0.553	0.542
Miscarriage with Complications	1.049	0.899	0.765	0.553	0.542
Miscarriage with No or Minor Complications	1.049	0.899	0.765	0.553	0.542
Completed Pregnancy With Major Complications	2.784	2.404	2.197	1.961	1.958
Completed Pregnancy With Complications	2.784	2.404	2.197	1.961	1.958
Completed Pregnancy with No or Minor Complications	2.784	2.404	2.197	1.961	1.958
Chronic Ulcer of Skin, Except Pressure	2.025	1.939	1.854	1.785	1.781
Hip Fractures and Pathological Vertebral or Humerus Fractures	5.331	5.100	4.905	4.806	4.802
Pathological Fractures, Except of Vertebrae, Hip, or Humerus	1.417	1.296	1.168	1.028	1.019
Stem Cell, Including Bone Marrow, Transplant Status/ Complications	21.519	21.274	21.082	21.114	21.116
Artificial Openings for Feeding or Elimination	11.532	11.432	11.368	11.481	11.487
Amputation Status, Lower Limb/Amputation Complications	7.235	7.007	6.844	6.738	6.734

TABLE 5—PROPOSED INFANT RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR

Group	Platinum	Gold	Silver	Bronze	Catastrophic
Extremely Immature * Severity Level 5 (Highest)	268.917	267.690	266.660	266.665	266.666
Extremely Immature * Severity Level 4	164.057	162.851	161.848	161.805	161.804
Extremely Immature * Severity Level 3	34.929	34.068	33.319	33.095	33.090
Extremely Immature * Severity Level 2	34.929	34.068	33.319	33.095	33.090
Extremely Immature * Severity Level 1 (Lowest)	34.929	34.068	33.319	33.095	33.090
Immature * Severity Level 5 (Highest)	163.691	162.498	161.499	161.501	161.503
Immature * Severity Level 4	72.779	71.594	70.608	70.581	70.582
Immature * Severity Level 3	33.416	32.404	31.556	31.393	31.387
Immature * Severity Level 2	24.515	23.529	22.711	22.500	22.490
Immature * Severity Level 1 (Lowest)	24.515	23.529	22.711	22.500	22.490
Premature/Multiples * Severity Level 5 (Highest)	118.666	117.511	116.565	116.511	116.512
Premature/Multiples * Severity Level 4	26.998	25.884	24.983	24.819	24.815
Premature/Multiples * Severity Level 3	13.865	13.000	12.294	11.914	11.898
Premature/Multiples * Severity Level 2	7.702	7.015	6.435	5.861	5.832
Premature/Multiples * Severity Level 1 (Lowest)	5.180	4.663	4.139	3.538	3.508
Term * Severity Level 5 (Highest)	94.243	93.167	92.263	92.087	92.080
Term * Severity Level 4	14.247	13.396	12.715	12.261	12.242
Term * Severity Level 3	5.672	5.124	4.602	3.974	3.940
Term * Severity Level 2	3.403	2.987	2.524	1.843	1.808
Term * Severity Level 1 (Lowest)	1.530	1.305	0.896	0.365	0.345
Age1 * Severity Level 5 (Highest)	49.506	48.891	48.377	48.287	48.283
Age1 * Severity Level 4	8.229	7.779	7.399	7.151	7.141

TABLE 5—PROPOSED INFANT RISK ADJUSTMENT MODEL FACTORS FOR 2019 BENEFIT YEAR—Continued

Group	Platinum	Gold	Silver	Bronze	Catastrophic
Age1 * Severity Level 3	2.945	2.674	2.388	2.123	2.112
Age1 * Severity Level 2	1.913	1.697	1.446	1.161	1.147
Age1 * Severity Level 1 (Lowest)	0.513	0.420	0.276	0.179	0.175
Age 0 Male	0.575	0.533	0.515	0.461	0.456
Age 1 Male	0.115	0.100	0.088	0.060	0.059

TABLE 6—HHS HCCS INCLUDED IN INFANT MODEL MATURITY CATEGORIES

Maturity category	HCC/description
Extremely Immature	Extremely Immature Newborns, Birthweight <500 Grams.
Extremely Immature	Extremely Immature Newborns, Including Birthweight 500–749 Grams.
Extremely Immature	Extremely Immature Newborns, Including Birthweight 750–999 Grams.
Immature	Premature Newborns, Including Birthweight 1,000–1,499 Grams.
Immature	Premature Newborns, Including Birthweight 1,500–1,999 Grams.
Premature/Multiples	Premature Newborns, Including Birthweight 2,000–2,499 Grams.
Premature/Multiples	Other Premature, Low Birthweight, Malnourished, or Multiple Birth Newborns.
Term	Term or Post-Term Singleton Newborn, Normal or High Birthweight.
Age 1	All age 1 infants.

TABLE 7—HHS HCCS INCLUDED IN INFANT MODEL SEVERITY CATEGORIES

Severity category	HCC
Severity Level 5 (Highest)	Metastatic Cancer.
Severity Level 5	Pancreas Transplant Status/Complications.
Severity Level 5	Liver Transplant Status/Complications.
Severity Level 5	End-Stage Liver Disease.
Severity Level 5	Intestine Transplant Status/Complications.
Severity Level 5	Peritonitis/Gastrointestinal Perforation/Necrotizing Enterocolitis.
Severity Level 5	Respirator Dependence/Tracheostomy Status.
Severity Level 5	Heart Assistive Device/Artificial Heart.
Severity Level 5	Heart Transplant.
Severity Level 5	Congestive Heart Failure.
Severity Level 5	Hypoplastic Left Heart Syndrome and Other Severe Congenital Heart Disorders.
Severity Level 5	Lung Transplant Status/Complications.
Severity Level 5	Kidney Transplant Status.
Severity Level 5	End Stage Renal Disease.
Severity Level 5	Stem Cell, Including Bone Marrow, Transplant Status/Complications.
Severity Level 4	Septicemia, Sepsis, Systemic Inflammatory Response Syndrome/Shock.
Severity Level 4	Lung, Brain, and Other Severe Cancers, Including Pediatric Acute Lymphoid Leukemia.
Severity Level 4	Mucopolysaccharidosis.
Severity Level 4	Major Congenital Anomalies of Diaphragm, Abdominal Wall, and Esophagus, Age <2.
Severity Level 4	Myelodysplastic Syndromes and Myelofibrosis.
Severity Level 4	Aplastic Anemia.
Severity Level 4	Combined and Other Severe Immunodeficiencies.
Severity Level 4	Traumatic Complete Lesion Cervical Spinal Cord.
Severity Level 4	Quadriplegia.
Severity Level 4	Amyotrophic Lateral Sclerosis and Other Anterior Horn Cell Disease.
Severity Level 4	Quadriplegic Cerebral Palsy.
Severity Level 4	Myasthenia Gravis/Myoneural Disorders and Guillain-Barre Syndrome/Inflammatory and Toxic Neuropathy.
Severity Level 4	Non-Traumatic Coma, Brain Compression/Anoxic Damage.
Severity Level 4	Respiratory Arrest.
Severity Level 4	Cardio-Respiratory Failure and Shock, Including Respiratory Distress Syndromes.
Severity Level 4	Acute Myocardial Infarction.
Severity Level 4	Heart Infection/Inflammation, Except Rheumatic.
Severity Level 4	Major Congenital Heart/Circulatory Disorders.
Severity Level 4	Intracranial Hemorrhage.
Severity Level 4	Ischemic or Unspecified Stroke.
Severity Level 4	Vascular Disease with Complications.
Severity Level 4	Pulmonary Embolism and Deep Vein Thrombosis.
Severity Level 4	Aspiration and Specified Bacterial Pneumonias and Other Severe Lung Infections.
Severity Level 4	Chronic Kidney Disease, Stage 5.
Severity Level 4	Hip Fractures and Pathological Vertebral or Humerus Fractures.
Severity Level 4	Artificial Openings for Feeding or Elimination.
Severity Level 3	HIV/AIDS.
Severity Level 3	Central Nervous System Infections, Except Viral Meningitis.
Severity Level 3	Opportunistic Infections.
Severity Level 3	Non-Hodgkin's Lymphomas and Other Cancers and Tumors.

TABLE 7—HHS HCCS INCLUDED IN INFANT MODEL SEVERITY CATEGORIES—Continued

Severity category	HCC
Severity Level 3	Colorectal, Breast (Age <50), Kidney and Other Cancers.
Severity Level 3	Breast (Age 50+), Prostate Cancer, Benign/Uncertain Brain Tumors, and Other Cancers and Tumors.
Severity Level 3	Lipidoses and Glycogenosis.
Severity Level 3	Adrenal, Pituitary, and Other Significant Endocrine Disorders.
Severity Level 3	Acute Liver Failure/Disease, Including Neonatal Hepatitis.
Severity Level 3	Intestinal Obstruction.
Severity Level 3	Necrotizing Fasciitis.
Severity Level 3	Bone/Joint/Muscle Infections/Necrosis.
Severity Level 3	Osteogenesis Imperfecta and Other Osteodystrophies.
Severity Level 3	Cleft Lip/Cleft Palate.
Severity Level 3	Hemophilia.
Severity Level 3	Disorders of the Immune Mechanism.
Severity Level 3	Coagulation Defects and Other Specified Hematological Disorders.
Severity Level 3	Prader-Willi, Patau, Edwards, and Autosomal Deletion Syndromes.
Severity Level 3	Traumatic Complete Lesion Dorsal Spinal Cord.
Severity Level 3	Paraplegia.
Severity Level 3	Spinal Cord Disorders/Injuries.
Severity Level 3	Cerebral Palsy, Except Quadriplegic.
Severity Level 3	Muscular Dystrophy.
Severity Level 3	Parkinson's, Huntington's, and Spinocerebellar Disease, and Other Neurodegenerative Disorders.
Severity Level 3	Hydrocephalus.
Severity Level 3	Unstable Angina and Other Acute Ischemic Heart Disease.
Severity Level 3	Atrial and Ventricular Septal Defects, Patent Ductus Arteriosus, and Other Congenital Heart/Circulatory Disorders.
Severity Level 3	Specified Heart Arrhythmias.
Severity Level 3	Cerebral Aneurysm and Arteriovenous Malformation.
Severity Level 3	Hemiplegia/Hemiparesis.
Severity Level 3	Cystic Fibrosis.
Severity Level 3	Fibrosis of Lung and Other Lung Disorders.
Severity Level 3	Pathological Fractures, Except of Vertebrae, Hip, or Humerus.
Severity Level 2	Viral or Unspecified Meningitis.
Severity Level 2	Thyroid, Melanoma, Neurofibromatosis, and Other Cancers and Tumors.
Severity Level 2	Diabetes with Acute Complications.
Severity Level 2	Diabetes with Chronic Complications.
Severity Level 2	Diabetes without Complication.
Severity Level 2	Protein-Calorie Malnutrition.
Severity Level 2	Congenital Metabolic Disorders, Not Elsewhere Classified.
Severity Level 2	Amyloidosis, Porphyria, and Other Metabolic Disorders.
Severity Level 2	Cirrhosis of Liver.
Severity Level 2	Chronic Pancreatitis.
Severity Level 2	Inflammatory Bowel Disease.
Severity Level 2	Rheumatoid Arthritis and Specified Autoimmune Disorders.
Severity Level 2	Systemic Lupus Erythematosus and Other Autoimmune Disorders.
Severity Level 2	Congenital/Developmental Skeletal and Connective Tissue Disorders.
Severity Level 2	Acquired Hemolytic Anemia, Including Hemolytic Disease of Newborn.
Severity Level 2	Sickle Cell Anemia (Hb-SS).
Severity Level 2	Drug Psychosis.
Severity Level 2	Drug Dependence.
Severity Level 2	Down Syndrome, Fragile X, Other Chromosomal Anomalies, and Congenital Malformation Syndromes.
Severity Level 2	Spina Bifida and Other Brain/Spinal/Nervous System Congenital Anomalies.
Severity Level 2	Seizure Disorders and Convulsions.
Severity Level 2	Monoplegia, Other Paralytic Syndromes.
Severity Level 2	Atherosclerosis of the Extremities with Ulceration or Gangrene.
Severity Level 2	Chronic Obstructive Pulmonary Disease, Including Bronchiectasis.
Severity Level 2	Chronic Ulcer of Skin, Except Pressure.
Severity Level 1 (Lowest)	Chronic Hepatitis.
Severity Level 1	Acute Pancreatitis/Other Pancreatic Disorders and Intestinal Malabsorption.
Severity Level 1	Thalassemia Major.
Severity Level 1	Autistic Disorder.
Severity Level 1	Pervasive Developmental Disorders, Except Autistic Disorder.
Severity Level 1	Multiple Sclerosis.
Severity Level 1	Asthma.
Severity Level 1	Chronic Kidney Disease, Severe (Stage 4).
Severity Level 1	Amputation Status, Lower Limb/Amputation Complications.
Severity Level 1	No Severity HCCs.

d. Cost-Sharing Reductions Adjustments (§ 153.320)

We propose to continue including an adjustment for the receipt of cost-sharing reductions in the model to account for increased plan liability due to increased utilization of healthcare services by enrollees receiving cost-sharing reductions (induced demand) in all States where HHS operates risk adjustment. The proposed cost-sharing reductions adjustment factors for the 2019 benefit year risk adjustment are unchanged from those finalized in the 2018 Payment Notice, and are set forth in Table 8. These adjustments would be effective for 2016, 2017, 2018, and 2019 risk adjustment, and would be multiplied against the sum of the demographic, diagnosis, and interaction factors, and enrollment and prescription drug utilization factors (for the adult model). We anticipate adjusting these factors in the annual HHS notice of benefit and payment parameters for the 2020 benefit year as enrollee-level data from the individual market will be available in time for proposal in that rulemaking.

We seek comment on this approach.

TABLE 8—COST-SHARING REDUCTIONS ADJUSTMENT

Household income	Plan AV	Induced utilization factor
Silver Plan Variant Recipients		
100–150% of FPL	Plan Variation 94%	1.12
150–200% of FPL	Plan Variation 87%	1.12
200–250% of FPL	Plan Variation 73%	1.00
>250% of FPL	Standard Plan 70%	1.00
Zero Cost-Sharing Recipients		
<300% of FPL	Platinum (90%)	1.00
<300% of FPL	Gold (80%)	1.07
<300% of FPL	Silver (70%)	1.12
<300% of FPL	Bronze (60%)	1.15
Limited Cost-Sharing Recipients		
>300% of FPL	Platinum (90%)	1.00
>300% of FPL	Gold (80%)	1.07
>300% of FPL	Silver (70%)	1.12
>300% of FPL	Bronze (60%)	1.15

e. Model Performance Statistics (§ 153.320)

To evaluate the model's performance, we examined its R-squared statistic and predictive ratios. The R-squared statistic, which calculates the percentage of individual variation explained by a model, measures the predictive accuracy of the model overall. The predictive ratios measure the predictive accuracy of a model for different validation groups or subpopulations. The predictive ratio for each of the HHS risk adjustment models is the ratio of the weighted mean predicted plan liability for the model sample population to the weighted mean actual plan liability for the model sample population. The predictive ratio represents how well the model does on average at predicting plan liability for that subpopulation. A subpopulation that is predicted perfectly would have a predictive ratio of 1.0. For each of the HHS risk adjustment models, the R-squared statistic and the predictive ratios are in the range of published estimates for concurrent risk adjustment models.[12] Because we are proposing to blend the coefficients from separately solved models based on MarketScan® 2014 and 2015 data in the proposed rule, we are publishing the R-squared statistic for each model and benefit year separately to verify their statistical validity. The R-squared statistic for each model is shown in Table 9.

TABLE 9—R-SQUARED STATISTIC FOR PROPOSED HHS RISK ADJUSTMENT MODELS

Risk adjustment model	R-squared statistic	
	2014	2015
Platinum Adult	0.4221	0.4212
Platinum Child	0.293	0.3314
Platinum Infant	0.3284	0.3329
Gold Adult	0.4179	0.4164
Gold Child	0.2883	0.3269
Gold Infant	0.3264	0.3309
Silver Adult	0.4143	0.4123
Silver Child	0.2841	0.3227
Silver Infant	0.325	0.3295
Bronze Adult	0.4117	0.4095
Bronze Child	0.2805	0.3188

[12] Winkleman, Ross and Syed Mehmud. ''A Comparative Analysis of Claims-Based Tools for Health Risk Assessment.'' Society of Actuaries. April 2007.

TABLE 9—R-SQUARED STATISTIC FOR PROPOSED HHS RISK ADJUSTMENT MODELS—Continued

Risk adjustment model	R-squared statistic	
	2014	2015
Bronze Infant	0.3247	0.3292
Catastrophic Adult	0.4115	0.4094
Catastrophic Child	0.2803	0.3186
Catastrophic Infant	0.3247	0.3292

f. Overview of the Payment Transfer Formula (§ 153.320)

i. Accounting for High-Cost Risk Pool in the Transfer Formula

We previously defined the calculation of plan average actuarial risk and the calculation of payments and charges in the Premium Stabilization Rule. In the 2014 Payment Notice, we combined those concepts into a risk adjustment payment transfer formula. Risk adjustment transfers (total payments and charges including outlier pooling) will be calculated after issuers have completed risk adjustment data reporting. The payment transfer formula includes a set of cost adjustment terms that require transfers to be calculated at the geographic rating area level for each plan (that is, HHS will calculate two separate transfer amounts for a plan that operates in two rating areas). The payment transfer formula is designed to provide a per member per month (PMPM) transfer amount. The PMPM transfer amount derived from the payment transfer formula would be multiplied by each plan's total member months for the benefit year to determine the total payment due or charge owed by the issuer for that plan in a rating area. The total payment or charge is thus calculated to balance the State market risk pool in question. In addition to the total charge collected and payment made for the State market risk pool, in the 2018 Payment Notice, we added to the risk adjustment methodology additional transfers that would reflect the payments and charges assessed with respect to the costs of high-risk enrollees. To account for costs associated with high-risk enrollees, we added transfer terms (a payment term and a charge term) that would be calculated separately from the State transfer formula. Thus, the non-high cost pooling portion of plan risk would continue to be calculated as the member month weighted average of individual enrollee risk scores. Beginning for the 2018 benefit year, we added one term that reflects 60 percent of costs above $1 million, the threshold for our payments for these high-risk enrollees, and another term that reflects a percentage of PMPM premium adjustment to the transfer formula for the high-cost enrollee pool to maintain the balance of payment and charges within the risk adjustment program. For the 2019 benefit year we propose to maintain this adjustment to the risk adjustment transfers with the threshold of $1 million and a coinsurance rate of 60 percent, as finalized for the 2018 benefit year.

ii. Administrative Cost Reduction to Statewide Average Premium

Additionally, we propose to continue the policy finalized in the 2018 Payment Notice to reduce the Statewide average premium in the risk adjustment transfer formula by 14 percent to account for the proportion of administrative costs that do not vary with claims for the 2019 benefit year and future benefit years until changed in rulemaking. As a note, we define unadjusted Statewide average premiums as the sum of average premium per member month of plan (P_i) multiplied by plan *i*'s share of Statewide enrollment in the market in the risk pool (S_i). For the 2019 benefit year, the Statewide average premium, which will be used for the transfer formula finalized beginning for the 2018 benefit year, will be calculated based on the formula below:

$$\bar{P}_S = \left(\sum_i (s_i \cdot P_i) \right) * 0.86$$

Where:

s_i = plan *i*'s share of Statewide enrollment in the market in the risk pool;

P_i = average premium per member month of plan *i*.

iii. State Flexibility

The HHS risk adjustment payment transfer formula generally transfers amounts from issuers with lower than average actuarial risk to those with higher than average actuarial risk. Such risk adjustment transfers are widely used in health insurance markets and recognized as critical in mitigating the effects of adverse selection, ensuring financial viability of plans that enroll a higher proportion of high-risk enrollees, and thus, fostering competitive health insurance markets. The HHS risk adjustment program transfers are scaled with the Statewide average premium in the applicable State market. In the 2018 Payment Notice, we noted that compared to other scaling factors, such as, plans' own premiums, our analyses found Statewide average premium proves to be a more accurate means of scaling the transfers for differences in relative actuarial risk, particularly in the context of a budget-neutral system. We also finalized in the 2018 Payment Notice an administrative cost adjustment to the statewide average premium to remove a portion of administrative costs that did not vary based on claims differences from the Statewide average premium and base the transfers on the portion of the premiums that vary with claims.[13] Nevertheless, we acknowledge that, for some States that deviate significantly from the national dataset used, a further adjustment to the Statewide average premium may more precisely account for differences between the plan premium estimate reflecting adverse selection and the plan premium estimate not reflecting selection in the respective State market risk pools.

In the 2016 Interim Final Rule,[14] HHS recognized some State regulators' desire to reduce the magnitude of risk adjustment charge amounts for some issuers. We acknowledged that States are the primary regulators of their insurance markets, and as such, we encouraged States to examine whether any local approaches under State legal authority are warranted to help ease the transition to new health insurance markets.

In the small group market, employers select the plans offered to their employees and often pay a significant portion of employees' premiums to encourage enrollment. Depending on the participation rules and market dynamics within a particular State, risk selection can be significantly less in a State's small group market compared to

[13] 81 FR 94099, 94100. (December 22, 2016). Available at *https://www.gpo.gov/fdsys/pkg/FR-2016-12-22/pdf/2016-30433.pdf*.

[14] 91 FR 29146, 29152. (May 11, 2016). Available at *https://www.gpo.gov/fdsys/pkg/FR-2016-05-11/pdf/2016-11017.pdf*.

its individual market. The HHS methodology calculates relative risk scores between issuers in a State market, and in the case of the small group market, the differences between risk scores for issuers within State markets are generally smaller, leading to a smaller magnitude of risk adjustment transfers in the small group market as compared to the individual market. However, certain States have opined that the HHS risk adjustment methodology, which is calibrated on a national dataset, may in some circumstances, overcompensate for risk differences in the small group market for their particular State. In such cases, the States have the statutory authority to operate their own State risk adjustment program under a Federally-certified alternate risk adjustment methodology as they deem fit. We believe that allowing certain State-by-State adjustments to the HHS risk adjustment program can account for such State-specific differences in risk without the necessity for States to undertake operation of their own risk adjustment program. Therefore, in the case of small group markets, where States can demonstrate that the actuarial risk differences due to adverse selection are mitigated by the small group market dynamics described above, to tailor the risk adjustment methodology to particularities of reduced risk selection in a State's small group market, we are proposing to permit States' primary insurance regulators to request a percentage adjustment in the calculation of the risk adjustment transfer amounts in the small group market in their State, beginning for the 2019 benefit year.

Under this proposal, beginning in the 2019 benefit year and beyond, HHS would require any State that intends to request this flexibility to submit its proposal for an adjustment to the Statewide average premium in the small group market within 30 calendar days after publication of the proposed HHS notice of benefit and payment parameters for the applicable benefit year in order to permit issuers to incorporate any such adjustment into their proposed rates. For example, for the 2019 benefit year risk adjustment transfers, which will be calculated in the 2020 calendar year, State proposals would be submitted to HHS no later than 30 days after publication of this proposed HHS notice of benefit and payment parameters for the 2019 benefit year, similar to the public comment deadline for the proposed rule. In order to promote transparency and solicit feedback from consumers and stakeholders on the proposed adjustment to the HHS risk adjustment transfer formula, HHS would publish the requested State adjustments for public comment in guidance while it begins its initial review of the State proposal. HHS would then make final determinations of approval of State requests by March 1 of the benefit year prior to the applicable benefit year, in time for issuers' initial rate setting deadline. That is, for the 2019 benefit year, HHS would make final determinations of approval by March 1, 2018. The proposed timing of the State adjustment request submission, publication of HHS guidance, the public notice and comment period and HHS request approval process will permit plans to incorporate approved adjustments in their rates for the applicable benefit year.

HHS would consider requests from State regulators to reduce the calculation of the Statewide average premium used in the HHS risk adjustment transfer formula by up to 50 percent for the applicable benefit year. As noted above, Statewide average premium is defined as unadjusted Statewide average premium reduced by 14 percent, to account for a portion of administrative costs, or as 86 percent of unadjusted Statewide average premium. Transfers in the small group market could be reduced by up to an additional 43 percent (or 50 percent of the transfer amounts, after the 14 percent reduction for a portion of administrative costs to the Statewide average premium). We believe this adjustment would proportionally reduce the magnitude of risk adjustment transfers in the small group market. We seek comment on all aspects of this proposal, including the permissible extent of the adjustment, the timing of the submission, any evidence the State should be required to provide, and what procedural requirements should be in place.

We also seek comment on whether we should establish a similar process through which States could request an adjustment to the calculation of Statewide average premiums for risk adjustment in the individual market similarly to the proposed small group market adjustment. Although adverse selection in the individual market is not mitigated by group enrollment or minimum participation requirements that require a minimum percentage of employees to enroll in coverage as is the selection in the small group market, a State may believe the HHS risk adjustment methodology, which is calibrated on a national dataset, disproportionately accounts for relative actuarial risk differences in its individual market risk pool. We seek comment on whether, if a State can demonstrate such a difference in calculated relative actuarial risk, we should reduce States' administrative burden in operating its own risk adjustment program by allowing some flexibility in the HHS risk adjustment methodology to the extent permissible under the statute. Therefore, we seek comment on whether the adjustment described above for the small group market should also apply to the individual market, what individual market features would justify such an adjustment, and what additional submissions a State should provide in order to justify such a departure for that market. For example, to accommodate a State with particular State rating practices that serve to mitigate risk selection, we might require a statistical or actuarial study demonstrating the extent to which transfer amounts calculated pursuant to the HHS risk adjustment methodology finalized for the applicable benefit year would overstate differentials in uncompensated predicted risk in the individual market.

As noted above, a State that wishes to make an adjustment for the magnitude of these transfers in the individual and small group markets may take temporary, reasonable measures under State authority to mitigate effects under their own authority.

We seek comment on these proposals.

iv. The Payment Transfer Formula

Except as proposed above, the payment transfer formula would be unchanged from what was finalized in the 2014 Payment Notice (78 FR 15430 through 15434). We believe it useful to republish the formula in its entirety, since, as noted above, we are proposing to recalibrate the HHS risk adjustment model. Transfers (payments and charges) will be calculated as the difference between the plan premium estimate reflecting risk selection and the plan premium estimate not reflecting risk selection. As finalized in the 2014 Payment Notice, the HHS risk adjustment payment transfer formula is:

$$T_i = \left[\frac{PLRS_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot PLRS_i \cdot IDF_i \cdot GCF_i)} - \frac{AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i}{\sum_i (s_i \cdot AV_i \cdot ARF_i \cdot IDF_i \cdot GCF_i)}\right] \overline{P}_s$$

Where:

$\overline{P}_s$ = Statewide average premium;
$PLRS_i$ = plan *i*'s plan liability risk score;
AV_i = plan *i*'s metal level AV;
ARF_i = allowable rating factor;
IDF_i = plan *i*'s induced demand factor;
GCF_i = plan *i*'s geographic cost factor;
s_i = plan *i*'s share of State enrollment.

The denominator is summed across all plans in the risk pool in the market in the State.

The difference between the two premium estimates in the payment transfer formula determines whether a plan pays a risk adjustment charge or receives a risk adjustment payment. Note that the value of the plan average risk score by itself does not determine whether a plan would be assessed a charge or receive a payment—even if the risk score is greater than 1.0, it is possible that the plan would be assessed a charge if the premium compensation that the plan may receive through its rating (as measured through the allowable rating factor) exceeds the plan's predicted liability associated with risk selection. Risk adjustment transfers are calculated at the risk pool level, and catastrophic plans are treated as a separate risk pool for purposes of risk adjustment.

This existing formula would be multiplied by the number of member months to determine the total payment or charge assessed with respect to plan average risk scores for a plan's geographic rating area for the market within the State, and this payment or charge will be added to the transfer terms described above to account for the costs of high-risk enrollees.

g. Risk Adjustment Data Validation Requirements When HHS Operates Risk Adjustment (§ 153.630)

HHS will conduct risk adjustment data validation under § 153.630 in any State where HHS is operating risk adjustment on a State's behalf.[15] The purpose of risk adjustment data validation is to ensure issuers are providing accurate high-quality information to HHS, which is crucial for the proper functioning of the risk adjustment program. Risk adjustment data validation consists of an initial validation audit and a second validation audit. Under § 153.630, each issuer of a risk adjustment covered plan must engage an independent initial validation audit entity. The issuer provides demographic, enrollment, and medical record documentation for a sample of enrollees selected by HHS to its initial validation auditor for data validation. Set forth below are proposed amendments and clarifications to the risk adjustment data validation program in light of experience and feedback from issuers during the first pilot year.

i. Payment Adjustments for Error Rates

Under § 153.350(c), HHS may adjust risk adjustment payments and charges to all issuers of risk adjustment covered plans based on adjustments to the average actuarial risk of a risk adjustment plan due to errors discovered during risk adjustment data validation. We believe that some variation and error should be expected in the compilation of data for risk scores, because providers' documentation of enrollee health status varies across provider types and groups. Our experiences with the Medicare Advantage risk adjustment data validation program and the HHS risk adjustment data validation pilot for the 2015 benefit year reinforce this belief.

We propose evaluating material statistical deviation in error rates in applying error rates to risk scores beginning with the 2017 benefit year risk adjustment data validation. We are considering adjusting an issuer's risk score only when the issuer's error rate materially deviates from a statistically meaningful value, such as the central tendency (a mean or typical value) of errors, nationally. HHS could also evaluate error rates within each HCC, or groups of HCCs, and then only apply error rates to outlier issuers' risk scores within each HCC or group of HCCs. When an error rate materially deviates from the central tendency, we propose to apply the difference between the mean error rate or the confidence interval around the population's central tendency and the calculated error rate instead of the full error rate. If all error rates in a State risk pool do not materially deviate from the national central tendency of error rates, we propose to not apply any adjustments to issuers' risk scores for that benefit year in the respective State risk pool.

We believe the implementation of any of the alternative evaluations and subsequent adjustments we propose here would reduce issuer burden, streamline the risk adjustment data validation process, improve issuers' ability to predict risk adjustment transfers, and promote confidence and stability in the budget-neutral payment transfer methodology while ensuring the integrity and quality of data provided by issuers.

We seek comment on this proposal and alternatives to evaluating material deviation in error rates for applying error rates to risk scores beginning with the 2017 benefit year risk adjustment data validation.

ii. Payment Adjustments for Issuers That Have Exited the Market

In the 2015 Payment Notice, we established that HHS will use a prospective approach to adjust risk scores and payment transfers based on the results of risk adjustment data validation. Specifically, HHS will apply the error rate calculated through the risk adjustment data validation process for the applicable benefit year to plan risk scores in the subsequent benefit year, and then make risk adjustment payment transfers based on adjusted plan average risk scores in that subsequent benefit year. However, in some cases, an issuer of a risk adjustment covered plan may have exited a State market during or at the end of the benefit year being audited and therefore would not have risk scores or payment transfers in the subsequent benefit year to which HHS could make adjustments.

As previously noted, the purpose of data validation for risk adjustment is to promote confidence in the budget-neutral payment transfer methodology by ensuring the integrity and quality of data provided from issuers. HHS believes that the prospect of not receiving payment adjustments based on the results of risk adjustment data validation results could undermine these goals by eliminating the incentive for an exiting issuer to carefully and accurately submit risk adjustment data for its final benefit year in the market. Not only could this type of inaccuracy result in overpayments to the exiting issuer, it could also cause the other issuers in the market to be over or undercompensated for the actual risk of their enrollee populations. Therefore, we propose that HHS would use the error rate derived from the risk adjustment data validation process to adjust the payment transfer for the issuer's final benefit year in the State market, which would be concurrent with the benefit year being audited, for issuers that exit a State market during or

[15] Starting with the 2017 benefit year, no State has elected to operate a risk adjustment program. Therefore, HHS operates risk adjustment in all States.

at the end of the benefit year being audited. Because risk adjustment transfers for a given benefit year are calculated and paid before the risk adjustment data validation process for that benefit year is completed, this approach would require HHS to make a retroactive adjustment to the issuer's payment transfer for its final benefit year and reallocate the adjusted transfer amount to the other issuers in the State market in that year.

HHS believes that the proposed retroactive adjustment to an exited issuer's payment transfer would help ensure that an issuer with inaccurate data does not benefit from this error and that other issuers in the State market are not harmed by it. However, we acknowledge that this approach could reduce issuers' confidence in the finality of risk adjustment transfers for any given benefit year because of the potential for retroactive adjustments for an issuer that has exited the market. In addition, the calculation of payment transfers could become increasingly complex for 2018 benefit year risk adjustment transfers and beyond, because HHS could be adjusting payment transfers based on the results of data validation, even if transfers were already adjusted retroactively for an exited issuer's data validation adjustment (for example, 2018 benefit year risk adjustment transfers would be adjusted for 2017 benefit year risk adjustment data validation, and would also be adjusted for 2018 risk adjustment benefit year data validation if an issuer exits the market at the end of the 2018 benefit year). However, we believe the payment adjustment proposal for error rates that is discussed above could result in some exiting issuers not being adjusted at all, alleviating some of the complexity associated with retroactively adjusting transfers. We seek comment on this proposal to make retroactive adjustments to payment transfers for issuers that have exited the market based on the results of risk adjustment data validation for the most recent benefit year in which they participated in risk adjustment.

iii. 500 Billable Member Months

Numerous small issuers have expressed concern regarding the regulatory burden and cost associated with complying with the risk adjustment data validation program. HHS has previously considered these concerns and provided relief where possible. For example, in the 2017 Payment Notice, we included a lower, separate default risk adjustment charge for small issuers with 500 billable member months or fewer beginning with the 2016 benefit year in light of the high operational burden associated with compliance for these issuers.

We propose that, beginning with 2017 benefit year risk adjustment data validation, issuers with 500 billable member months or fewer that elect to establish and submit data to an EDGE server would not be subject to the requirement to hire an initial validation auditor or submit initial validation audit results. Issuers at or below the 500 billable member months threshold would have their risk score adjusted by a default error rate equal to the lower of either the national average negative error rate, or the average negative error rate within a State, as set forth in the 2018 Payment Notice. We believe exempting issuers with 500 billable member months or fewer from the requirement to hire an initial validation auditor is appropriate because issuers of this size would have a disproportionately high operational burden for compliance with risk adjustment data validation. We note that, beginning with 2018 benefit year risk adjustment data validation, these issuers would not be subject to random sampling under the materiality threshold discussed below, and would continue to not be subject to the requirement to hire an initial validation auditor or submit initial validation audit results, but would have their risk scores adjusted by a default error rate annually. We note that if the proposal discussed above to implement a central tendency approach to payment adjustments is finalized, then it is possible no adjustment would occur for issuers below this threshold. We seek comment on the proposed exemption from risk adjustment data validation, including the 500 billable member months threshold.

iv. Materiality Threshold for Risk Adjustment Data Validation

In the 2018 Payment Notice, HHS implemented a materiality threshold for risk adjustment data validation to ease the burden of annual audit requirements for smaller issuers of risk adjustment covered plans. Specifically, we stated that issuers with total annual premiums at or below $15 million (calculated based on the premiums of the benefit year being validated) will not be subject to *annual* initial validation audit requirements, beginning with the 2017 benefit year, but will still be subject to an initial validation audit approximately every 3 years. HHS based the timeline for enforcement of the materiality threshold on the expectation that we would begin making payment adjustments based on the results of 2016 benefit year risk adjustment data validation, effectively requiring all issuers of risk adjustment covered plans to participate in the first benefit year for which risk adjustment payments are adjusted. However, in light of our subsequent decision to convert the 2016 benefit year to another pilot year,[16] we propose to postpone application of the materiality threshold to the 2018 benefit year. Therefore, all issuers of risk adjustment covered plans would be required to conduct an initial validation audit for the 2017 benefit year risk adjustment data validation, other than issuers with 500 billable member months or fewer as discussed above. Beginning with the 2018 benefit year, issuers below the $15 million premium threshold would not be required to conduct an initial validation audit every year. Under this proposal, HHS would still conduct random and targeted sampling under which issuers below the materiality threshold would be subject to an initial validation audit approximately every 3 years, beginning with 2018 benefit year risk adjustment data validation. In addition, issuers below the $15 million threshold that are not selected for the random and targeted sampling would have their risk adjustment transfers adjusted by a default error rate equal to the lower of the average negative error rate nationally, or the average negative error rate within a State. We note that if the proposal to implement a central tendency approach to payment adjustments discussed above is finalized, then it is possible no adjustment would occur for issuers below this threshold. We seek comment on this proposal.

v. Data Validation Sampling Methodology

Section 153.350(a) requires that a statistically valid sample of enrollees from each issuer of risk adjustment covered plans be validated. In the 2015 Payment Notice, HHS finalized its methodology for selecting the sample of enrollees for the initial validation audit for each issuer of a risk adjustment covered plan. We established a sample size per issuer for each State in which the issuer offers risk adjustment covered plans and clarified that the sample would include 200 enrollees per issuer for each risk pool in which the issuer participates, not 200 enrollees per plan. However, HHS will not calculate a risk

[16] ''HHS-Operated Risk Adjustment Data Validation (HHS–RADV)—2016 Benefit Year Implementation and Enforcement.'' May 3, 2017. Available at *https://www.regtap.info/uploads/library/HRADV_PilotGuidance_5CR_050317.pdf.*

score, or apply risk adjustment payment transfers except for high-cost risk pool transfers beginning with the 2018 benefit year, on behalf of a State in a market and risk pool when there is only one issuer in the market and risk pool. That issuer may participate in another market in the State where it is not the sole issuer and, as such, would still participate in risk adjustment and risk adjustment data validation for the applicable benefit year. In this circumstance, data from the risk pools in which the issuer was the sole issuer would not be part of a State market risk pool payment transfer, and would not be subject to the same quality controls as data used to calculate risk scores and payment transfers; consequently, the data could not be validated with the same confidence that data used for payment can be validated. Therefore, HHS would not require the issuer to validate data for its plans in a risk pool that was not risk adjusted against another issuer in the State risk pool in the applicable benefit year. We propose to change the sampling methodology so that, beginning with the 2017 benefit year data validation, the initial data validation audit sample will only include enrollees from State risk pools in which there was more than one issuer and where HHS conducted risk adjustment on behalf of the State for the benefit year being validated.[17] We seek comment on this proposal.

vi. Mental and Behavioral Health Records

Under § 153.630(b)(6), the issuer of a risk adjustment covered plan must provide the initial validation auditor and second validation auditor with all relevant source enrollment documentation, all claims and encounter data, and medical record documentation from providers of services to each enrollee in the applicable sample without unreasonable delay and in a manner that reasonably assures confidentiality and security in transmission. Issuers have advised HHS that certain States' medical privacy laws may limit providers' ability to furnish mental and behavioral health records for risk adjustment data validation purposes. We believe that section 1343 of the PPACA and associated regulations require issuers of risk adjustment covered plans to furnish any records needed for purposes of the risk adjustment program, including mental and behavioral health records. We believe that the HIPAA Privacy Rule at 45 CFR 164.512(a) generally permits disclosures of protected health information that are required by law within the meaning of 45 CFR 164.103. Nevertheless, we recognize that some State and Federal privacy laws impose requirements for mental and behavioral health information that are different from, and potentially more restrictive than, the HIPAA regulations. However, without the necessary mental and behavioral health information, the diagnosis code for an applicable enrollee cannot be validated and, therefore, it would be rejected during risk adjustment data validation.

To address these potential issues, we propose to amend § 153.630(b)(6) to provide that, if a provider is prohibited from furnishing a full mental or behavioral health record by State or Federal privacy laws, the provider instead may furnish a mental or behavioral health assessment that providers routinely prepare, for validation of a mental or behavioral health diagnosis. Although HHS needs the full content of the mental or behavioral health record to ensure full validation of the accuracy of diagnosis codes, we believe that we can still perform some risk adjustment data validation based on the information contained in mental or behavioral health assessments in those instances in which State or Federal law prohibits submission of the full record. For risk adjustment data validation purposes, we would expect a mental or behavioral health assessment to be signed by a qualified provider who is licensed by the State to diagnose mental illness and, to the extent permissible under governing privacy and confidentiality laws, to contain: (i) The enrollee's name; (ii) gender; (iii) date of birth; (iv) current status of all mental or behavioral health diagnoses; and (v) dates of service. We note that ''psychotherapy notes,'' a subset of mental and behavioral health information that receives special protections under the HIPAA Privacy Rule, are not required for the purposes of risk adjustment data validation.[18] We also note that some State and Federal privacy laws require that providers obtain patient consent before disclosing mental or behavioral health records, and that these consent requirements may apply to mental or behavioral health assessments. We clarify that we do not view a State or Federal law requiring patient consent as inconsistent with the risk adjustment data validation requirements to furnish a mental or behavioral health record or assessment. Additionally, we note that certain substance use disorder patient records are subject to the Federal confidentiality law at 42 U.S.C. 290dd–2 and the regulations promulgated thereunder in 42 CFR part 2 and to similar State laws, and generally require consent prior to disclosure. We believe that this proposal is consistent with the foregoing Federal and State confidentiality rules, and that the substance use disorder confidentiality requirements should govern when applicable. Therefore, issuers or providers may be required to obtain written patient consent in order to comply with this proposal.

The proposal described above allows issuers an additional avenue to achieve compliance by permitting abbreviated mental or behavioral health assessments for risk adjustment data validation in the event that a provider is subject to State or Federal privacy laws that prohibit the provider from providing a complete mental or behavioral health record to HHS. To submit a mental or behavioral health assessment instead of the full mental or behavioral health record, a provider would be required to attest that relevant State or Federal privacy laws prohibit him or her from providing the entire mental or behavioral health record. HHS also believes that the proposal supports the integrity of the risk adjustment data validation program by ensuring that an initial validation auditor obtains data that will enable proper validation of mental or behavioral health HCCs, which are susceptible to discretionary coding. Furthermore, we believe the use of mental or behavioral health assessments would reduce burden on providers by permitting them to utilize records they routinely prepare and likely already have, which would avoid the need to prepare special summaries solely for the purpose of risk adjustment data validation. We seek comment as to the prevalence and typical contents of mental or behavioral health assessments under current practice, as well as other aspects of this proposal.

vii. Inter-Rater Reliability Rates

Under § 153.630(b)(8), the initial validation auditor must measure and report to the issuer and HHS, in a manner and timeframe specified by

[17] For the 2018 and future benefit years, HHS would not require the sole issuer in the State market to include high-cost risk pool enrollees in its sample for data validation, as these payments will be subject to a separate audit process.

[18] ''Psychotherapy notes'' are notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session, or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, modalities and frequency of treatment, test results, and summaries of diagnoses, functional status, treatment plan, symptoms, prognosis, and progress to date. See 45 CFR 164.501.

HHS, its inter-rater reliability rates among its reviewers. An initial validation auditor must achieve a consistency measure of at least 95 percent for his or her review outcomes, except for the initial benefit years of risk adjustment data validation, for which the initial validation auditor may meet an inter-rater reliability standard of 85 percent. Consistent with our decision to make the 2016 benefit year another pilot year as referenced above, we propose to amend § 153.630(b)(8) to add the 2016 benefit year as an initial year of risk adjustment data validation for which the initial validation auditor may meet the lower inter-rater reliability standard of 85 percent.

viii. Civil Money Penalties

An effective risk adjustment data validation program is essential to the proper functioning of HHS-operated risk adjustment. In order to enforce risk adjustment data validation standards when operating risk adjustment data validation on behalf of a State, we are proposing to clarify and amend the bases upon which HHS may impose CMPs for violations of risk adjustment data validation requirements.

To give HHS additional flexibility for ensuring compliance with the risk adjustment data validation requirements and in light of our experience in the first pilot year of the risk adjustment data validation program, HHS is proposing to amend § 153.630(b)(9) to give HHS the authority to impose a CMP on an issuer of a risk adjustment covered plan in the event of misconduct or substantial non-compliance with the risk adjustment data validation standards and requirements. Specifically, we propose to amend § 153.630(b)(9) to state that, if an issuer of a risk adjustment covered plan (1) fails to engage an initial validation auditor; (2) fails to submit the results of an initial validation audit to HHS; (3) engages in misconduct or substantial non-compliance with the risk adjustment data validation standards and requirements applicable to issuers of risk adjustment covered plans; or (4) intentionally or recklessly misrepresents or falsifies information that it furnishes to HHS, HHS may impose CMPs in accordance with the procedures set forth in § 156.805(b) through (e). We note that § 153.630(b)(9) already addresses the possible imposition of CMPs for (1) and (2) above, and provides a cross-reference to § 156.805, which contains the bases and procedures for imposing CMPs for (3) and (4) above. Section 153.630(b)(9) provides the authority to assess CMPs on all issuers of risk adjustment covered plans, not just issuers on an FFE as does § 156.805.[19] Through this proposal, we are clarifying that the authority to impose CMPs for (3) and (4) applies to all issuers of risk adjustment covered plans, not just those issuers on an FFE. We note that the CMP authority would be in addition to HHS's ability to adjust an issuer's transfers under § 153.350(c).

As previously noted in the Second 2013 Program Integrity Rule, and in the 2015 Payment Notice, we propose that HHS's possible application of CMPs would continue to take into account the totality of the issuer's circumstances, including such factors as an issuer's previous record of non-compliance (if any), the frequency and level of the violation, and any aggravating or mitigating circumstances. Additionally, we would continue to impose any CMPs so that the level of the enforcement action is proportional to the level of the violation. While we reserve the right to impose penalties up to the maximum amounts set forth in § 156.805(c), as a general principle, we intend to work collaboratively with issuers to address any problems in conducting the risk adjustment data validation process.

We believe this additional CMP authority will improve program integrity and fairness by permitting HHS the authority to assess CMPs on issuers that engage in misconduct in risk adjustment data validation. Although § 153.630(e) permits HHS to adjust payments and charges for issuers that do not comply with audit requirements and standards, this provision only makes the markets whole in the event of a violation of the risk adjustment data validation standards or misconduct. We do not believe this provision provides a sufficient deterrent effect to ensure program integrity of the risk adjustment data validation program. Additionally, we believe this additional authority is necessary in light of the policies finalized in the 2018 Payment Notice, specifically, the concerns HHS highlighted around gaming and the inclusion of prescription drug data in the risk adjustment model. We seek comment on this proposal.

ix. Adjustment of Risk Adjustment Transfers Due to Submission of Incorrect Data

On September 2, 2015, HHS released the *Adjustment of Risk Adjustment Transfers Due to Submission of Incorrect Data* guidance,[20] setting forth the process by which HHS would address instances of materially incorrect EDGE server data submissions. We propose to include risk adjustment data validation as a method of discovering materially incorrect EDGE server data submissions and making adjustments pursuant to § 153.630(e), as described in our September 2, 2015 guidance. We propose that demographic or enrollment errors discovered during risk adjustment data validation would be the basis for an adjustment to the applicable benefit year transfer amount, rather than the subsequent benefit year risk score. The elements being validated are related to the transfer formula. As such, we believe they are substantially similar to a discrepancy in the transfer process, which is addressed in the current benefit year as part of the process for handling discrepancies in data under § 153.710, as opposed to a discrepancy in underlying enrollee diagnoses contributing to risk scores, which is addressed through subsequent year risk score adjustments as part of risk adjustment data validation.

As we noted in the September 2, 2015 guidance, an overstatement or understatement of premium data may affect issuers differently, because it will lead to an increase or decrease in the absolute value of the magnitude of the transfers (and will affect the calculation of the geographic rating area factors). Therefore, an issuer's submission of incorrect EDGE server premium data may have the effect of increasing or decreasing the magnitude of risk adjustment transfers to other issuers in the market, depending on the direction of the premium error, holding constant the other elements of the payment transfer formula. In cases where there is a material impact on risk adjustment transfers for that particular market as a result of incorrect EDGE server premium data, HHS would calculate the dollar value of differences in risk adjustment transfers, and, where the difference is detrimental to one or more issuers in the market, adjust the other issuers' risk adjustment transfer amount by that calculation, and increase the risk adjustment charge (or decrease the risk adjustment payment) to the issuer that made the data error, in order to balance

[19] Pursuant to § 153.20, *risk adjustment covered plan* means, for the purpose of the risk adjustment program, any health insurance coverage offered in the individual or small group market with the exception of grandfathered health plans, group health insurance coverage described in 45 CFR 146.145(c), individual health insurance coverage described in 45 CFR 148.220, and any plan determined not to be a risk adjustment covered plan in the applicable Federally certified risk adjustment methodology.

[20] Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/RA-Adjustment-Guidance-9-2-15.pdf*.

the market.[21] We believe this approach allows HHS to operate the risk adjustment program efficiently, while ensuring that issuers do not profit from their data submission errors or harm their competitors in the relevant market. We seek comment on this proposal.

h. Risk Adjustment User Fee for 2019 Benefit Year (§ 153.610(f))

As noted above, if a State is not approved to operate, or chooses to forgo operating its own risk adjustment program, HHS will operate risk adjustment on its behalf. In 2019, HHS anticipates operating a risk adjustment program in every State. As described in the 2014 Payment Notice, HHS's operation of risk adjustment on behalf of States is funded through a risk adjustment user fee. Section 153.610(f)(2) provides that an issuer of a risk adjustment covered plan must remit a user fee to HHS equal to the product of its monthly billable member enrollment in the plan and the per member per month risk adjustment user fee specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year.

OMB Circular No. A–25R established Federal policy regarding user fees, and specified that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The risk adjustment program will provide special benefits as defined in section 6(a)(1)(B) of Circular No. A–25R to issuers of risk adjustment covered plans because it mitigates the financial instability associated with potential adverse risk selection. The risk adjustment program also contributes to consumer confidence in the health insurance industry by helping to stabilize premiums across the individual and small group markets.

In the 2018 Payment Notice, we calculated the Federal administrative expenses of operating the risk adjustment program for the 2018 benefit year to result in a risk adjustment user fee rate of $1.68 per billable member per year or $0.14 PMPM, based on our estimated contract costs for risk adjustment operations and estimates of billable member months for individuals enrolled in a risk adjustment covered plan. For the 2019 benefit year, we propose to use the same methodology to estimate our administrative expenses to operate the program. These contract costs cover development of the model and methodology, collections, payments, account management, data collection, data validation, program integrity and audit functions, operational and fraud analytics, stakeholder training, and operational support. To calculate the user fee, we divided HHS's projected total costs for administering the risk adjustment programs on behalf of States by the expected number of billable member months in risk adjustment covered plans in HHS-operated risk adjustment States for the benefit year.

We estimate that the total cost for HHS to operate the risk adjustment program on behalf of States for 2019 will be approximately $38 million, and the risk adjustment user fee would be $1.68 per billable member per year, or $0.14 PMPM. The risk adjustment user fee contract costs for the 2019 benefit year are lower than the 2018 benefit year contract costs due to lower risk adjustment data validation and stakeholder training costs as issuers are becoming more familiar with our programs. We expect billable member months to decline slightly compared to the 2016 benefit year, whereas we expected billable member months to increase over this time period when setting the risk adjustment user fee rate for the 2018 benefit year. Therefore, the calculated 2019 benefit year risk adjustment user fee is lower than the rate for the 2018 benefit year prior to rounding, but after rounding to the nearest cent, is the same as that for the 2018 benefit year. We seek comment on the proposed risk adjustment user fee for the 2019 benefit year.

C. Part 154—Health Insurance Issuer Rate Increases: Disclosure and Review Requirements

1. Applicability (§ 154.103)

Since July 18, 2011, issuers have been required to submit rate filing justifications for rate increases for non-grandfathered plans in the individual and small group markets.[22] This requirement was established, in part, to carry out the Secretary's responsibility, in conjunction with States, under section 2794(b)(2)(A) of the PHS Act to monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange. Student health insurance coverage is considered by HHS to be a type of individual market coverage and is generally subject to the PHS Act individual market requirements including rate review.[23] However, student health insurance coverage is not subject to single risk pool requirements.[24] Because student health insurance coverage is only available through colleges and universities, it is also exempt from the guaranteed availability and guaranteed renewability requirements enacted under HIPAA. For purposes of the guaranteed availability and guaranteed renewability requirements enacted under the PPACA, a health insurance issuer that offers student health insurance coverage is not required to accept individuals who are not students or dependents of students, and is not required to renew or continue in force coverage for individuals who are no longer students or dependents of students. Student health insurance coverage also need not be issued on a calendar year basis.[25]

We propose to modify § 154.103(b) to exempt from rate review student health insurance coverage, effective for plan or policy years beginning on or after January 1, 2019. Grandfathered health plan coverage as defined in 45 CFR 147.140 and excepted benefits as described in section 2791(c) of the PHS Act are already exempted from rate review under the existing regulation at § 154.103(b).

The Federal rate review requirements currently apply to student health insurance coverage because it is considered individual market coverage.[26] Issuers of student health insurance plans are required to use the Rate Review Justification module of the Health Insurance Oversight System (HIOS) to submit the required rate filing information. However, student health insurance coverage is written and sold more like large group coverage, which was exempted from rate review as part of the implementing regulations in part 154 because States traditionally focused their efforts on the review of rates in the small group and individual markets. Additionally, purchasers in the large group market were viewed as being more sophisticated, with greater leverage, and therefore better able to

[21] Calculation of the dollar value will include adjustment to the statewide premium average and, to the extent possible, adjustment to the geographic cost factor.

[22] *See* Rate Increase Disclosure and Review; Final Rule, 76 FR 29964, 29966 (May 23, 2011).

[23] *See* Student Health Insurance Coverage Final Rule 77 FR 16453 (March 21, 2012).

[24] A health insurance issuer that offers student health insurance coverage may establish one or more separate risk pools for an institution of higher education, if the distinction between or among groups of students (or dependents of students) who form the risk pool is based on a bona fide school-related classification and not based on a health factor (as described in 45 CFR 146.121). However, student health insurance rates must reflect the claims experience of individuals who comprise the risk pool, and any adjustments to rates within a risk pool must be actuarially justified. See 45 CFR 147.145(b)(3).

[25] 45 CFR 147.145(b)(1).

[26] 45 CFR 147.145.

avoid the imposition of large rate increases.[27] Similarly, institutions of higher education that offer student health insurance coverage are seen as well informed, with significant purchasing power, and student health insurance coverage is generally rated and administered differently from other forms of individual health insurance coverage.[28]

States have allowed rating practices for student health insurance coverage to be more in line with large group pricing, in which experience rating and other factors can be used to determine rates. Because student health insurance coverage is typically experience rated, and is typically only available to students and their dependents with an open enrollment period coinciding with the start of the academic year, it is exempt from single risk pool rating requirements and not guaranteed to be available or renewable to individuals who are not students or dependents of students in an institution of higher education. In addition, States have generally given student health insurance coverage more plan design flexibility compared to individual market plans to better meet student needs and utilization of on-campus providers. Because of these factors, some States have requested student health insurance coverage be exempt from the rate review requirements in part 154 of title 45. The proposed change would reduce the regulatory burden on States and issuers of student health insurance plans. This proposal is consistent with our general approach of providing tailored flexibility with respect to the PHS Act individual market reforms for student health insurance coverage. Eliminating the burdens associated with the Federal rate review requirements may incentivize issuers to offer more student health insurance plans, increasing competition among issuers to the benefit of institutions of higher education and their students.

We note that States would continue to have the flexibility to review rate increases or other aspects of student health insurance coverage. Under this proposal, in States that do not have an Effective Rate Review Program, we would monitor the compliance of student health insurance coverage with applicable market rating reforms based on complaints and as part of targeted market conduct examinations. In States where we are enforcing market reforms, we would continue to review form filings for student health insurance coverage for compliance with applicable PHS Act individual market requirements, but would not review rate increases for reasonableness under part 154 of title 45.

We solicit comment on this proposal.

2. Rate Increases Subject to Review (§ 154.200)

Section 2794(a)(1) of the PHS Act requires the Secretary, in conjunction with States, to establish a process for the annual review of unreasonable premium increases for health insurance coverage. Section 2794(a)(2) of the PHS Act requires health insurance issuers to submit to the Secretary and relevant State a justification for an unreasonable premium increase prior to implementation. States may establish a more robust review process, and many have chosen to do so.

Section 154.200(a)(1) currently provides that a rate increase for single risk pool coverage beginning on or after January 1, 2017 is subject to a reasonableness review if: (1) The average increase, including premium rating factors described in 45 CFR 147.102, for all enrollees, weighted by premium volume for any plan within the product, meets or exceeds 10 percent; or (2) the increase exceeds a State-specific threshold approved by the Secretary. We propose to amend this provision to establish a 15 percent default threshold for reasonableness review, in recognition of significant rate increases in the past number of years, rather than the current 10 percent default threshold, and seek comment on the appropriate default threshold.[29]

A reasonableness review looks at the assumptions used in determining the rate increase to make sure those assumptions are supported by evidence. The reasonableness review also checks that the increase will not result in a projected Federal MLR below the minimum standard in the applicable market and will not unfairly discriminate between insureds with similar risk categories.

Regardless of the threshold set for reasonableness review, all issuers must submit a Uniform Rate Review Template (URRT) (Part I of the Rate Filing Justification) for all single risk pool plan submissions. Issuers offering a QHP or any single risk pool submission containing a rate increase of any size must also submit an actuarial memorandum (Part III of the Rate Filing Justification). Issuers with rate filings that do not meet the threshold for a reasonableness review are exempt from the requirement to submit Part II of the Rate Filing Justification (Consumer Justification Narrative) for those rate filings. No changes are being proposed to these requirements.

We note that the threshold set by CMS constitutes a minimum standard. Some States currently employ stricter rate review standards and may continue to do so. Section 154.200(a)(2) currently requires States to submit a proposal to the Secretary for approval of any State-specific threshold. We propose to amend § 154.200(a)(2) to require submission of a proposal only if the State-specific threshold is higher than the Federal default threshold. We are proposing this change to reduce burdens and promote State flexibility. We also propose to amend this provision to clarify that a State seeking approval for a higher threshold than the Federal default must base its request on factors impacting rate increases in the State to the extent that the data relating to such factors are available by August of the preceding year.

CMS released guidance entitled, ''State-Specific Threshold Proposals, Guidance for States'' on March 27, 2012,[30] and outlined the process to be followed by States wishing to propose a State-specific threshold to be effective from September 1, 2012 through August 31, 2013. We will issue future guidance on the process for submission and review of State requests to propose a State-specific threshold above what is set by CMS, to be effective for rate filings submitted on or after January 1, 2019.

We also propose to delete paragraph (b) in its entirety. That paragraph currently requires that the Secretary publish a notice each year indicating which threshold applies to each State. CMS currently posts information regarding State-specific threshold requests on its Web site [31] and would continue to do so for States that request a State-specific threshold above what is set by CMS, beginning with rate filings submitted on or after January 1, 2019. If this proposal is finalized, CMS would

[27] *See* preamble discussion in the proposed rule, ''Rate Increase Disclosure and Review'' 75 FR 81004, 81009 (December 23, 2010).

[28] *See* preamble discussion in the final rule, ''Health Insurance Market Rules; Rate Review'' 78 FR 13406, 13424 (February 27, 2013).

[29] The 10 percent threshold was established in the ''Rate Increase Disclosure and Review'' Final rule (76 FR 29963, May 23, 2011) based upon three indices. These indices are: (1) The medical component of the Consumer Price Index (CPI); (2) the National Health Expenditure data (NHE); and (3) the Standard and Poor's Healthcare Economic Commercial Index. The threshold was finalized at 10 percent based on the analysis of the trend in health care costs and rate increases provided in the preamble to the proposed rule.

[30] *https://www.cms.gov/CCIIO/Resources/Files/Downloads/dwnlds/rrjssptguidance.pdf.*

[31] *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/sst.html.*

not post information on States where the Federal default or a stricter State-specific threshold applies. Under the proposed approach, we would rely on States to communicate information about stricter thresholds, as well as any other State-specific requirements.

We propose to redesignate paragraph (c) as paragraph (b) and revise that paragraph to delete the language related to rates filed for coverage beginning before January 1, 2017, currently captured in paragraph (c)(1) as this provision is no longer necessary.[32] We propose to redesignate paragraph (d) as paragraph (c). Finally, we propose conforming changes to change the cross references in § 154.200 to align with the changes described above.

We seek comment on these proposals.

3. Submission of Rate Filing Justification (§ 154.215)

Section 154.215(h)(2) includes a reference to 45 CFR 5.65, which defined trade secret, confidential commercial or financial information under HHS regulations implementing the Freedom of Information Act, 5 U.S.C. 552. HHS revised 45 CFR part 5 in a final rule issued on October 28, 2016, effective on November 28, 2016 (81 FR 74930). We propose to make a technical correction to § 154.215(h)(2) to refer to 45 CFR 5.31(d) because 45 CFR 5.65 no longer exists and § 5.31(d) now lists the reasons a record may be withheld.

4. Timing of Providing the Rate Filing Justification (§ 154.220)

Section 154.220(b) provides that a health insurance issuer must submit applicable sections of the Rate Filing Justification for all single risk pool coverage in the individual or small group market by the earlier of (1) the date by which the State requires submission of a rate filing; or (2) the date specified in guidance by the Secretary. As discussed in the 2016 Payment Notice,[33] we have interpreted that section to require submission of all rate filings, for both QHPs and non-QHPs, at a uniform time. We have issued rate filing timeline guidance on an annual basis establishing the respective dates for each benefit year and reiterating that requirement.[34]

Several State regulators have indicated that requiring all submissions at one time poses an undue regulatory burden. They have stated that they prefer to set a later date for submission of rate filings from issuers that only offer non-QHPs to enable regulators to complete the review of QHP rate filings first and review non-QHP rate filings later. Therefore, starting with plan year 2019, we propose to interpret § 154.220(b) to allow a State with an Effective Rate Review Program to set different submission deadlines for rate filings from issuers that only offer non-QHPs. This change would reduce burden while empowering States to pick the timeframe that works best for their markets, and also accounts for market differences between States. This is also in line with a comment we received in response to the Request for Information requesting that States be allowed to set rate filing dates. Under this proposal, an issuer that offers both QHPs and non-QHPs in a market in a given State would be required to submit its rate filing in accordance with the deadlines established for QHPs pursuant to § 154.220(b) to support regulatory review of compliance with the single risk pool requirement.

CMS would need to coordinate with all States in order to continue collecting preliminary rate filing information and final rate determinations in order to comply with the statutory requirement under section 2794(b)(2)(A) of the PHS Act to monitor premium increases of health insurance coverage offered inside and outside of the Exchanges. This coordination will also be important to support compliance under section 1311(e)(2) of the PPACA for the FFEs to take into consideration State recommendations provided under section 2794(b)(1) of the PHS Act when certifying QHPs, as well as information on any excess premium growth outside of Exchanges as compared to inside the Exchanges. We solicit comment on this proposal.

5. Determinations of Effective Rate Review Programs (§ 154.301)

a. State Posting of Rate Increases

We propose to modify § 154.301(b)(2), which requires a State with an Effective Rate Review Program to notify us in writing, no later than 30 days prior to the date it intends to make any proposed or final rate filing information public if the State will be posting prior to the date specified by the Secretary. We propose to reduce the advance notification required from 30 days to 5 business days. The 30-day notification period was intended to give us sufficient notice in advance of State rate increase announcements. However, in many instances a State does not know the posting date 30 days in advance, so it was difficult to meet this requirement. Shortening the advance notice period to 5 business days would better reflect existing State practices. Under this proposal, if a State opts to post submissions on a rolling basis, as specified in the proposed change below, then the State would need to provide this notification to us only for the first submission for a given plan year that is publicly posted.

b. Posting of Rate Increases

Section 154.301(b)(3) currently provides that a State with an Effective Rate Review Program must ensure that information regarding rate increases is made available to the public at a uniform time for all proposed and final rate increases, as applicable, in the relevant market segment and without regard to whether coverage is offered on or off of an Exchange. That provision was codified in order to set a level playing field, to prevent issuers that submit rate filings later from having an advantage over their competitors that submitted rate filings earlier.

Upon further analysis and input from stakeholders, including a comment we received in response to the Request for Information, we propose to eliminate the requirement for uniform posting by deleting paragraph (b)(3). This would permit States that have an Effective Rate Review Program to post proposed and final rate filing information on a rolling basis. We believe that providing this flexibility better accords with State laws and historical practices. Prior to the introduction of the Federal rate review program, many States received and posted rate filing information on a rolling basis. Some State laws conflict with the Federal uniform posting requirement and require posting of rate filing information upon receipt. In addition, several States faced challenges due to information systems that were unable to suppress rate filing information until a later date.

Under this proposal, States with Effective Rate Review Programs would continue to be required to provide access from their respective Web sites to at least the same information from the rate filing that we make available on our Web site (or provide our web address for such information). Further, such States must have a mechanism for receiving

[32] This standard (that is, the average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold), however, continues to apply to rates filed for coverage beginning before January 1, 2017, including with respect to compliance reviews and enforcement actions.

[33] 80 FR 10782.

[34] See, for example, Bulletin: Revised Timing of Submission and Posting of Rate Filing Justifications for the 2017 Filing Year for Single Risk Pool Coverage; Revised Timing of Submission for Qualified Health Plan Certification Application (April 13, 2017), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Revised-2017-filing-timeline-bulletin-4-13-17.pdf*.

public comments on proposed rate increases subject to review and must post the required rate filing information by the applicable deadlines established under § 154.301(b)(1).

We would need to coordinate with States to continue collecting preliminary rate filing information and final rate determinations to comply with the statutory requirement under section 2794(b)(2)(A) of the PHS Act to monitor premium increases of health insurance coverage offered inside and outside of the Exchanges. This coordination would also be important to support compliance under section 1311(e)(2) of the PPACA for the FFEs to take into consideration State recommendations provided under section 2794(b)(1) of the PHS Act when certifying QHPs, as well as information on any excess premium growth outside of Exchanges as compared to inside the Exchanges. We would continue to post proposed and final rate changes at *http://ratereview.HealthCare.gov* at a uniform time, consistent with current practices and § 154.215(h).

We solicit comment on these proposals for posting of rate increases.

D. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Standardized Options (§ 155.20)

In the 2017 Payment Notice, HHS introduced standardized options (also now referred to as Simple Choice plans). A standardized option is a QHP offered for sale through an individual market Exchange that either has a standardized cost-sharing structure specified by HHS in rulemaking or has a standardized cost-sharing structure specified by HHS in rulemaking that is modified only to the extent necessary to align with the high deductible health plan (HDHP) requirements under section 223 of the Code or the applicable annual limitation on cost sharing and HHS actuarial value requirements. For the 2017 and 2018 benefit years, HHS specified standardized options in rulemaking, encouraged issuers to offer such plans and provided differential display of these plans on *HealthCare.gov.*

We seek to encourage free market principles in the individual market, and to maximize innovation by issuers in designing and offering a wide range of plans to consumers. We have heard concerns that providing differential display for these plans may limit enrollment in coverage with plan designs that do not match the standardized options, removing incentives for issuers to offer coverage with innovative plan designs. We believe that encouraging innovation is especially important now, given the stresses faced by the individual market. Therefore, we are proposing not to specify any standardized options for the 2019 benefit year, and not to provide differential display for standardized options on *HealthCare.gov*. If this proposal is finalized, agents, brokers and issuers that assist consumers with QHP selection and enrollment as described in § 155.220(c)(3) and § 156.265(b), respectively, would also not be required to provide differential display for standardized options on those third-party Web sites.

We seek comment on this proposal.

2. General Standards Related to the Establishment of an Exchange

a. Flexibility for State-Based Exchanges and State-Based Exchanges on the Federal Platform (§ 155.106 and § 155.200)

While the PPACA allowed each State to operate its own SBE, currently, 11 States and the District of Columbia operate their own Exchanges, five States utilize the SBE–FP model, and FFEs operate in the remaining 34 States. We seek to support innovation by States operating SBEs by providing opportunities for increased program flexibilities to help support the retention and financial self-sustainability of States participating in the SBE model. In particular, we seek comment on how HHS can best support SBE efforts to utilize commercial platform services, including what type of technical support would be useful and what, if any, specific regulatory changes would facilitate the use of these services.

We also propose to explore strategies to make the SBE–FP model more appealing and viable to States with FFEs, as well as to support retention of existing SBE–FPs. As codified in the 2017 Payment Notice, the SBE–FP model allows States to establish the legal status of their Exchanges as SBEs while leveraging the economies of scale available through the Federal eligibility and enrollment platform and information technology infrastructure. The SBE–FP model offers States opportunities to retain more control over their Exchanges than if an FFE operated in the State, as it allows them to control plan management and consumer assistance activities, without the additional responsibility of building the infrastructure required to operate an IT eligibility and enrollment platform. Accordingly, we seek to explore options for streamlining current requirements and leveraging private sector and Federal platform technologies and advances to increase opportunities for those States interested in remaining or becoming SBE–FPs.

As discussed in prior rulemaking, due to operational limitations, HHS is unable at this time to offer a ''menu'' of Federal services from which an SBE–FP may select some, but not other, services on the Federal platform. However, we have stated in previous rules that we would explore the availability of new capabilities of the Federal platform to customize particular functionalities. We intend to continue to explore additional areas where current authority, technology, and operational capacities would permit HHS to provide additional options in operational functions to SBE–FPs and provide SBE–FPs with a greater role in decision-making. Those areas include allowing SBE–FPs greater access to enrollment data and operational statistics to enable States to more effectively design their local outreach and education strategies, providing SBE–FPs access to personally identifiable consumer data to assist the FFE with conducting resource-intensive consumer assistance activities such as data matching issues or special enrollment period verifications, and exploring branding opportunities for SBE–FPs to make their role more visible, including potential State-specific landing pages on *HealthCare.gov*. We seek comment on these options, as well as other activities that SBE–FPs could undertake that would strengthen and enhance the SBE–FP model.

b. Election To Operate an Exchange After 2014 (§ 155.106)

Section 155.106 describes the process for a State electing to operate an SBE, for a State terminating its SBE and transitioning to an FFE, and for a State seeking to operate an SBE–FP. This section applies to both individual market and SHOP Exchanges. Currently, under § 155.106(c), as finalized in the 2017 Payment Notice, States can elect to operate an individual market SBE–FP, an SBE–FP for SHOP, or both. If a State operates an SBE–FP for SHOP, the SBE–FP utilizes the Federal platform for enrollment, eligibility, and premium aggregation services.

As discussed more fully in section III.D.7 of this proposed rule, we are proposing changes to required SHOP functionality, effective on the effective date of the final rule, if finalized as proposed, for plan years beginning on or after January 1, 2018, under which qualified employers and employees could enroll in SHOP plans by working with a QHP issuer or SHOP-registered agent or broker. If these proposals are

finalized as proposed, many Federal platform services currently available to a State operating an SBE–FP would no longer exist, including employee eligibility, enrollment, and premium aggregation services. Therefore, States operating an SBE–FP for SHOP would no longer be able to utilize the Federal platform for those functions.

If the proposed changes reducing SHOP requirements for SHOP functionality are finalized as proposed, we propose to amend § 155.106(c) to remove the option for States to seek approval to operate an SBE–FP for SHOP after the effective date of the final rule. Nonetheless, States that are currently operating an SBE–FP for SHOP, which include Kentucky and Nevada, could maintain their existing SBE–FPs for SHOP, using the Federal platform functionality that would remain if the proposals regarding SHOP functionality are finalized as proposed and subject to the applicable requirements in § 155.200(f)(4), which we also have proposed to amend to align with the proposed changes to SHOP functionality requirements. Issuers in these SBE–FPs for SHOP would continue to be subject to § 156.350, which we have also proposed to amend to align with the proposed changes to SHOP functionality requirements. For those issuers that offer SHOP QHPs in SBE–FPs for SHOP beginning on or after January 1, 2018, the expected burden (as well as expected reduction in burden) should be similar to that of issuers in the FF–SHOPs.

We seek comment on all aspects of this proposal.

c. Additional Required Benefits (§ 155.170)

Section 1311(d)(3)(B) of the PPACA permits a State, at its option, to require QHPs to cover benefits in addition to the EHB, but requires a State to make payments, either to the individual enrollee or to the issuer on behalf of the enrollee, to defray the cost of these additional State-required benefits. In previous rulemaking, we directed States to identify additional State-required benefits that are subject to defrayal and provided direction on how States must calculate the cost of those benefits.[35]

At § 156.111 of this proposed rule, we make a number of proposals related to State changes to EHB-benchmark plans beginning for the 2019 plan year. In light of those proposals, we are affirming that we are not proposing any changes to the policies governing State-required benefits at § 155.170. Under any of the proposed methods for a State to select a new EHB-benchmark plan, benefits mandated by State action *prior to or on December 31, 2011* could be considered EHB according to the continuing policy described above and would not require State defrayal. However, State-required benefits mandated by State action taking place *after December 31, 2011,* other than for purposes of compliance with Federal requirements, would continue to be considered in addition to EHB under this continuing policy even if embedded in the State's newly selected EHB-benchmark plan under the proposals at § 156.111, and their costs would accordingly be required to be defrayed by the State. Therefore, whether a State mandate could be considered EHB is dependent on when the State enacted the mandate.

As discussed more in the preamble for § 156.111, we propose that § 155.170 would continue to apply in the same manner as it currently applies to § 156.110 and that the proposed § 156.111, which offers States the flexibility to select a new EHB-benchmark plan, would not remove the obligations required under the proposed § 156.111(a)(3) with regard to maximum allowed generosity for a State's EHB-benchmark plan. For further discussion of how the State mandate policy at § 155.170 would apply to EHB under the proposals at § 156.111 supplying States with options to select a new EHB-benchmark plan for plan years beginning in 2019 and later, see the preamble to § 156.111.

We solicit comments regarding State mandates and our proposal to apply § 155.170 in the same manner as it currently applies to § 156.110 to the options proposed at § 156.111, which would allow States to select new EHB-benchmark plans. Specifically, we are interested in comments on different applications of the State mandate policy to the proposed policy for EHB-benchmark plan selections at § 156.111 that would increase State flexibility, while also being cost effective for States, consumers, and the Federal government, such as allowing States the flexibility to update benefits mandated by State action prior to or on December 31, 2011, that are considered EHB if the State can prove that the update to the State mandate is budget neutral.

3. General Functions of an Exchange

a. Functions of an Exchange (§ 155.200)

The 2017 Payment Notice finalized requirements at § 155.200(f)(2) for SBE–FPs to establish and oversee certain requirements for their QHPs and QHP issuers that are no less strict than the requirements that apply to QHPs and QHP issuers on an FFE. Due to the operational complexities in implementing these requirements from both the State and Federal perspective, and to promote the goal of returning regulatory authority over the insurance markets to States, we propose to eliminate requirements for SBE–FPs to enforce FFE standards for network adequacy at § 155.200(f)(2)(ii) and essential community providers at § 155.200(f)(2)(iii). Instead, we propose that the SBE–FPs, like other SBEs, would have the flexibility to determine how to implement the network adequacy and essential community provider standards with which issuers offering QHPs through the SBE–FP must comply. We believe SBE–FPs are best positioned to determine these standards for the QHP certification process in their States, and that the removal of the requirement that SBE–FPs establish and oversee requirements for their issuers that are no less strict that the manner in which these regulatory requirements are applied to FFE issuers would streamline certain aspects of the QHP certification process, and return traditional insurance market regulatory authority to the States. Additionally, HHS is proposing elsewhere in this proposed rule that, for 2019 plan years and later, the FFEs would rely on State reviews of network adequacy standards where the States have been determined to have an adequate review process. Accordingly, we believe similar deference should be granted to States with SBE–FPs. We believe these changes would further empower SBE–FPs to use their QHP certification authority to encourage issuers to stay in the Exchange, enter the Exchange for the first time, or expand into additional service areas.

We also are proposing to remove the requirement at § 155.200(f)(2)(iv) that QHP issuers in SBE–FPs comply with the Federal meaningful difference standard to reflect the proposal to remove § 156.298 described elsewhere in this rule.

Section 155.200(f)(4) describes requirements for States that operate an SBE–FP for SHOP. As discussed above, although we are proposing that States can no longer elect to operate SBE–FPs for SHOP after the effective date of the final rule, if finalized as proposed, Kentucky and Nevada are already

[35] *See* the EHB Rule, available at *https://www.gpo.gov/fdsys/pkg/FR-2013-02-25/pdf/2013-04084.pdf. Also see* the 2016 Payment Notice Final Rule, available at *https://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf. and* the 2017 Payment Notice Final Rule, available at *https://www.gpo.gov/fdsys/pkg/FR-2016-03-08/pdf/2016-04439.pdf.*

approved to operate SBE–FPs for SHOP, and thus the requirements in § 155.200(f)(4) could remain relevant for those SBE–FPs for SHOP. We therefore propose to amend § 155.200(f)(4) to reflect the proposed amendments (described in section III.D.7 of this proposed rule) under which the functionality of the FF–SHOPs' platform would be reduced for plan years beginning on or after January 1, 2018. Specifically, we propose to amend the introductory text to § 155.200(f)(4) to describe the requirement applicable, effective on the effective date of the final rule, if finalized as proposed, for plan years beginning on January 1, 2018 and beyond, and to make the requirements in paragraphs (f)(4)(i) through (vii), effective on the effective date of the final rule, if finalized as proposed, applicable for only plan years beginning prior to January 1, 2018.

Specifically we propose that the requirements in (f)(4)(i) and (iv), which require SBE–FPs for SHOP to align their premium payment and employer contribution calculation methodologies with those used by the Federal platform, would not apply for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed. Because under our proposed amendments to § 155.705 and proposed introduction of § 155.706, for plan years beginning on or after January 1, 2018, the Federal platform for SHOP would no longer calculate premium rates or employer contributions, and would no longer aggregate premium payments (as of the effective date of the final rule, if finalized as proposed), there would be no further need for such alignment for plan years beginning on or after January 1, 2018.

Because under our proposed approach the Federal platform would continue to include plan display with premium amounts, we do not propose changes to the requirement that States operating an SBE–FP must require its QHP issuers to make any changes to rates in accordance with the timeline applicable in a Federally-facilitated SHOP under current § 155.705(b)(6)(i)(A), which regulation is mirrored in our proposed introduction of § 155.706(b)(6)(i)(A). However, we propose to specify that this requirement applies in the introductory text to (f)(4), to reflect the proposed change to make the requirements in (f)(4)(i) through (vii) applicable for only plan years beginning prior to January 1, 2018, effective on the effective date of the final rule, if finalized as proposed.

Additionally, because under our proposed approach, for plan years beginning on or after January 1, 2018, the Federal platform would, effective on the effective date of the final rule, if finalized as proposed, no longer calculate whether a qualified employer has met the applicable minimum participation rate, there would no longer be any need for States operating an SBE–FP for SHOP to align their minimum participation rate requirements and calculation methodologies with those applicable in the FF–SHOPs for plan years beginning on or after January 1, 2018. We therefore propose that this requirement would only apply for plan years beginning prior to January 1, 2018, effective on the effective date of the final rule, if finalized as proposed.

To align with our proposed amendments at § 155.725 and proposed new section § 155.726, under which the FF–SHOPs, effective on the effective date of the final rule, if finalized as proposed, for plan years beginning on or after January 1, 2018, would no longer establish annual employee open enrollment periods, or establish effective dates of coverage for an initial group enrollment or group renewal, we also propose that the requirements in § 155.200(f)(4)(v) and (vi) would only apply for plan years beginning prior to January 1, 2018, effective on the effective date of the final rule, if finalized as proposed. Finally, to align with our proposed amendments at § 155.735, under which the FF–SHOP, effective on the effective date of the final rule, if finalized as proposed, for plan years beginning on or after January 1, 2018, would no longer determine the timing, form, and manner in which coverage or enrollment in a SHOP QHP may be terminated, we propose that the requirement in § 155.200(f)(4)(vii) would only apply for plan years beginning prior to January 1, 2018, effective on the effective date of the final rule, if finalized as proposed.

We seek comment on these proposals.

b. Navigator Program Standards (§ 155.210)

Each Exchange is required under section 1311(d)(4)(K) and 1311(i) of the PPACA to establish a Navigator program under which it awards grants to entities that, among other things: Conduct public education activities to raise awareness of the availability of QHPs, distribute fair and impartial information concerning enrollment in QHPs and the availability of premium tax credits and CSRs, and facilitate enrollment in QHPs. Under section 1311(i)(2)(B) of the PPACA, these entities may include trade, industry, and professional associations; commercial fishing industry organizations; ranching and farming organizations; community and consumer-focused nonprofit groups; chambers of commerce; unions; resource partners of the Small Business Administration; other licensed insurance agents and brokers; and other entities that meet the statutory requirements at section 1311(i)(3), (4), and (5) of the PPACA.

Currently, § 155.210(c)(2) specifies that each Exchange must include among its Navigator grantees both a community and consumer-focused nonprofit group *and* at least one other entity that is from one of the other categories listed at § 155.210(c)(2), including other public or private entities or individuals that meet the requirements of § 155.210. Section 155.210(c)(2)(viii) specifies that these other entities may include Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

To maximize the flexibility and efficiency of the Navigator program, we propose to amend § 155.210(c)(2) to remove the requirements that each Exchange must have at least two Navigator entities and that one of these entities must be a community and consumer-focused nonprofit group. We believe removing these requirements would provide Exchanges with improved flexibility to award funding to the number and type of entities that would be most effective for the specific Exchanges. Eliminating the requirement to have at least two Navigator entities would allow each Exchange to optimally use the funding amounts available, which may include selecting a single, high performing grantee in an Exchange.

The requirement that one Navigator grantee in each Exchange must be a community and consumer-focused nonprofit group may unnecessarily limit an Exchange's ability to award grants to the strongest applicants. Additionally, if we finalize our proposal to permit an Exchange to have only one Navigator grantee but retain the requirement regarding community and consumer-focused nonprofit groups, this requirement could effectively exclude any other type of statutorily eligible entities from becoming Navigators. Eliminating this requirement would provide Exchanges with the flexibility to target grants to the highest scoring and performing entities, regardless of organization type.

Removing these requirements at § 155.210(c)(2) would also promote Exchange flexibility and autonomy to structure Navigator programs tailored to each Exchange. An Exchange could award a grant to a single Navigator

entity from any of the permitted types. Alternatively, Exchanges could elect to continue awarding two or more grants, as they have been doing thus far, and include a community and consumer-focused nonprofit group among those grantees.

Section 155.210(e)(7) requires each Navigator entity to maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees. We propose to remove this requirement to provide more flexibility to each Exchange to structure its Navigator program to best serve the Exchange service area. Under section 1311(i)(2)(A) of the PPACA and § 155.210(c)(1)(ii), entities seeking to become Navigator grantees must demonstrate to the Exchange that they have existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a QHP. Consistent with those provisions, Navigator grant applicants in the FFEs are scored on their ability to make this demonstration. Based on HHS's experience with Navigator programs in FFEs and other public programs, we believe entities with a physical presence and strong relationships in their FFE service areas tend to deliver the most effective outreach and enrollment results. However, we believe that each Exchange is best suited to determining the weight to give a physical presence in the Exchange service area when selecting Navigator entities, as long as the Exchange's Navigator grantee selection process is consistent with section 1311(i)(2)(A) of PPACA and § 155.210(c)(1)(ii).

These proposals are intended to maximize flexibility for each Exchange in awarding Navigator grants. We seek comment on statutorily acceptable alternative types of entities that could serve as Navigators and possible new ways in which Navigators could carry out their duties.

For reasons similar to those motivating our proposed changes to § 155.210(e)(7), as well as to promote consistency across programs, we propose to remove the corresponding requirement at § 155.215(h) that requires maintenance of a physical presence in the Exchange service area by all non-Navigator entities subject to § 155.215.

In addition to the requirement to maintain a physical presence in the Exchange service area, §§ 155.210(e)(7) and 155.215(h) currently provide that, in an FFE, no individual or entity is ineligible to operate as a Navigator or non-Navigator assistance personnel solely because its principal place of business is outside of the Exchange service area. We note that there is also a corresponding provision applicable to certified application counselors and certified application counselor organizations at § 155.225(b)(3). We are not proposing changes to these provisions. We codified these provisions due to concerns about non-Federal requirements that these types of assisters maintain their principal place of business in the State (79 FR 30273–30274), and we continue to have these concerns.

We solicit comments on all aspects of these proposals.

c. Standards Applicable to Navigators and Non-Navigator Assistance Personnel Carrying Out Consumer Assistance Functions Under §§ 155.205(d) and (e) and 155.210 in a Federally-Facilitated Exchange and to Non-Navigator Assistance Personnel Funded Through an Exchange Establishment Grant (§ 155.215)

For a discussion of the provisions of this proposed rule related to standards applicable to non-Navigator Assistance Personnel subject to § 155.215, please see the preamble to § 155.210.

d. Standards for Third-Party Entities To Perform Audits of Agents, Brokers, and Issuers Participating in Direct Enrollment (§ 155.221)

In the 2018 Payment Notice, we implemented an approach for an HHS-approved third party to conduct onboarding operational readiness reviews and audits authorized by § 155.220(c)(5), specific to use of the direct enrollment pathway by agents and brokers registered with the FFEs. HHS proposes new standards in this rule to replace the standards set forth in the 2018 Payment Notice for § 155.221. HHS also proposes to expand the applicability of this section to require issuers, in addition to agents and brokers, participating in direct enrollment to engage third-party entities to conduct the required operational readiness reviews. We propose a conforming edit to § 156.1230(b)(2) to reflect this proposal.

HHS is proposing to implement an approach wherein agents, brokers, and issuers that participate in direct enrollment and use their own Internet Web site for QHP selection or to complete the Exchange eligibility application would select their own third-party entities for conducting audits, rather than requiring HHS to initially review and approve these entities. HHS anticipates this approach would reduce the regulatory burden on agents, brokers, and issuers by allowing the opportunity to choose an auditor or use an existing auditor. In addition, HHS anticipates that agents, brokers, and issuers already conduct audits for compliance with HHS requirements, and implementing this program would reduce duplicative HHS oversight. This approach would also reduce the burden on third-party entity reviewers, as the entities would no longer need to apply for HHS-approval to perform operational readiness reviews. HHS believes this approach would expand the available number of qualified third-party entities to perform the audits, thereby enabling more agents, brokers and issuers to demonstrate operational readiness to participate in direct enrollment. We believe this would expand consumer access to direct enrollment pathways for enrolling in Exchange coverage. The proposed approach would also reduce the burdens on HHS by no longer requiring the establishment of a Federal application, approval and appeals process for these entities to conduct operational readiness reviews. HHS anticipates this approach would allow more flexibility for private entities to respond to potential changes and HHS requirements as HHS considers future enhancements to the direct enrollment pathway. Under this proposal, agents, brokers and issuers must select an auditor who meets the requirements described in the proposed amendments to § 155.221(b), such as privacy and security experience, to perform a review to demonstrate operational readiness as required under § 155.220(c)(3)(i)(K) and § 156.1230(b)(2).

We propose to replace § 155.221(a) with a new paragraph to require agents, brokers, and issuers to select a third-party entity that meets the proposed standard outlined in the new § 155.221(b), described below, to perform these operational readiness reviews, instead of restricting the availability to third-party entities that have been pre-approved by HHS. Specifically, § 155.221(a) would require that the agent, broker, or issuer engage a third-party entity that meets the standards outlined in the new § 155.221(b) to conduct an annual operational readiness review prior to participating in direct enrollment. Consistent with § 155.220(c)(3)(i)(K) and § 156.1230(b)(2), the operational readiness review would be performed using the third parties' own audit processes and methods subject to HHS-defined specifications and

requirements. The third-party entity's review would verify compliance by the agent, broker, or issuer with the applicable requirements in §§ 155.220, 155.260, 156.265, and 156.1230, and would need to be completed prior to the use of the agent, broker or issuer Internet Web site for submission of an Exchange application or completion of QHP selection. HHS would publish technical guidance outlining the review standards and other operational details, as well as provide other resources to assist the third-party entities in conducting the reviews at a later date. The new proposed paragraph (a) also provides that the third-party entity would be a downstream or delegated entity of the agent, broker or issuer that participates or wishes to participate in direct enrollment. Therefore, these third-party entities would be subject to HHS oversight as delegated or downstream entities of an agent, broker, or issuer, and the agent, broker, or issuer would remain responsible for compliance with all applicable direct enrollment requirements.

HHS proposes revising § 155.221(b) to modify the standards that third-party entities must satisfy to perform the reviews to demonstrate operational readiness under § 155.220(c)(3)(i)(K) and § 156.1230(b)(2). HHS proposes replacing the introductory language at § 155.221(b) with new language to align with the new proposed approach where the agent, broker, or issuer selects the third-party entity to perform the audit under paragraph (a) and remove the requirement for approval of these entities by HHS. New § 155.221(b)(1) would remove the requirement that an entity must submit its application to HHS; instead we propose to require the entity to have experience conducting audits or similar services, including specific experience with relevant privacy and security standards due to the operational requirements of the current direct enrollment processes and any potential future enhancements. This would include demonstrated experience with current National Institute of Standards and Technology (NIST) SP 800–53 or the HIPAA Security Rule standards, and the review of compliance with those standards. Auditors must also be capable of performing penetration testing on all interfaces that collect personally identified information or connect with HHS. We propose modifying § 155.221(b)(2) to include issuers participating in direct enrollment and to expand the scope of the audit to also include review of compliance with other applicable program requirements (for example, Web site design, or consumer disclosures). We propose to modify § 155.221(b)(3) to require the auditor to collect, store, and share with HHS all data related to its audits of agents, brokers, and issuers under paragraph (a) in a manner, format, and frequency specified by HHS until 10 years from the date of creation. The proposed amendments to paragraph (b)(3) also require the auditor to comply with the privacy and security standards HHS adopts for agents, brokers, and issuers as required in accordance with § 155.260.

Further, HHS proposes adding new paragraph (b)(4) to implement a conflict of interest standard that requires disclosure of financial relationships between a third-party entity conducting a direct enrollment operational readiness review and the agent, broker, or issuer. We also propose to add § 155.221(b)(5) to require compliance by the third-party entity with all applicable Federal and State requirements, and to add § 155.221(b)(6) to require the third-party entity to ensure, on an annual basis, that appropriate staff successfully complete operational readiness review training as established by HHS prior to conducting audits under paragraph (a) of this section. The training would provide information about compliance, direct enrollment technical requirements, applicable privacy and security standards, and reporting requirements.

Under proposed § 155.221(b)(7), a third-party entity would be required to permit access by the Secretary and the Office of the Inspector General (OIG), or their designees, in connection with their right to evaluate through audit, inspection, or other means, to the third-party entity's books, contracts, computers, or other electronic systems, relating to the third-party entity's audits of agents, broker's, or issuer's obligations in accordance with Federal standards under paragraph (a) of this section until 10 years from the date of creation. This is intended to align with the existing obligation on QHP issuer downstream and delegated entity requirements under § 156.340(b) to cooperate with HHS and OIG audits, investigations, or other reviews. Proposed new paragraph (b)(8) would require compliance with other minimum business criteria specified in guidance by HHS.

To provide agents, brokers, and issuers with flexibility, HHS proposes replacing § 155.221(c) with a new paragraph to permit an agent, broker, or issuer participating in direct enrollment to engage multiple third-party entities to perform the audits under paragraph (a) and to clarify that each such third-party entity will need to separately comply with the standards proposed under paragraph (b).

HHS proposes deleting paragraphs § 155.221(d) (regarding a list of HHS-approved entities) and (e) (regarding an appeals process for entities that were not approved) to conform to the other proposed changes in this section.

We solicit comments on these proposals, and general feedback on the direct enrollment process to inform the development of future direct enrollment operational and oversight standards, including improvements to the pathway to further expand access to coverage.

4. Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

a. Eligibility Standards (§ 155.305)

Section § 155.305(f)(4)(i) prohibits an Exchange from determining a consumer is eligible for APTC if APTC payments were made on behalf of the tax filer for the consumer's household (or either spouse, if the tax filer is married) for a previous year for which tax data would be utilized for verification of household income and family size, and the tax filer or his or her spouse did not comply with the requirement to file an income tax return and reconcile APTC received for that year. Under the current regulation at paragraph (f)(4)(ii), Exchanges cannot discontinue APTC due to the failure to file and reconcile associated APTC unless direct notification is first sent to the tax filer that his or her eligibility will be discontinued as a result of the tax filer's failure to comply with the requirement specified under paragraph (f)(4)(i) of § 155.305.

We propose to amend § 155.305(f)(4) by removing the direct notification requirement in paragraph (f)(4)(ii) and revising the remaining paragraph (f)(4) to move the content in paragraph (f)(4)(i) into paragraph (f)(4).

Upon further examination, we have determined that notification practices in place prior to adoption of the direct notification requirement provide sufficient clarity for consumers prior to action being taken to discontinue APTC. Specifically, these practices were to discontinue APTC by notifying the household contact that his or her eligibility will be discontinued as a result of the tax filer's failure to comply with the filing and reconciliation requirement.

In past years, the FFEs have sent notifications to the household contact based on notification preference—electronically or at the address specified

when he or she submitted the application. Because of the restrictions on disclosing Federal tax information (FTI), these notices cited three possible reasons why a consumer may be at risk for losing APTC, one of which is failure to file and reconcile. In our experience operating the FFEs and the Federal eligibility and enrollment platform, the household contact may often be the same person as the tax filer on whose behalf APTC is paid; accordingly, since FFE notices have been sent to the household contact, we believe the notifications have been addressed, in many cases, to the person who is the tax filer for the household. In cases where the household contact has not been the tax filer, because the notification has been clear that it concerns eligibility for APTC, we expect that the household contact likely has shared the notice with the tax filer on whose behalf APTC was paid. As evidence that tax filers generally have received notification directly regarding their receipt of APTC and information that they have not satisfied the requirement to file and reconcile, this notification method has successfully resulted in tax filers for approximately 60 percent of households receiving the notification taking appropriate action to file a tax return and reconcile associated APTC. However, because tax filers for approximately 40 percent of households receiving the notification did not take appropriate action, HHS believes it is important for program integrity purposes that Exchanges discontinue APTC for tax filers who failed to file a tax return and reconcile after the notice was provided. If the Exchange discontinues APTC in connection with the requirement under paragraph § 155.305(f)(4), the enrollee would have the right to appeal the discontinuation of APTC and maintain APTC during the appeal. Therefore, we propose to remove the direct notification requirement in § 155.305(f)(4)(ii).

We also believe this change could reduce burden on Exchanges. Absent this proposed change, in order to discontinue APTC for consumers who failed to file a tax return and reconcile their income taxes, Exchanges would be required to establish a mechanism through which to notify tax filers without making an unauthorized disclosure of protected FTI. Doing so could be financially and operationally burdensome and out of proportion to the limited need for FTI handling in Exchange notice generation functionality.

As discussed above, we believe that removing the direct notification requirement will reduce the burden on Exchanges, while tax filers and households that have been identified as not meeting the requirement to file and reconcile will continue to receive adequate notice under the approach that Exchanges using the federal eligibility and enrollment platform have taken in past years. However, improving the clarity and overall effectiveness of this notification process is a priority, and we continue to explore ways to make the process even more robust and consumer-friendly, without unduly burdening the Exchanges. We may issue additional information about our notification process in the future as an aid to SBEs seeking to implement a more robust process.

We seek comment on this proposal.

b. Verification Process Related to Eligibility for Insurance Affordability Programs (§ 155.320)

i. Income Inconsistencies

Section § 155.320(c)(3)(iii) sets forth the verification process for increases in household income. Generally, if income data from our electronic data sources indicate a tax filer's attested projected annual income is *more than* the income amount represented by income data returned by the IRS and the SSA and current income data sources, § 155.320(c)(3)(iii) requires the Exchange to accept the attestation without further verification. Currently, Exchanges generally are not permitted to create inconsistencies for consumers when the consumer's attested income is greater than the amount represented by income data returned by IRS and the SSA and current income data sources.

We propose to revise § 155.320(c)(3)(iii) to specify that the Exchange will also generate annual income inconsistencies in certain circumstances when a tax filer's attested projected annual income is *greater than* the income amount represented by income data returned by IRS and the SSA and current income data sources. Current regulations generally require the Exchange to accept a consumer's attestation to projected annual household income when the attestation reflects a higher income than what is indicated in data from the IRS and Social Security Administration. This approach continues to make sense from a program integrity perspective when both the attestation and data from trusted data sources are over 100 percent Federal poverty level (FPL), since an attestation that is higher than data from trusted data sources in that situation would reflect a lower APTC than would be provided if the information from trusted data were used instead.

However, where electronic data sources reflect income under 100 percent FPL and a consumer attests to income between 100 percent FPL and 400 percent FPL, where the attested income exceeds the income reflected in trusted data sources by more than some reasonable threshold, we believe it would be reasonable to request additional documentation, since the consumer's attested income could make him or her eligible for APTC that would not be available using income data from electronic data sources. This proposal also would help limit tax filers' potential liability at tax reconciliation to repay excess APTC. Accordingly, we propose to add new paragraphs (c)(3)(iii)(D) and (E), and to modify paragraphs (c)(3)(vi)(C), (D), (F), and (G), to specify that the Exchange will follow the procedures in § 155.315(f)(1) through (4) to create an annual income data matching issue for consumers if: (1) The consumer attested to projected annual income between 100 percent and 400 percent of the FPL; (2) the Exchange has data from IRS and SSA that indicates income is below 100 percent FPL; (3) the Exchange has not assessed or determined the consumer to have income within the Medicaid or CHIP eligibility standard; and (4) the consumer's attested projected annual income exceeds the income reflected in the data available from electronic data sources by a reasonable threshold established by the Exchange and approved by HHS. We propose that a reasonable threshold must not be less than 10 percent, and can also include a threshold dollar amount. In accordance with the existing process in § 155.315(f)(1) through (4), if the applicant fails to provide documentation verifying their income attestation, the Exchange would redetermine the applicant's eligibility for APTC and CSRs based on available IRS and SSA data, which under this proposal would typically result in discontinuing APTC and CSR as required in paragraph (c)(3)(vi)(G). The adjustment and notification process would work like other inconsistency adjustments laid out in paragraph (c)(3)(vi)(F).

We propose to allow the Exchange to set the threshold for setting a data matching issue similar to § 155.320(c)(3)(vi). We propose that a reasonable threshold should take into account that consumers with incomes near 100 percent FPL have a smaller margin for error in dollar terms. Therefore, a reasonable threshold might also include a fixed dollar amount in

addition to a percentage threshold. We seek comment on this proposal.

In paragraph (c)(3)(vi)(D) we propose to make changes to provide consistency with changes finalized in the 2017 Payment Notice regarding the threshold for the generation of annual income data matching issues for decreases in annual household income. This proposed change would specify that the 10 percent threshold standard no longer applies to cases when a tax filer's attested projected income is less than all data sources, or when no electronic data sources are available. Instead, an Exchange would use the reasonable threshold established in accordance with § 155.320(c)(3)(vi).

We note, however, our interest in providing further guidance on the appropriate thresholds for the generation of data matching issues generally. It is our intent to reconsider and provide further guidance on these thresholds in the near future, and in anticipation of that effort we seek comment on the appropriate thresholds to use at various income levels and in various circumstances. In particular, we welcome data and evidence on this issue.

We intend to address this issue as part of broader rulemaking and guidance on a number of related program integrity issues, including further examination of our processes for denying eligibility for subsidies for individuals who have failed to reconcile APTC on their Federal income tax return, Exchange processes for matching enrollment data with Medicare and Medicaid in order to remove duplicate enrollments, and our rules around recalculation of eligibility for APTC following a midyear change in eligibility. In anticipation of these actions, we seek comment generally on these and other program integrity topics.

ii. Verification of Eligibility for Employer Sponsored Coverage

An employee, or a member of the employee's family, who is eligible to enroll in qualifying coverage in an eligible employer-sponsored plan is not eligible for a premium tax credit unless the plan's coverage for the employee is either unaffordable, as defined in section 36B(c)(2)(C)(i)(II) of the Code, or does not provide minimum value, as defined in section 36B(c)(2)(C)(ii) of the Code. An employee (or member of the employee's family) also is not eligible if he or she actually enrolls in the employer-sponsored plan, even if the plan is not affordable or fails to provide minimum value.

When an individual submits a request for an eligibility determination for insurance affordability programs, including as part of the eligibility verification process for APTC and CSRs, § 155.320(d) requires the Exchange to verify whether the applicant reasonably expects to be enrolled in an eligible employer-sponsored plan or is eligible for qualifying coverage in an eligible employer-sponsored plan for the benefit year for which coverage is requested. Paragraph (d)(2) of § 155.320 describes the data sources an Exchange must use to perform verification. Paragraph (d)(2)(i) requires an Exchange to obtain data from any electronic data sources that are available to the Exchange and which have been approved by HHS based on evidence showing that such data sources are sufficiently current, accurate, and minimize administrative burden. Paragraph (d)(2)(ii) requires that the Exchange also obtain available data based on Federal employment through HHS, and paragraph (d)(2)(iii) requires the Exchange to obtain available data from the SHOP that corresponds to the State in which the Exchange is operating. Under § 155.320(d)(4), if an Exchange is unable to fulfill the requirement to connect to the data sources set forth in (d)(2), the Exchange is required to conduct sampling as described under paragraph (d)(4)(i), or—for benefit years 2016 and 2017—it may conduct an HHS-approved alternative process instead of sampling, as provided under paragraph (d)(4)(ii).

We propose to amend § 155.320(d)(4) to allow an Exchange to conduct an HHS-approved alternative process instead of sampling, as provided under paragraph (d)(4)(ii), for benefit years through 2019. When we introduced this option for benefit years 2016 and 2017, we received comments that encouraged us to make this option permanent. However, at the time we stated that we believed the alternative process should be used as an interim measure to gather information about the verification process as Exchanges improve their long-term verification programs.[36] We also stated that we believed the temporary option would provide Exchanges with needed flexibility as verification processes are refined and employer databases compiled, to improve long-term verification programs. While Exchanges have since gained greater access to data and explored approaches to sampling, challenges remain. To reduce regulatory burdens on Exchanges while they address remaining hurdles to developing a long-term approach to verification, we believe the option to use an alternative process instead of sampling should be extended through plan year 2019.

After the option to use an alternate process for benefit years 2016 or 2017 was finalized, HHS investigated the feasibility of connecting to a comprehensive database of information on employer-sponsored coverage that could be used by all Exchanges to fulfill verification requirements under § 155.320(d)(2)(i). Such a database would be most useful and cost-effective if it contained information on employer-sponsored coverage from as many non-Federal and non-SHOP employers as possible. We found that a comprehensive database does not currently exist and building such a database would be a resource-intensive endeavor. In addition, employers are not required to provide information to Exchanges or HHS regarding the coverage they offer, potentially limiting the completeness of such a database.

Because of the current challenges associated with building an HHS-approved database that is sufficiently complete and accurate to satisfy requirements under paragraph (d)(2)(i), we anticipate many Exchanges will fulfill verification requirements using an alternate process, as described under paragraph (d)(4). And, in recognition of the challenges that Exchanges may encounter with conducting sampling, as explained below, we propose to extend the option for Exchanges to conduct an alternative process to sampling through benefit year 2019. Our hope is that Exchanges can continue to compile databases sufficient to meet verification requirements under paragraph (d)(2) and to continue to refine their approaches to sampling to meet verification requirements under paragraph (d)(4)(i).

In accordance with the requirement at paragraph (d)(4) to pursue an alternate process, the FFE conducted a pilot study that incorporated many components of sampling. The pilot was intended to assess sampling's value protecting the integrity of the attestation process regarding applicant access to and enrollment in employer-sponsored coverage. As part of this sampling pilot, employers for a small sample of enrollees receiving APTC through the FFE were contacted by telephone, based on the employer contact information applicants provided on their Exchange applications, and asked whether specified employees were also enrolled in a qualifying employer-sponsored plan or were offered qualifying coverage in an employer-sponsored plan. The FFE collected information by contacting employers' human resources personnel.

[36] 81 FR 12203, 12269 (March 8, 2016).

Sampling may be a lower cost option for SBEs compared to FFEs. For example, the FFE operates Exchanges for 38 States, and the volume of employers that the FFE encompasses may inherently present challenges in relying on sampling results that States may not face. Some states may collect and have access to data from employers that makes verifying consumers' attestations more efficient and reliable, or may have existing channels through which they can communicate with in-State employers. Therefore, we are maintaining the option to use sampling as an alternate method of verification under paragraph (d)(4) to allow SBEs maximum flexibility. We expect that the proposed change to paragraph (d)(4) to allow Exchanges to continue to use an HHS-approved alternative process to sampling through plan year 2019 will provide Exchanges with important flexibility to conduct the most efficient, reliable alternate method of verification as Exchanges refine their approaches to conducting sampling over time, and until data sources exist that provide an effective way to verify consumers' enrollment in or access to qualifying employer-sponsored coverage. If SBEs use an alternative process to sampling to conduct verification under paragraph (d)(4)(ii), the process must be approved by HHS. To be approved by HHS, we expect an Exchange to develop an alternate process that provides insight into whether employees provide accurate information or the Exchange effectively verifies information about enrollment in and eligibility for qualifying coverage in an eligible employer-sponsored plan.[37] This requires Exchanges to conduct reliable and sufficient verification, while giving them the flexibility to find the most efficient ways of doing so for their Exchange.

We note that to the extent an Exchange believes an alternate process to verification through data sources other than those described under paragraph (d)(2) may result in a more efficient or comprehensive verification procedure, the Exchange may also, in accordance with §§ 155.315(h) and 155.320(a)(2), request HHS approval for use of an alternate process for verifying enrollment in and access to employer sponsored coverage. We note that HHS received support for providing flexibility for the use of alternate data sources by Exchanges in comments to the Request for Information. For example, we received comments indicating that, for some Exchanges, due to the limited number of Federal employees in their State, connecting to the database containing data on Federal employment provides little utility in Exchange verification of applicants' eligibility for employer-sponsored coverage. One commenter encouraged HHS to consider removing the regulatory requirement to connect to this database for purposes of employer-sponsored coverage verification. We have also received feedback from some Exchanges noting challenges and limitations connecting to a SHOP database. These Exchanges noted that, given the limited enrollment in SHOP in many States and that many States do not have a SHOP database to which to connect, requiring verification through SHOP imposes a technical and financial challenge for States that may not be the most efficient and cost-effective way to perform verification.

We seek comment on these proposals. Additionally, we seek information and suggestions from State-based Exchanges and other stakeholders on ways to improve verification of whether an applicant reasonably expects to be enrolled in an eligible employer-sponsored plan or is eligible for qualifying coverage in an eligible employer-sponsored plan for the benefit year for which coverage is requested.

c. Eligibility Redetermination During a Benefit Year (§ 155.330)

We seek comment on ways to better encourage enrollees to report changes in circumstance during the benefit year that may have an impact on their eligibility for Exchange coverage or for advance payment of the premium tax credit or cost sharing reductions. The FFEs currently conduct proactive outreach to enrollees through a variety of means, including emails, phone calls, and paper mail to encourage them to return to the Exchange to update their information throughout the benefit year and during key Exchange operational efforts, such as open enrollment. The FFEs also periodically provide general information and reminders to enrollees. However, many individual changes in circumstance, such as an individual's changes in household income or size, remain unknown by the Exchanges until reported by the enrollee and, such changes may have a significant impact on the enrollee's eligibility for QHP coverage through the Exchange and for financial assistance.

Therefore, we are interested in hearing from stakeholders about ways to increase enrollee reporting of individual changes in circumstance within 30 days of the change in order to ensure compliance with § 155.330(b). Increasing such reporting would benefit enrollees by ensuring that they continue to be enrolled given their current eligibility for financial assistance and would improve program integrity.

d. Annual Eligibility Redetermination (§ 155.335)

We are considering the possibility of amending the length of time that individuals may authorize the Exchanges to obtain the updated tax return information for enrollees as described in § 155.335(k)(2). Currently, the Exchanges may obtain updated tax return information for a period of no more than five years based on a single authorization.

We seek comment on whether five years is an appropriate amount of time for this type of an authorization to last or whether a shorter time period should be considered. In particular, we are contemplating whether shortening this authorization period would improve Exchange program integrity by helping to ensure that the enrollee's application at the time of re-enrollment accurately reflects his or her data collection preferences, that all sources of income that may impact his or her eligibility for APTC and cost sharing reductions are listed on the application, and that individuals update their applications on a more regular basis to reflect other changes in circumstances that affect eligibility (such as changes in employment or marital status).

5. Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

a. Special Enrollment Periods (§ 155.420)

i. Plan Options Under Select Special Enrollment Periods

For many special enrollment periods, a dependent of an Exchange enrollee may newly enroll in Exchange coverage or switch Exchange plans when the dependent or another qualified individual on the Exchange application qualifies for a special enrollment period. Even though dependents may access special enrollment periods based on different qualifying events, when they qualify for a special enrollment period to newly enroll in Exchange coverage, regardless of whether it is a special enrollment period due to gaining or becoming a dependent or due to a loss of minimum essential coverage, we believe they should be treated alike. Section 155.420(a)(4) defines the coverage changes Exchange enrollees may make when they or their dependents qualify for special enrollment periods. We are proposing to modify how paragraph (a)(4)(iii) treats

[37] 81 FR 94058, 94125 (December 22, 2016).

dependents to align more closely with paragraph (a)(4)(i) which addresses when an existing enrollee gains a new dependent. To do this, we propose to modify paragraph (a)(4)(iii) to establish a distinction between how the rule treats existing enrollees who qualify for one of the relevant special enrollment periods themselves or when existing Exchange enrollees themselves and their dependent(s) qualify for one of the relevant special enrollment periods; and when only new dependents qualify for one of the relevant special enrollment periods and are enrolling in coverage with an existing Exchange enrollee. We propose to establish this distinction by separating these situations into new paragraphs (a)(4)(iii)(A) and (a)(4)(iii)(B). We believe the latter situation is akin to when an enrollee adds a new dependent to their coverage, even though in this situation the dependent is qualifying for a different special enrollment period.

Proposed new paragraph (a)(4)(iii)(A) would address the coverage options available to current enrollees and dependents who qualify for a special enrollment period. As is current policy under paragraph (a)(4)(iii), paragraph (a)(4)(iii)(A) would continue to allow enrollees and their dependents who qualify for the special enrollment periods specified in paragraphs (d), other than those described in paragraphs (d)(2)(i), (d)(4), (d)(6)(i) or (ii) for becoming newly eligible for CSRs, (d)(8), (d)(9), and (d)(10) of this section, to use their special enrollment period to change to another QHP within the same level of coverage or one metal level higher or lower, if no such QHP is available, as outlined in § 156.140(b) of this subchapter.

Proposed new paragraph (a)(4)(iii)(B) would address the coverage options available when only a dependent who is not currently enrolled in Exchange coverage qualifies for a special enrollment period. We are proposing to revise the policy for these qualified individuals to align with paragraph (a)(4)(i) of this section. We propose that, if a new dependent qualifies for one of the special enrollment periods specified in paragraphs (d)(1), (d)(3), (d)(6)(iii), (d)(6)(iv), (d)(7), (d)(11), and (d)(13) of this section and an enrollee would like to add the dependent to his or her QHP at that time, the Exchange must allow the enrollee to add the dependent to his or her current QHP; or, if the plan's business rules do not allow the dependent to enroll, the Exchange must allow the enrollee and dependent to change to another QHP within the same level of coverage; or, if no such QHP is available, allow them to switch to a QHP one metal level lower or higher, as outlined in § 156.140(b) of this subchapter. Alternatively, the enrollee may enroll the dependent in a separate QHP at any metal level.

We believe that these modifications are needed in order to align the flexibilities available to enrollees and dependents when a dependent is newly enrolling in Exchange coverage during the benefit year due to qualifying for a special enrollment period. With this proposed change, regardless of the special enrollment period for which a dependent qualifies, an enrollee may either add the dependent to his or her existing QHP, as long as they continue to qualify for it, or enroll the new dependent in a separate QHP at any metal level.

In the event that both the enrollee and the new dependent qualify for special enrollment periods referenced in proposed paragraphs (a)(4)(iii)(A) and (a)(4)(iii)(B), respectively, and the enrollee wants to add this new dependent to his or her QHP, the Exchange would allow both the enrollee and dependent to switch to a new QHP at the same metal level, if available, as described in proposed paragraph (a)(4)(iii)(A).

In addition, we propose to exclude the special enrollment period in paragraph (d)(12) for material plan or benefit display errors from paragraph (a)(4)(iii). This is because we understand that certain material plan or benefit display errors may impact an enrollees' decision to enroll in a level of coverage, in addition to his or her decision to enroll in a specific QHP. Therefore, we believe that, if an enrollee qualifies for the special enrollment period because of a material plan or benefit display error, he or she should be allowed to switch to a different QHP at any metal level that better meets his or her needs.

We seek comment on these proposals.

ii. Exception to Prior Coverage Requirement for Qualified Individuals Who Have Lived in Service Areas Where No QHP Is Offered Through an Exchange

In response to concerns from stakeholders that certain special enrollment periods intended to help qualified individuals maintain continuous coverage for themselves and their families were being used to newly enroll in coverage mid-year, HHS recently added a prior coverage requirement to the special enrollment period for gaining access to new QHPs as a result of a permanent move, described in § 155.420(d)(7), and the special enrollment period for gaining or becoming a dependent through marriage, described in § 155.420(d)(2)(i). Section 155.420(a)(5) specifies how a qualified individual can satisfy the prior coverage requirement. Qualified individuals can either demonstrate that they had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for 1 or more days during the 60 days preceding the date of the qualifying event; lived in a foreign country or in a United States territory for 1 or more days during the 60 days preceding the date of the qualifying event; or are an Indian, as defined by section 4 of the Indian Health Care Improvement Act. This prior coverage requirement encourages individuals to maintain coverage throughout the year.

However, we recognize that individuals living in a service area, as defined by § 155.1055, where no Exchange QHPs are offered, may not be able to obtain affordable coverage. We believe that individuals in this situation should not later be prevented from enrolling in coverage through a special enrollment period that requires prior coverage, when they were previously unable to enroll in Exchange coverage because it was unavailable or inaccessible. Therefore, we propose to amend paragraph (a)(5) to exempt qualified individuals from the prior coverage requirement if, for at least 1 of the 60 days prior to the date of their qualifying event, they lived in a service area where there were no QHPs offered through an Exchange. Absent this change, qualified individuals who have lived for part of the benefit year in a location where no QHPs were offered through an Exchange, and therefore may have been unable to enroll in minimum essential coverage, would be prevented from subsequently qualifying for a special enrollment period due to a permanent move or marriage.

Additionally, we note that the proposed amendment to paragraph (a)(5) would apply, along with the rest of the paragraph, to the individual market outside of the Exchange through the cross-reference to § 155.420(d) in § 147.104(b)(2). In this context, health insurance issuers offering coverage outside an Exchange would not be able to require qualified individuals to demonstrate prior coverage if they lived for at least 1 of the 60 days prior to their qualifying event in a service area where there were no QHPs offered through an Exchange.

We invite comment on this proposal.

iii. Effective Date Options for Special Enrollment Periods Relating to Gaining or Becoming a Dependent

Paragraph (b)(2)(i) of § 155.420 requires Exchanges to provide qualified individuals who qualify for a special enrollment period due to gaining or becoming a dependent through birth, adoption, placement for adoption, or placement in foster care with a retroactive coverage effective date back to the date of the qualifying event, and provides Exchanges with the option to allow these consumers to elect an effective date of the first of the month following the date of the event or following regular coverage effective dates, in accordance with paragraph (b)(1) of this section. Paragraph (b)(2)(v) addresses coverage effective date options for special enrollment periods related to gaining or becoming a dependent due to a child support or other court order as described in paragraph (d)(2)(i); it requires Exchanges to ensure that coverage takes effect on the date of the court order and permits the Exchange to allow qualified individuals to elect an effective date based on paragraph (b)(1), but it does not provide qualified individuals with an option to begin their coverage the first of the month following the date of the event.

We propose to remove paragraph (b)(2)(v) of this section and to revise paragraph (b)(2)(i) to include the special enrollment period for a court order to align the coverage effective dates for all special enrollment periods based on gaining or becoming a dependent, with the exception of gaining or becoming a dependent through marriage. Aligning coverage effective date options ensures that Exchanges provide qualified individuals in similar situations with the same flexibility with regard to coverage effective dates. We then propose to redesignate current paragraph (b)(2)(vi) as paragraph (b)(2)(v).

In addition, we propose to modify paragraph (b)(2)(i) so that, in addition to requiring an Exchange to ensure that coverage is effective retroactive to the date of the qualifying event, it may permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following plan selection, rather than the first of the month following the qualifying event, as currently written, or following regular coverage effective dates, in accordance with paragraph (b)(1) of this section.

This amendment would streamline Exchange operations and align this coverage effective date option with the accelerated prospective coverage effective date rule as it applies to other special enrollment periods, including the special enrollment period for gaining or becoming a dependent through marriage, as described in (b)(2)(ii) of this section. Thus, at the Exchange's option, qualified individuals who qualify for a special enrollment period due to gaining or becoming a dependent through birth, adoption, placement for adoption, placement in foster care, or through a child support or other court order, would be able to elect from the same coverage effective date options, including: the date of qualifying event, the first day of the month following plan selection, or regular coverage effective dates in accordance with paragraph (b)(1). These amendments would standardize the coverage effective date options for qualified individuals who have experienced similar qualifying events.

We request comments on this proposal.

iv. Loss of Coverage Special Enrollment Period (§ 155.420(d)(1)(iii))

Section § 155.420(d)(1) establishes a special enrollment period for qualified individuals who lose certain types of coverage, including minimum essential coverage. As described in paragraph (d)(1)(iii), qualified individuals who lose certain types of Medicaid pregnancy-related coverage not considered minimum essential coverage may also qualify for this special enrollment period. This is to ensure that women losing eligibility for coverage of pregnancy-related services that often meet their primary and specialty healthcare needs are not left without the option to enroll in a QHP through an Exchange after they lose access to those services.

We propose to revise paragraph (d)(1)(iii) to include women who lose access to healthcare services that they were receiving through CHIP coverage for their unborn child. While CHIP coverage for unborn children, provided based on the definition of a child described in 42 CFR 457.10, is considered minimum essential coverage for the unborn child, it is not considered minimum essential coverage for the pregnant woman. Nonetheless, these pregnant women may receive a set of health services comparable to those available to women enrolled in Medicaid pregnancy-related coverage. For this reason, pregnant women who have received prenatal care as part of CHIP coverage for their unborn child may apply and be determined eligible for a hardship exemption from the FFEs so that they are not required to also maintain minimum essential coverage during that time.

The proposed revision to paragraph (d)(1)(iii) would provide a pathway to coverage for new mothers who lose access to healthcare services provided through unborn child CHIP coverage following the birth of their child, and who are otherwise eligible to enroll in a QHP through the Exchange. Under paragraph (c)(2) of this section, these qualified individuals would have up to 60 days before or after the loss of access to CHIP unborn child coverage to qualify for the loss of coverage special enrollment period and enroll in a QHP. If they select a plan prior to their loss of CHIP unborn child coverage, their Exchange coverage would begin as soon as the first day of the month following the loss of coverage. If they select a plan after the loss of CHIP unborn child coverage, their Exchange coverage would begin either the first of the following month or following regular, prospective coverage effective dates at the option of the Exchange, as provided under paragraph (b)(2)(iv). We believe that this revision is needed to ensure a pathway to coverage for women in the 17 states that offer unborn child CHIP coverage, so that they may maintain access to continuous coverage after the birth of their child.

We request comments on this proposal.

iv. Technical Amendment (§ 155.420(d)(10)(i))

We propose to make a technical amendment to update the cross reference to 26 CFR 1.36B–2T in § 155.420(d)(10)(i), regarding the special enrollment period for victims of domestic abuse or spousal abandonment. The temporary regulation under section 36B of the Code originally cited has now been finalized without change to the definition cited in this special enrollment period. Therefore, this technical correction would not in any way alter the parameters of this special enrollment period.

b. Effective Dates for Terminations (§ 155.430)

Section 155.430 specifies the termination dates for Exchange enrollees. Paragraph (d)(1)(i) of § 155.430 defines ''reasonable notice'' as at least 14 days before the requested effective date of termination. Paragraph (d)(2) sets forth three possible effective dates for enrollee-initiated terminations made in accordance with paragraph (b)(1): (1) The termination date specified by the enrollee, if the enrollee provides reasonable notice; (2) 14 days after the termination is requested by the enrollee,

if the enrollee does not provide reasonable notice; or (3) on a date on or after the date on which the termination is requested by the enrollee, if the enrollee's QHP issuer agrees to effectuate termination in fewer than 14 days, and the enrollee requests an earlier termination effective date. Further, current paragraph (d)(2)(iv) sets the QHP termination effective date for enrollees newly eligible for Medicaid, CHIP, or the basic health program as the day before the individual is determined eligible for Medicaid, CHIP, or the basic health program.

While the 14-day ''reasonable notice'' rule was created to provide issuers ample termination transaction processing time, we believe that most Exchanges and issuers have the operational capability to make enrollee-initiated terminations effective in fewer than 14 days—and often do so on the same day of enrollee request. When asked, issuers have not informed HHS of any challenges in processing these same-day transactions. Therefore, we propose to remove paragraphs (d)(2)(i) through (d)(2)(iii) and align the effective dates for all enrollee-initiated terminations on the date on which the termination is requested by the enrollee or on another prospective date selected by the enrollee.

To further align termination effective dates, we also propose removing existing paragraph (d)(2)(iv), which states that the QHP termination date for an enrollee newly determined eligible for Medicaid, CHIP or a basic health program is the date before the Medicaid, CHIP, or basic health program eligibility determination. We do not provide QHP termination dates according to eligibility for other forms of coverage, such as Medicare or employer-sponsored coverage. This rule singles out the Medicaid/CHIP/basic health program enrollee population for an earlier termination date than other Exchange consumers, causing unnecessary confusion for consumers and issuers. Consumers may also be determined eligible through the State Medicaid agency, instead of the Exchange, resulting in challenges in coordinating effective dates through the State and the Exchange and its issuers. The removal of paragraph (d)(2)(iv) may limit enrollees' ability to retroactively terminate QHP coverage when it overlaps with Medicaid or CHIP, which could result in consumers being unable to recoup premiums paid for periods when the enrollee was enrolled in QHP coverage through the Exchange and gains retroactive eligibility for Medicaid or CHIP. However, these types of retroactive terminations can lead to major challenges for consumers as Medicaid/CHIP providers may not cover claims reversed by the QHP—leading to unexpected out-of-pocket costs for consumers.

Consolidating these termination effective date scenarios—based on reasonable notice or the reason for termination—into one option for consumers would help streamline operations for Exchanges and issuers. Allowing enrollees to terminate their coverage immediately or on a future date of their choosing also would provide consumers with greater control over ending their QHP coverage and would help minimize or eliminate overlaps in coverage. Such flexibility would also allow Exchanges to send termination transactions to issuers that do not need subsequent adjustment, reducing the need for casework or direct consumer contact with issuers to request earlier termination dates as permitted under paragraph (d)(2)(iii).

We believe that streamlining these termination dates would not negatively affect issuer or Exchange operations, but we invite comment from Exchanges, issuers, and other stakeholders on any burdens these rule changes may impose, as well as whether we should make the changes at the option of the Exchange or the issuer.

6. Definitions (§ 155.500)

This section defines terms that are relevant to this subpart. We propose to amend the definitions of ''Appeal request'' and ''Appeals entity'' by adding a cross reference to proposed section § 155.716(e)'' to align with the other proposals discussed throughout this proposed rule.

7. Eligibility Standards for Exemptions (§ 155.605)

a. Hardship Exemptions (§ 155.605(d))

Section 1311(d)(4)(H) of the PPACA and section 5000A(e)(5) of the Code allow individuals to seek an exemption from the individual shared responsibility provision due to a lack of affordable coverage based on an individual's projected income. Section 155.605(d)(2) establishes the circumstances under which an Exchange must determine an applicant eligible for an exemption due to lack of affordable coverage based on projected income. For determining whether affordable coverage is available, paragraph (d)(2) states that the Exchange should use the standards specified in section 5000A(e)(1) of the Code which, among other things, specifies that the Exchange should use, for individuals not eligible for employer-sponsored coverage, the annual premium for the lowest-cost bronze plan available in the individual market through the Exchange in the State in the rating area in which the individual resides.

However, market instability has resulted in limited offerings of plans on the Exchanges in many regions, and there may be individuals who live in a rating area without a bronze plan. Under the current regulation, the Exchange would not be able to make a determination as to whether an individual not eligible for employer-sponsored coverage who lives in a rating area without a bronze plan is eligible for the exemption due to lack of affordable coverage based on projected income. We propose to amend paragraph § 155.605(d)(2)(iv), to allow an Exchange to make a determination of lack of affordable coverage based on projected income for individuals not eligible for employer-sponsored coverage using the annual premium for the lowest cost Exchange metal level plan available in the individual market through the Exchange in the State in the rating area in which the individual resides if there is no bronze level plan sold through the Exchange in that rating area. Absent this proposed change, individuals may lack access to affordable coverage, but be unable to qualify for an exemption determination from the Exchange due to the Exchange's inability to calculate whether coverage is unaffordable due to the absence of a bronze plan in that rating area. Under the proposed amendment to § 155.605(d)(2), Exchanges would use the amount of the lowest cost Exchange metal level plan available to the individual when no bronze level plan is available.

We invite comment on this proposal.

b. Required Contribution Percentage (§ 155.605(e)(3))

Under section 5000A of the Code, an individual must have minimum essential coverage for each month, qualify for an exemption, or make an individual shared responsibility payment. Under section 5000A(e)(1) of the Code, an individual is exempt if the amount that he or she would be required to pay for minimum essential coverage (the required contribution) exceeds a particular percentage (the required contribution percentage) of his or her actual household income for a taxable year. In addition, under § 155.605(d)(2), an individual is exempt if his or her required contribution exceeds the required contribution percentage of his or her projected household income for a year. Finally, under § 155.605(d)(2)(iv), certain

employed individuals are exempt if, on an individual basis, the cost of self-only coverage is less than the required contribution percentage, but the aggregate cost of individual coverage through employers exceeds the required contribution percentage and no family coverage is available through an employer at a cost less than the required contribution percentage.

Section 5000A established the 2014 required contribution percentage at 8 percent. For plan years after 2014, section 5000A(e)(1)(D) of the Code and 26 CFR 1.5000A–3(e)(2)(ii) provide that the required contribution percentage is the percentage determined by the Secretary of HHS that reflects the excess of the rate of premium growth between the preceding calendar year and 2013, over the rate of income growth for that period.

We established a methodology for determining the excess of the rate of premium growth over the rate of income growth for plan years after 2014 in the 2015 Market Standards Rule (79 FR 30302), and we stated that future adjustments would be published annually in the HHS notice of benefit and payment parameters.

Under the HHS methodology, the rate of premium growth over the rate of income growth for a particular calendar year is the quotient of (x) 1 plus the rate of premium growth between the preceding calendar year and 2013, carried out to ten significant digits, divided by (y) 1 plus the rate of income growth between the preceding calendar year and 2013, carried out to ten significant digits.[38]

As the measure of premium growth for a calendar year, we established in the 2015 Market Standards Rule that we would use the premium adjustment percentage. The premium adjustment percentage is based on projections of average per enrollee employer-sponsored insurance premiums from the National Health Expenditure Accounts (NHEA), which are calculated by the CMS Office of the Actuary.[39] (As discussed elsewhere in this preamble, we are proposing the 2019 premium adjustment percentage to be 1.2516634051, (or an increase of about 25 percent over the period from 2013 to 2018). This reflects an increase of about 7.7 percent over the 2018 premium adjustment percentage (1.2516634051/1.1617303196).

As the measure of income growth for a calendar year, we established in the 2017 Payment Notice that we would use per capita personal income (PI). Under the approach finalized in the 2017 Payment Notice, and using the NHEA data, the rate of income growth for 2019 is the percentage (if any) by which the most recent projection of per capita PI for the preceding calendar year ($53,729 for 2018) exceeds per capita PI for 2013 ($44,555), carried out to ten significant digits. The ratio of per capita PI for 2018 over the per capita PI for 2013 is estimated to be 1.2059028167 (that is, per capita income growth of about 20.6 percent). This reflects an increase of about 4.5 percent relative to the increase for 2013 to 2017 (1.2059028167/1.1540603665) used in last year's rule.

Thus, using the 2019 premium adjustment percentage proposed in this rule, the excess of the rate of premium growth over the rate of income growth for 2013 to 2018 is 1.2516634051/1.2059028167, or 1.0379471610. This results in a proposed required contribution percentage for 2019 of 8.00*1.0379471610 or 8.30 percent, when rounded to the nearest one-hundredth of one percent, an increase of 0.25 percentage point from 2018 (8.30358 − 8.05317). The excess of the rate of premium growth over the rate of income growth also is used for determining the applicable percentage in section 36B(b)(3)(A) of the Code and the required contribution percentage in section 36B(c)(2)(C) of the Code.

We seek comment on whether there are other measures of premium growth or income growth that we could use to calculate the required contribution percentage.

8. Eligibility Process for Exemptions

Paragraph 155.610(h)(2) describes the timeframe during which the Exchange will accept an individual's application for a hardship exemption. We are proposing to make a technical correction to paragraph 155.610(h)(2) to reflect the prior redesignation of paragraph 155.605(g)(1), which describes the criteria for a hardship exemption, to paragraph 155.605(d)(1) in the 2017 Payment Notice.[40]

We seek comment on this proposal.

9. Exchange Functions: Small Business Health Options Program

We previously interpreted the PPACA's provisions regarding the SHOPs to require that all SHOPs provide for employer eligibility, employee eligibility, and certain enrollment functions, including premium aggregation services.

We recognize that SHOPs, including SBE–FP for SHOP and FF–SHOPs, continue to face challenges and, to accommodate those challenges and to provide SHOPs with more flexibility in operating their programs, we propose to allow SHOPs to operate in a leaner fashion beginning for plan years beginning on or after January 1, 2018. If the proposals of this rule are finalized, the changes would become effective as of the effective date of the final rule. In the 2018 Payment Notice, HHS finalized the removal of a participation provision that had required certain QHP issuers to participate in an FF–SHOP in order to participate in an FFE. As a result, HHS expects that there will be a significant decrease in the number of issuers in the FF–SHOPs in the 2018 plan year and therefore, also expects fewer enrollments in the FF–SHOPs and SBE–FPs utilizing the Federal platform for SHOP. With the anticipated significant decreases in QHP issuer participation and enrollment beginning in 2018, it is not cost effective for the Federal government to continue to maintain certain FF–SHOP functionalities, collect significantly reduced user fees on a monthly basis, maintain the technologies required to maintain an FF–SHOP Web site and payment platform, generate enrollment and payment transaction files, and perform enrollment reconciliation. Specifically, as previously signaled,[41] we are proposing to remove regulatory burden on SHOPs by removing several of the existing requirements imposed upon the SHOPs, focusing on removing requirements to provide certain functionality that is not expressly required by the PPACA, while still ensuring appropriate implementation of statutorily required functions of the SHOP. Under this proposal, employer groups that are currently enrolled, or will enroll in a SHOP QHP for plan years that begin prior to January 1, 2018, would enroll in a SHOP QHP consistent with the current SHOP regulations. If this rule is finalized as proposed, the

[38] We also defined the required contribution percentage at § 155.600(a) to mean the product of 8 percent and the rate of premium growth over the rate of income growth for the calendar year, rounded to the nearest one-hundredth of one percent.

[39] For any given year, the premium adjustment percentage is the percentage (if any) by which the most recent NHEA projection of per enrollee employer-sponsored insurance premiums for the preceding year exceeds the most recent NHEA estimate of per enrollee employer-sponsored insurance premiums for 2013.

[40] 81 FR 12346, March 8, 2016.

[41] Centers for Medicare & Medicaid Services Offers New Health Coverage Enrollment Option for Small Business (May 15, 2017), available at *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-05-15.html*.

changes would take effect for plan years beginning on or after January 1, 2018 as of the effective date of the final rule.

Under the proposed approach, SHOPs would no longer be required to provide employee eligibility, premium aggregation, and online enrollment functionality for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed. If these proposals are finalized as proposed, the FF–SHOPs and the SBE–FP for SHOPs would take advantage of this flexibility, and SBEs would continue to have the flexibility to operate a SHOP in the way that they choose in accordance with applicable Federal and State law. Notably, we received comments to the Request for Information that provided support for this proposed enrollment approach. Moreover, few SBEs currently utilize a similar enrollment approach as is being proposed as a transitional measure that was expected to extend through plan years beginning in 2018. These SBEs have already inquired about the possibility to continue permitting enrollment of their SHOP consumers through a participating QHP SHOP issuer, or a SHOP-registered agent or broker, for plan years beginning in 2019 and beyond.[42] Additionally, these SBEs have each indicated that this enrollment method has contributed to reduced SHOP Exchange programmatic expenses, which is critical for SBEs to maintain financial sustainability as required by section 1311(d)(5)(A) of the PPACA.

To reflect the proposed changes for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed, we are proposing modifications throughout the requirements applicable in the SHOPs. However, because some groups' plan years that begin prior to the effective date of the rule finalizing this proposal will continue beyond the effective date of the rule finalizing this proposal, both the existing requirements and the proposed requirements would need to be in place simultaneously. For this reason, we propose to make many of the existing regulatory sections regarding SHOP applicable for plan years beginning prior to January 1, 2018 only, and propose new regulatory sections applicable for plan years beginning on or after January 1, 2018. After the effective date of this rule, the new regulatory sections will be effective for all 2018 plans, regardless of whether they started prior to the effective date of the rule. Except as described in this rule, we propose that these new regulatory sections would mirror the existing regulatory sections.

Specifically, we propose to amend §§ 155.705, 155.715, 155.720, 155.725, 155.730, 155.735, 155.740, 156.285 and 157.205 to make each section applicable only to plan years beginning prior to January 1, 2018. Additionally, we propose to introduce mirroring new sections, applicable for plan years beginning on or after January 1, 2018, at §§ 155.706, 155.716, 155.721, 155.726, 155.731, 155.741, 156.286 and 157.206. We do not propose a new section mirroring current § 155.735, as further explained later in this preamble. We also propose minor changes to § 155.700. These are described in the sections that follow. We also propose additional changes related to the proposed new approach to SHOP in §§ 155.106, 155.200, and 156.350, to define the streamlined enrollment approach that groups enrolling in a SHOP QHP in a SBE–FP would take, if the proposals in this rule were to become finalized. In light of the substantial changes proposed throughout this document, we intend to make conforming amendments and to update all applicable cross references in these and other regulations, including §§ 147.102, 147.104, 155.500, 156.200, and 156.340. We solicit comment on any additional cross-references that should be amended.

If this proposal is finalized, SHOPs that opt to operate in a leaner fashion, such as the FF–SHOPs, would still assist qualified employers who are small employers in facilitating the enrollment of their employees in QHPs offered in the small group market in the State, consistent with section 1311(b)(1)(B) of the PPACA, because the basic functionalities of an Exchange would still be provided. Under the proposed approach, SHOPs would continue to be required to certify plans for sale through the SHOP, and the following features would still be available: An Internet Web site that displays and provides QHP information, a premium calculator that generates estimated prices of the available QHPs, and a call center to answer questions related to the SHOP. Further, small employers would continue to obtain an eligibility determination from the SHOP Web site but would enroll in a SHOP QHP by working with a SHOP-registered agent or broker, or with a QHP issuer participating in a SHOP to complete the enrollment process.

An enrollment completed by working with a SHOP-registered agent or broker, or with a QHP issuer participating in a SHOP under the proposed flexibilities, would be considered to be an enrollment through the SHOP, and an employer would be considered to have offered its employees coverage through a SHOP for purposes of section 45R of the Code (the Small Business Health Care Tax Credit), if the employer: (1) Obtains from the SHOP a favorable determination of eligibility to participate in the SHOP; (2) enrolls in a SHOP QHP offered by an issuer; and (3) chooses to have the enrollment identified as being through the SHOP. If an enrollment meets this definition, the QHP issuer would be required to conduct enrollment with all applicable SHOP rules and policies.

Because the SHOP would be required to determine employer eligibility to participate in the SHOP only, and not be required to determine employer group members' eligibility to enroll, it would only be responsible for handling appeals as they relate to an employer's eligibility in the SHOP, as currently described in § 155.740. If, under the flexibilities described here, employer group members enrolled in a SHOP QHP needed to file an appeal related to their SHOP coverage, they generally would file the appeal directly with the insurance company, or could take advantage of other appeals mechanisms under applicable State and Federal law. If an employer group member, under the approach proposed throughout this document, believed that he or she were entitled to a SHOP special enrollment period, but was denied that special enrollment period, the employer group member could file a complaint with the SHOP and the SHOP would investigate. SHOP special enrollment periods would continue to be available to enrollees who experience specified qualifying events. If the proposed changes are finalized, SHOPs that use the new flexibilities, such as the FF–SHOPs, would no longer have the information required to determine employer group members' eligibility for special enrollment periods. Therefore, issuers wishing to participate in such a SHOP would be required to administer special enrollment periods.

SHOPs opting to operate in a leaner fashion, like the FF–SHOPs, would continue to provide employers with the option to offer a choice of plans, consistent with section 1312(a)(2) of the PPACA, by continuing to allow employers to offer their employees a choice of plans, either by coverage level, or, in some States, by participating QHP issuer. Employers would be able to see the SHOP plans available, by coverage level and issuers, in their area using the

[42] Extension of state-based SHOP Direct Enrollment Transition (April 18, 2016), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/1332-and-SHOP-Guidance-508-FINAL.pdf.*

plan comparison tool available on a SHOP Web site. To streamline enrollment through a SHOP, the employer would maintain the ability to offer their employees a choice of plans across issuers. Employers who choose to offer a choice of plans to employees would contact the participating QHP issuers, whose plans they would like to offer to their employees, to obtain the application information necessary in order to enroll in coverage.

Once the necessary information required to enroll is obtained from the QHP issuer or issuers or from the SHOP-registered agent or broker, the employer could disseminate the application information to its employees. The employer could later collect the information from its employees and send it to the applicable QHP issuer or issuers or the SHOP-registered agent or broker. Employers generally would also be responsible for collecting monthly premium payments from employees and sending them to the appropriate issuers. While initially offered to support employers' option to offer a choice of plans across issuers, premium aggregation services are not a service mandated by the PPACA and therefore may be altered or removed, as proposed in this proposed rule. SHOP-registered agents and brokers would be able to assist employers perform these tasks, if the employer chooses to work with a SHOP-registered agent or broker.

Additionally, to further support employers' option to offer a choice of plans across issuers, under the proposed approach, an employer's minimum participation rate would continue to be calculated at the employer level, though the SHOPs would not be involved in calculating it, and the FF–SHOPs would no longer calculate it. Participating QHP issuers would not be permitted to deny enrollment on the basis of failure to meet minimum participation requirements to employers who have been determined eligible to participate in the SHOP, and who have met the applicable minimum participation rate, as specified by the SHOP, even if only one employee in a group wishes to enroll with a particular issuer.

Under the proposed approach, SHOPs would also still be able to administer the provision at section 1304(b)(4)(D) of the PPACA that guarantees continuing eligibility for growing small employers by limiting the validity of an employer's eligibility determination such that it terminates when the employer makes a change that could end its eligibility under § 155.710(b), by requiring the employer to submit a new single employer application to the SHOP if the employer makes a change that could end its eligibility under § 155.710, and by requiring issuers to be able to distinguish SHOP enrollments from non-SHOP enrollments. Under the proposed flexibilities, issuers would be expected to rely on the determination of eligibility to reflect the employer's ongoing eligibility to participate in the SHOP and the IRS would have the option to follow up with an employer for additional information if necessary.

HHS understands that the changes outlined in this proposed rule, if finalized, would allow SHOPs to adopt changes (and we propose that the FF–SHOPs would adopt such changes) that result in a substantial departure from current operations for participating SHOP QHP issuers, employers, and enrollees. We recognize that if this proposed rule is finalized, it would be effective on the effective date of the final rule, and thus could take effect after the first date that employers can complete an enrollment that takes effect on or after January 1, 2018. It is important to note that employer groups currently enrolled in a SHOP plan that began in 2017 in a SHOP that would opt to operate in a leaner fashion would not be affected until their plan year ends, as the current regulations will be in effect for the entirety of a plan that began in 2017. The current regulations will also be in place for the beginning of plan year 2018 for those plans that start before the effective date of the rule. But, after the effective date of the rule, any finalized regulations pertaining to plan year 2018 will be effective for all plans that begin or began in 2018, regardless of whether they started prior to the effective date. HHS acknowledges that this transition will create challenges and is concerned about employers enrolling between when rates become available for plan years beginning in 2018 and when the proposed flexibilities in this rule would go into effect. We seek comment on how to best ease this transition.

HHS also recognizes that if the proposals are finalized and take effect after rates become available for plan years beginning in 2018, employers participating in an FF–SHOP that complete the enrollment process for a plan that would take effect on or after January 1, 2018, but prior to the effective date of the final rule could begin the enrollment process on the existing SHOP Web site, and might receive billing and premium aggregation services through the SHOP Web site for only a short time period in 2018 before any final version of these proposals could take effect. If SHOP enrollment processes that would no longer be required to be provided by the SHOP were discontinued when the rule took effect, issuers and small employers could experience a disruption in the processing of payments or subsequent enrollments, which could result in loss of coverage due to non-payment of premiums that might affect an employer's ability to claim the Small Business Health Care Tax Credit. This approach would also result in complex data transfers between a SHOP and issuers. Nonetheless, not allowing SHOPs to operate in a leaner fashion as soon as possible would cause SHOPs to continue to incur substantial financial and operational burdens, and would undermine the goal of achieving financial sustainability, as referenced above. This is why the proposals in this proposed rule would apply as of the effective date of the final rule, and any finalized regulations pertaining to plan year 2018 will be effective for all plans that begin or began in 2018, regardless of whether they started prior to the effective date. Issuers that intend to use the FF–SHOP and SBE–FP for SHOP systems that will no longer be required under the new regulations are encouraged to inform HHS of their intention to do so as soon as possible, so that HHS may work through the necessary operational, technology, and transition issues to establish manual procedures to accommodate them. Manual procedures could include premium aggregation services and processing of enrollments in SHOP QHPs.

We seek comment on these proposals, including on any other regulatory provisions that should be changed to reflect the changes described here.

a. Standards for the Establishment of a SHOP (§ 155.700)

Section 155.700 outlines the general requirements to establish a SHOP and defines certain terms specific to SHOPs. We propose to amend § 155.700(a) by adding paragraph (a)(1) to make the current requirements applicable for only plan years beginning prior to January 1, 2018. We propose to add paragraph (a)(2) to describe the general requirements applicable for plan years beginning on or after January 1, 2018. Proposed paragraph (a)(2) more closely aligns with the statutory language in section 1311(b)(1)(B) of the PPACA than existing paragraph (a), and would specify that SHOPs must assist qualified employers in facilitating the enrollment of their employees in small group market QHPs. We believe that the PPACA does not have to be interpreted to require SHOPs to facilitate the enrollment of qualified employees into QHPs, as is specified by the current

regulation. Instead, we believe it can also be interpreted in a less burdensome way, to require SHOPs to assist qualified employers in facilitating employees' enrollment into QHPs, which would still be provided for under our proposals. If finalized, these changes would become effective as of the effective date of the final rule. We seek comment on this proposal.

b. Functions of a SHOP (§ 155.705) for Plan Years Beginning Prior to January 1, 2018. (§ 155.705)

As discussed in the following section, we propose to modify the regulatory requirements regarding functions of a SHOP for plan years beginning on or after January 1, 2018 and to introduce those requirements in a new § 155.706. To reflect the proposal that the requirements currently in § 155.705 would apply only for plan years beginning before January 1, 2018, we propose to amend the heading of § 155.705 and add paragraph (f), to state that the section would apply only for plan years that begin prior to January 1, 2018. We discuss the proposed new § 155.706 below.

c. Functions of a SHOP for Plan Years Beginning on or After January 1, 2018 (§ 155.706)

Section 155.705 describes required Exchange functions that are specific to SHOPs. To permit SHOPs to operate in a leaner fashion for plan years beginning on or after January 1, 2018, we are proposing several changes to the required functions of a SHOP. If finalized, these changes would become effective as of the effective date of the final rule. Under these proposals, which we propose to introduce in new § 155.706, certain functions that are currently required would become optional for SHOPs for plan years beginning on or after January 1, 2018, and the FF–SHOPs would not provide them. With the exception of the proposed changes to the functions described here, the functions would remain the same as in § 155.705. The proposals described in this section would become effective on the effective date of the final rule, if finalized as proposed.

We propose only to include the paragraphs in current paragraph (b)(3) of § 155.705, that would be applicable to plan years beginning on or after January 1, 2018, maintaining the currently applicable policy requiring SHOPs to allow employers to select a level of coverage and to offer a choice of QHPs across that level of coverage, and permitting SHOPs to allow employers to offer a choice of all QHPs from a single issuer, or another method of providing employer choice. To provide additional flexibility, we also propose to codify that State SHOPs may, as the FF–SHOPs have, offer employers a choice of SADPs. To reflect the proposals described in § 156.150(b) of this document, we propose that SHOPs could and FF–SHOPs would allow employers to offer a choice of SADPs across a selected level of coverage, if such levels of coverage are available. In the event that no SADP coverage levels are available, employers would be able to offer a choice of all SADPs offered in an area. We also propose conforming amendments to the structure of this paragraph.

Because, as discussed earlier in this preamble, premium aggregation services are not mandated by the PPACA and to maximize the flexibilities associated with operating a SHOP, we propose to remove required functions related to premium aggregation. Specifically, we propose that the only premium aggregation function from § 155.705(b)(4) that would be applicable in plan years beginning on or after January 1, 2018, would be an amended version of the function in § 155.705(b)(4)(ii)(A), relating to the continuation of coverage. State–based Exchanges would be permitted to continue providing remaining premium aggregation services in their SHOPs currently described at § 155.705(b)(4) if they choose to do so. SHOPs electing not to provide premium aggregation services, like the FF–SHOPs, would still be required to provide an opportunity for employers to offer employees a choice of plans. In SHOPs not offering premium aggregation services, we expect that employers generally would receive premium bills from each of the plans or issuers with which an employee enrolls and would pay premiums to each such plan or issuer. Section 155.705(b)(4)(ii)(A) (which we propose to include in a revised form in § 155.706) describes the process through which the SHOP may enter into an agreement with a qualified employer related to the administration of continuation coverage. Under the proposed approach for enrollment in a SHOP QHP for plan years beginning on or after January 1, 2018, the FF–SHOPs would no longer facilitate the collection of premiums. Therefore, we propose that § 155.706(b)(4) would mirror § 155.705(b)(4)(ii)(A) but would not include the provision that permits the FF–SHOPs to limit the service to the collection of premiums related to the requirements under 29 U.S.C. 1161, *et seq.*

Paragraph (b)(7) of § 155.705 describes the SHOP function related to QHP availability in merged markets and paragraph (b)(8) describes the function related to QHP availability in unmerged markets. We propose to include these functions in § 155.706(b)(7) and (b)(8).

However, under the proposal to streamline SHOP enrollment for plan years beginning on or after January 1, 2018, we propose to change the references to a ''qualified employee'' to an ''employer group'' in both paragraphs, as the SHOP would no longer be required to process employee enrollments under the proposed approach.

Paragraph (b)(10) of § 155.705 establishes requirements related to minimum participation rates and SHOP coverage; we propose to include these requirements in § 155.706(b)(10), with certain modifications. In order to facilitate employers' ability to offer employees a choice of plans through a SHOP, as is required under section 1312(a)(2) of the PPACA, § 155.705(b)(10) requires that any minimum participation rate applicable in a SHOP be calculated based on the rate of employee participation in the SHOP, rather than on the rate of participation in any particular QHP or QHPs of any particular issuer. In the FF–SHOPs, this requirement has been implemented through the requirements currently outlined at § 155.705(b)(10)(i)–(iii). Currently, the Federally-facilitated SHOPs calculate a group's minimum participation rate based on the information provided by the employer and the employees during the online enrollment process. Under the proposed approach, the SHOP would not be required to collect the enrollment information needed to calculate a group's minimum participation rate. Under this proposal, issuers would be permitted to use their established practices allowed under State law for groups enrolling in their certified SHOP plans for plan years beginning on or after January 1, 2018, so long as they comply with § 147.104, and so long as the minimum participation rate is calculated based on the level of participation in the SHOP instead of on the level of participation in any one QHP or with any one issuer (that is, so long as SHOP participation is measured at the employer group level). Issuers participating in the FF–SHOPs would be required to adhere to the level of participation as would continue to be specified in § 155.706(b)(10) and issuers in State SHOPs would be subject to any minimum participation rate established by the SHOP, consistent with this provision. We also propose that

§ 155.706(b)(10) would not include the language in § 155.705(b)(10)(i) because it applies to plan years beginning before January 1, 2016, and would therefore not be applicable for the period covered in § 155.706. We also propose to clarify that, under the proposed approach, the reference in proposed § 155.706(b)(10) to the time the employer submits the SHOP group enrollment would be interpreted to mean the time when the employer submits a complete group enrollment or renewal to the QHP issuer or SHOP-registered agent or broker, applicable.

Section 155.705(b)(11) specifies the requirements related to an online premium calculator. For plan years beginning on or after January 1, 2018, we propose to modify these requirements and include the modified requirements in § 155.706(b)(11). Specifically, § 155.706 (b)(11) would specify that the premium calculator described in § 155.205(b)(6) must facilitate the comparison of available QHPs. This would reflect that SHOPs would no longer be required to maintain enrollment and premium payment information or administer premium billing, and therefore, would no longer necessarily have employer contribution information. If this proposal is finalized, the SHOPs would be required to maintain a calculator that facilitates the comparison of available QHPs and would generate premium estimates, but would no longer be required to reflect any employer contribution. Therefore, we propose to not include the requirements in § 155.705(b)(11)(i) or (ii) in § 155.706(b)(11), since these reflect methods SHOPs would use for determining employer contributions. In the FF–SHOPs and SBE–FPs for SHOP, this premium calculator would be where an employer or SHOP–registered agent or broker could go to see a complete listing of all the QHPs available in a given area. The tool has served and would continue to serve as a resource for employers and SHOP–registered agents and brokers. Because we believe the premium calculator requirement at section 1311(d)(4)(G) of the PPACA could be interpreted to apply to only individual market Exchanges based on its reference to APTCs and CSRs, which are not available through SHOPs, we believe that this proposal is consistent with the statute.

Section 155.705(c) generally requires a SHOP to provide data related to eligibility and enrollment of a qualified employee to the applicable individual market Exchange. For plan years beginning on or after January 1, 2018, we propose that this requirement would apply only in SHOPs that collect employee enrollment data related to eligibility and enrollment of a qualified employee, unless the SHOP is operated pursuant to § 155.100(a)(2).

Finally, we propose in paragraph (e) that the provisions of the section would be applicable for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed.

d. Eligibility Determination Process for SHOP for Plan Years Beginning Prior to January 1, 2018 (§ 155.715)

As discussed in the following section, we propose to modify the regulatory requirements regarding the eligibility determination process for SHOP for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed, and to introduce those requirements in a new § 155.716. To reflect the proposal that the requirements currently in § 155.715 would apply only for plan years beginning before January 1, 2018, we propose to amend the heading of § 155.715 and add paragraph (h), to state that the section would apply only for plan years that begin prior to January 1, 2018.

e. Eligibility Determination Process for SHOP for Plan Years Beginning on or After January 1, 2018 (§ 155.716)

Section 155.715 describes the SHOP eligibility determination process for employers and employees. We propose to add new § 155.716 to describe the eligibility determination process for SHOPs for plan years beginning on or after January 1, 2018. With the exception of the proposed changes to the process described here, the process would remain the same as in § 155.715. However, this new section would modify and remove some of the requirements in § 155.715. The proposals described in this section would be effective on the effective date of the final rule, if finalized as proposed.

Section 155.715(a) requires that before permitting the purchase of coverage in a QHP, the SHOP must determine that the employer or individual who requests coverage is eligible. Under current regulations, this requirement means that employers and employees must complete an application to participate in the SHOP. Accordingly, the FF–SHOPs have established certain operational requirements related to submitting an application through the FF–SHOP Web site, including creating an account on the FF–SHOP Web site, (for employers) providing information on the business (including location, Employer Identification Number, and number of employees), and identity verification.

To reduce the barriers on employers to obtain SHOP coverage, we propose in § 155.716 that SHOPs must determine that the employer who requests coverage is eligible, but that SHOPs generally would not always need to do so before the issuer permits the purchase of coverage in a QHP through a SHOP, for plan years beginning on or after January 1, 2018. This would generally permit an employer to purchase a QHP before obtaining a determination of SHOP eligibility and confirming with the issuer the status of the enrollment as being through the SHOP. As further explained in the preamble to § 156.286, issuers would be expected to establish processes to ensure that they can accurately identify which enrollments are considered SHOP enrollments and which are not considered SHOP enrollments. We would encourage employers to obtain an eligibility determination from the SHOP as close to the date in which they purchase a SHOP QHP. We also are considering establishing a limit on how long an employer can wait between purchasing the QHP and obtaining the determination of eligibility for that QHP to be considered purchased through the SHOP. We solicit comments on whether to establish such a limit, and how long it should be.

As a condition of claiming the Small Business Health Care Tax Credit, small employers must be prepared to provide sufficient proof that they meet applicable criteria. Part of the employer's responsibility in providing evidence that it is a small employer eligible for the Small Business Health Care Tax Credit includes the ability to verify not only the purchase of a SHOP QHP, but the ability to produce a favorable eligibility determination from a SHOP. Therefore, employers applying for the Small Business Health Care Tax Credit are also encouraged to obtain an eligibility determination from the SHOP in the taxable year in which they intend to apply for the credit.

Section 155.715(b) requires the SHOP to accept SHOP applications from both employers and employees, and § 155.715(c) provides for the verification of both employer and employee eligibility. For plan years beginning on or after January 1, 2018, we propose to provide SHOPs flexibility to forgo providing for employee eligibility determinations and related functionality and obligations (and the FF–SHOPs would pursue this flexibility). If finalized, these changes would become effective as of the effective date of the

final rule. We propose that SHOPs would not be required to accept applications by employees or determine eligibility of employees because, under the proposed approach to enrollment in a SHOP, SHOPs would not be required to interact with employees. Proposed paragraphs (b) and (c) of § 155.716 would still require SHOPs to accept a SHOP single employer application form from employers, and to verify employer eligibility subject to provisions like those currently in § 155.715(c)(2) through (4). We intend to update the single employer applications that employers applying to participate in SHOPs would use to reflect our proposed changes to § 155.730 described elsewhere in this preamble. Employee information is primarily collected for purposes of enrollment, and therefore would not be necessary to the operation of a leaner SHOP under our proposed approach. State-based SHOPs that intend to maintain more robust SHOP functionalities, in lieu of the flexibilities in this proposal, would be permitted to continue to determine employee eligibility. We believe this proposal is consistent with the statute because, as noted above, the PPACA does not have to be interpreted to require SHOPs to provide for employee enrollment functionality, and does not define qualified employees.

Paragraph (d) of § 155.715 describes the eligibility adjustment period. We propose to include in § 155.716(d) these requirements as they relate to eligibility for employers. However, because SHOPs would not be required to accept applications from employees, we propose not to include the requirements in § 155.715(d)(2), relating to eligibility for employees, in new § 155.716. We also propose to add language to reflect that SHOPs also must address inconsistencies in employer eligibility information received from sources other than those used in the employer eligibility process described in § 155.715(c).

To reflect our proposed changes to the employer eligibility verification process, as further described in this section and in the preamble to § 157.205, and our proposal not to include a section mirroring § 155.735 regarding terminations, we are adding a requirement in the paragraphs mirroring paragraphs (d)(3)(i) and (e) of § 155.715 to require the SHOP to notify employers not only of a denial of the employer's eligibility to participate in the SHOP, but also of a termination of the employer's eligibility to participate in the SHOP.

Paragraph (f) of § 155.715 specifies the requirement that the SHOP notify an employee of his or her eligibility to enroll in a SHOP. Because we would not be requiring SHOPs to determine employee eligibility for plan years beginning on or after January 1, 2018, we propose not to include this requirement in § 155.716. SHOPs that continue to provide employee eligibility functionality should continue notifying employees of their eligibility. Under the proposed approach for SHOP flexibilities for plan years beginning on or after January 1, 2018, we anticipate that the participating QHP issuer or employer would determine the method of employee enrollment and notification, consistent with otherwise applicable Federal or State law.

Paragraph (g) of § 155.715 describes the requirements surrounding communication between the SHOP and QHP issuers in the event of an employer withdrawing from the SHOP and the notification of qualified employees of an employer's withdrawal from SHOP. Under the proposed approach for SHOPs beginning for plan years that begin on or after January 1, 2018, the enrollment and disenrollment processes would be addressed between the employer and the issuer or the agent or broker. Therefore, we are not proposing to include these requirements in § 155.716.

We further propose in paragraph (f) of § 155.716 that an employer's determination of eligibility to participate in the SHOP obtained under paragraph (a) remains valid until the employer makes a change that could end its eligibility under § 155.710(b). This could include terminating offers of coverage to employees maintaining full-time status, growing to be a large employer without having maintained continuous SHOP coverage, or moving its principal business address or eligible employee worksites out of the SHOP service area. The employer would be required under new regulations proposed in part 157 to take further action upon termination of the validity of the determination of eligibility to participate in a SHOP to submit a new application for determination of eligibility or to withdraw from participation in the SHOP. We are considering requiring SHOPs to acknowledge an employer's withdrawal from participation in the SHOP within a reasonable time. Alternatively, we are considering requiring that employers reapply to determine their SHOP eligibility on an annual basis. We seek comment on these proposals. Under the proposals described herein, a SHOP would no longer be required to operate an enrollment system, where information such as an employee roster or employee worksite would generally be collected and stored. Because employers would no longer use a SHOP's systems to report and document these changes, employers must inform the SHOP if their business status changes.

We propose to specify in paragraph (g) that the provisions in § 155.716 would be applicable for plan years beginning on or after January 1, 2018. If finalized as proposed, these changes would become effective as of the effective date of the final rule.

We seek comment on these proposals.

f. Enrollment of Employees Into QHPs Under SHOP for Plan Years Beginning Prior to January 1, 2018 (§ 155.720)

Section 155.720 contains requirements related to the enrollment of employees into QHPs under SHOP. To reflect that our proposed approach would no longer require SHOPs to provide functionality related to enrollment of employees for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed, we propose to amend the heading of § 155.720 and add paragraph (j), to state that the section would apply only for plan years that begin prior to January 1, 2018.

Specifically, we propose that the requirement in paragraph (b) of § 155.720 that SHOPs establish a timeline and process for QHP issuers and employers to follow regarding purchasing coverage and processing of enrollment would not be applicable for plan years that begin on or after January 1, 2018. SBEs that choose to maintain their current operations may continue establishing enrollment timelines, as State law and SHOP technology permit. We also propose that the requirements to transmit enrollment information on behalf of qualified employers and employees to QHP issuers as described in current paragraph (c), and to process payments as described in current paragraph (d) would not apply after plan year 2017, since SHOPs may not have enrollment or payment information to transmit. We propose that the requirement in paragraph (e) that SHOPs ensure a QHP issuer notifies a qualified employee enrolled in a QHP of the effective date of his or her coverage would not apply for plan years beginning on or after January 1, 2018 because SHOPs may not have the enrollment information necessary to enforce this requirement, if the proposed approach became final. We anticipate QHP issuers would notify employees in accordance with applicable State law. Additionally, after

plan year 2017 plans have ended, we propose not to require SHOPs to reconcile enrollment information as described in paragraph (g), as SHOPs would not have enrollment files to reconcile with issuers. We also propose that the requirements described in current paragraph (h), which requires a SHOP to notify a qualified employee's employer in the event the qualified employee terminates his or her SHOP coverage, would no longer apply for plan years beginning on or after January 1, 2018. If finalized, these changes would become effective as of the effective date of the final rule. Under the proposed approach, SHOPs may not have that information to communicate to the qualified employee's employer.

g. Record Retention and IRS Reporting for Plan Years Beginning on or After January 1, 2018 (§ 155.721)

Our proposed approach would not require SHOPs to provide functionality related to enrollment of employees for plan years beginning on or after January 1, 2018, and we are therefore proposing that § 155.720 would be inapplicable for those plan years, effective on the effective date of the final rule, if finalized as proposed. However, there are requirements in that section related to record retention and IRS reporting that would continue to be applicable with some modifications. We propose to include modified versions of these requirements in a new § 155.721, titled ''Record retention and IRS Reporting for plan years beginning on or after January 1, 2018.''

We propose that all SHOPs would still be required to maintain records of employer eligibility for 10 years, as described in paragraph (f). Because SHOPs utilizing the proposed flexibilities, like the FF–SHOPs, would not have information on employees, we do not propose to continue requiring that SHOPs maintain information on employees.

Section 155.720(i) describes the information the SHOP is currently required to communicate to the IRS for purposes of the Small Business Health Care Tax Credit. We propose to modify the reporting for plan years beginning on or after the effective date of the rule finalizing this proposal to require SHOPs to send the IRS information about the employers determined eligible to purchase a SHOP QHP only upon the request of the IRS. We believe providing the IRS with a list of employers determined eligible to participate in a SHOP, at the IRS's request, fulfills HHS's reporting responsibility. SBEs that currently report all the information required by existing § 155.720(i) and will continue to collect such information related to an employer's eligibility and enrollment in a SHOP are encouraged to continue reporting this information to assist the IRS in administering the Small Business Health Care Tax Credit. As mentioned earlier in this document, employers in all States must be able to provide sufficient evidence that they meet all the necessary eligibility requirements for the Small Business Health Care Tax Credit, if they intend to apply for it. The IRS may ask employers to produce the aforementioned evidence and employers have a responsibility to produce it. Further, employers may work with their issuer to verify their contribution information, employee enrollment information and any other applicable information required to apply for the Small Business Health Care Tax Credit through their tax filings.

h. Enrollment Periods Under SHOP for Plan Years Beginning Prior to January 1, 2018 (§ 155.725)

As discussed in the following section, we propose to modify the regulatory requirements regarding enrollment periods under a SHOP for plan years beginning on or after January 1, 2018, and to introduce those requirements in a new § 155.726. To reflect the proposal that the requirements currently in § 155.725 would apply only for plan years beginning before January 1, 2018, we propose to amend the heading of § 155.725 and add paragraph (l), to state that the section would only apply for plan years that begin prior to January 1, 2018. If finalized, these changes would become effective as of the effective date of the final rule. We discuss the proposed new § 155.726 below.

i. Enrollment Periods Under SHOP for Plan Years Beginning on or After January 1, 2018 (§ 155.726)

Section 155.725 describes enrollment periods under SHOP, including the timeline under which employer groups must enroll in SHOP coverage, and the notices the SHOP is required to send related to enrollment periods. We propose to introduce a new § 155.726, which would retain the rolling enrollment and minimum participation rate provisions of § 155.725(b) and (k), but would remove the requirements applicable to enrollment periods under SHOP other than those related to special enrollment periods for plan years beginning on or after January 1, 2018, to reflect the increased flexibility we are proposing. The proposals described in this section would be effective on the effective date of the final rule, if finalized as proposed.

Section § 155.725(a) requires that SHOPs ensure that enrollment transactions are sent to QHP issuers and that such issuers adhere to coverage effective dates in accordance with this section. We propose that many previously required enrollment and election periods would no longer apply for plan years beginning on or after January 1, 2018. State-based SHOPs that continue to provide online enrollment functionality would be able to continue to adhere to these requirements. However, under the proposed approach, some SHOPs (including the FF–SHOPs) may not have enrollment information to communicate to the issuers and may not want to continue setting and enforcing coverage effective dates under the previously specified requirements. In SHOPs, like the FF–SHOPs, that pursue the proposed approach, we anticipate that most enrollment timelines, deadlines, and coverage effective dates in SHOPs would be set by employers and issuers consistent with applicable State law and otherwise applicable Federal law. We do, however, believe that, under the proposed approach, the SHOP should be responsible for ensuring that QHP issuers adhere to the remaining required enrollment periods and their corresponding coverage effective dates. Therefore, we propose to include this requirement in § 155.726(a).

Paragraph (c) of § 155.725 states that the SHOP must provide qualified employers with an annual election period prior to completion of the employer's plan year and paragraph (d) of § 155.725 requires the SHOP to provide notice of that period in advance of that period. Given that, under the proposed approach for SHOPs for plan years beginning on or after January 1, 2018, SHOPs would not be required to process enrollments, we propose that these requirements would not apply for plan years beginning on or after January 1, 2018. We anticipate that participating QHP issuers in SHOPs pursuing the proposed approach, like in the FF–SHOPs, would be responsible for setting any requirements around renewals, annual employer election periods, and annual employee open enrollment periods, based on their current practices, and subject to applicable State law and otherwise applicable Federal law, including §§ 147.104 and 147.106. For similar reasons, we propose that the requirements in § 155.725(e), which requires the SHOP to set a standard open enrollment period for qualified employees, and § 155.725(f), which requires the SHOP to send a notice to the employee about the open enrollment

period, would not apply for plan years beginning on or after January 1, 2018.

Section 155.725(g) requires SHOPs to establish and maintain enrollment and coverage effective dates, including waiting periods, for newly qualified employees. However, our proposed amendments at paragraphs (b), (c)(1), and (d)(2) of § 155.715 would remove the requirement for SHOPs to perform employee eligibility determinations, accept and process single employee SHOP application forms, as well as verify employee eligibility for plan years beginning on or after January 1, 2018. Furthermore, our proposed amendments to remove paragraphs (c) and (d) of § 155.725 would remove the requirement for SHOPs to maintain enrollment records for plan years beginning on or after January 1, 2018. SHOPs that utilize these proposed flexibilities, like the FF–SHOPs, may be unable to satisfy the requirements in § 155.725(g). To align with these proposed amendments, we propose that the requirements in § 155.725(g) would not apply for plan years beginning on or after January 1, 2018. Instead, we anticipate that enrollment timelines, deadlines, and coverage effective dates for newly qualified employees in SHOPs that pursue the proposed approach would be set by employers and issuers consistent with applicable State law and otherwise applicable Federal law, including § 147.116. Further, as noted above, issuers offering plans in SHOPs would still be required to adhere to the guaranteed availability requirements set in § 147.104(b)(1)(i) and the special enrollment period requirements in proposed § 155.726(c).

We also propose that the requirement in § 155.725(h)(1) that a SHOP establish the effective dates of coverage for initial and annual group enrollments would not apply for plan years beginning on or after January 1, 2018. Because SHOPs utilizing the proposed flexibilities, like the FF–SHOPs, would no longer be involved in processing group enrollments, and would therefore not be able to hold issuers accountable to these enrollment deadlines, we believe it is more appropriate to permit QHP issuers in SHOPs to set their own enrollment timelines. However, SBEs would be permitted to continue establishing these effective dates. We are also proposing to remove paragraph (h)(2) for plan years beginning on or after January 1, 2018, which establishes the effective dates for initial and annual group enrollments in FF–SHOPs, because the FF–SHOPs intends to utilize the proposed flexibilities. We anticipate that issuers in SHOPs that pursue this approach, like in FF–SHOPs, would set enrollment timelines for employer groups participating in these SHOPs, based on their current practices, and consistent with the market rules set forth in §§ 147.104 and 147.106, and otherwise applicable State law.

We propose that the special enrollment periods specified in § 155.725(j) would continue to be applicable in the SHOPs for plan years beginning on or after January 1, 2018, and propose to include these in § 155.726(c). We also propose that the requirements regarding special enrollment periods in § 155.725(j)(3) would apply for plan years beginning on or after January 1, 2018. However, we propose to modify the SHOPs' responsibilities with respect to special enrollment periods. As stated earlier in this preamble, under our proposed approach for SHOPs beginning in plan years starting on or after January 1, 2018, SHOPs would no longer be required to provide functionality related to enrollment of employees. For SHOPs that pursue the proposed approach, like the FF–SHOPs, issuers would preliminarily be responsible for completing enrollments, and so we expect issuers would implement enrollment periods. We are therefore proposing to modify the requirements to reflect that the SHOP's proposed role is not to provide special enrollment periods, but to ensure that QHP issuers offering coverage through the SHOP provides the special enrollment periods set forth in regulation.

We seek comment on these proposals.

j. Application Standards for SHOP for Plan Years Beginning Prior to January 1, 2018 (§ 155.730)

As discussed in the following section, we propose to modify the regulatory requirements regarding application standards of a SHOP for plan years beginning on or after January 1, 2018 and to introduce those requirements in a new § 155.731. To reflect the proposal that the requirements currently in § 155.730 would apply only for plan years beginning before January 1, 2018, we propose to amend the heading of § 155.730 and add paragraph (h), to state that the section would apply for only plan years that begin prior to January 1, 2018, effective on the effective date of the final rule, if finalized as proposed.

k. Application Standards for SHOP for Plan Years Beginning on or After January 1, 2018 (§ 155.731)

Section 155.730 describes the requirements for employer and employee applications in the SHOPs. We propose to modify these requirements for plan years beginning on or after January 1, 2018, and to introduce these modified requirements in § 155.731. With the exception of the proposed changes to the requirements described here, the requirements would remain the same as in § 155.730. The proposals in this section would be effective on the effective date of the final rule, if finalized as proposed.

Because under the proposed approach to SHOP enrollment for plan years beginning on or after January 1, 2018, QHP issuers would complete the process of enrolling qualified employees into coverage in SHOPs, it would not be necessary for a SHOP to collect information necessary for purchasing coverage. Therefore, we propose to modify the information collection requirements related to the single employer application to require SHOPs to collect only information that would be necessary for SHOPs to determine employer eligibility to participate in the SHOP under § 155.710(b). To more closely align the description of the data elements collected with those standards for eligibility to participate, we propose to require the SHOP to collect the employer name and address of the employer's locations; information sufficient to confirm that the employer is a small employer; the Employer Identification Number; and information sufficient to confirm that the employer is offering, at a minimum, all full-time employees' coverage in a QHP through a SHOP. SHOPs could collect other information, at their option subject to the limitations in § 155.716(c)(2) and § 155.731(f).

Paragraph (c) of 155.730 requires the use of a single employee application. We propose that this requirement would not apply for SHOP beginning for plan years starting on or after January 1, 2018, as the information collected in this application would no longer be necessary, since the SHOP would no longer process employees' enrollment.

Section 155.730(d) permits a SHOP to use a model single employer application and model single employee application provided by HHS and § 155.730(e) permits the use of HHS–approved alternatives to these model applications. We also propose to maintain these options, but for consistency with the proposal described throughout this preamble, we propose not to reference a model single employee application. We expect to update the model single employer application for consistency with the elements described in proposed § 155.731(b).

Paragraph (g) of § 155.730 describes additional application safeguards for SHOP employer and employee applications, which we propose to

maintain in § 155.731(f) with minor amendments to reflect the proposal to eliminate the requirement to collect a single employee application. We also propose in new paragraph (g) to state that § 155.731 is only applicable for plan years beginning on or after January 1, 2018. If finalized, these changes would become effective as of the effective date of the final rule.

We seek comment on these proposals.

l. Termination of SHOP Enrollment or Coverage (§ 155.735)

Section 155.735 outlines requirements related to terminations of SHOP coverage or enrollment. Under our proposed approach, described in detail in the preamble to earlier sections of this proposed rule, the process of completing enrollments, as well as terminating coverage, could be completed by issuers, and would not be required to be completed by the SHOPs. Issuers would be expected to comply with otherwise applicable State and Federal law regarding terminating coverage, the timelines and effective dates for termination, and any notice requirements, including those at §§ 147.106 and 156.285. Accordingly, we propose that this section would be applicable for only plan years beginning prior to January 1, 2018, as described in the proposed amendment to the heading and new paragraph (h), effective on the effective date of the final rule, if finalized as proposed. SHOPs maintaining current enrollment functions would be encouraged to set termination guidelines and distribute notices for terminations based on nonpayment of premiums or loss of employee eligibility, unless State law requires QHP issuers to send the notices. Because SHOPs, such as the FF–SHOPs, would no longer be required to enroll groups into a SHOP QHP, they would no longer be required to maintain the ability to terminate coverage. We believe proposed new §§ 155.716 and 157.206 sufficiently address terminations of eligibility for participation in a SHOP. We seek comments on this proposal.

m. SHOP Employer and Employee Eligibility Appeals Requirements for Plan Years Beginning Prior to January 1, 2018 (§ 155.740)

As discussed in the following section, we propose to modify the regulatory requirements regarding employer and employee eligibility appeals in SHOP for plan years beginning on or after January 1, 2018, and to introduce those modified requirements in a new § 155.741. To reflect the proposal that the requirements currently in § 155.740 would apply only for plan years beginning before January 1, 2018, effective on the effective date of the final rule, if finalized as proposed, we propose to amend the heading of § 155.740 and add paragraph (p), to state that the section would apply only for plan years that begin prior to January 1, 2018.

n. SHOP Employer and Employee Eligibility Appeals Requirements for Plan Years Beginning on or After January 1, 2018 (§ 155.741)

Section 155.740 describes the SHOP eligibility appeals process for employers and employees. These provisions describe the applicable definitions, the general requirements to provide for appeals, and employers' and employee's rights to appeal an eligibility determination from the SHOP.

To continue to provide for employer eligibility appeals, we propose to add new § 155.741, mirroring § 155.740, with the following exceptions. Because we propose elsewhere that the requirement to provide employees with eligibility determinations and the requirement in § 155.715(f) regarding notification of employee eligibility would no longer apply in plan years beginning on or after January 1, 2018, we propose not to include a paragraph mirroring § 155.740(d), which describes employees' rights to appeal. We also propose to omit other references to employee appeal rights, to add references to provide for appeals of terminations of eligibility to participate in a SHOP, and to update cross-references as applicable.

We propose in paragraph (o) that the provisions of § 155.741 would only be applicable to plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed.

We seek comments on these proposals.

E. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related to Exchanges

1. FFE and SBE–FP User Fee Rates for the 2019 Benefit Year (§ 156.50)

Section 1311(d)(5)(A) of the PPACA permits an Exchange to charge assessments or user fees on participating health insurance issuers as a means of generating funding to support its operations. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. If a State does not elect to operate an Exchange or does not have an approved Exchange, section 1321(c)(1) of the PPACA directs HHS to operate an Exchange within the State. Accordingly, in § 156.50(c), we specified that a participating issuer offering a plan through an FFE or SBE–FP must remit a user fee to HHS each month that is equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for FFEs and SBE–FPs for the applicable benefit year, and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE or SBE–FP.

OMB Circular No. A–25R establishes Federal policy regarding user fees; it specifies that a user fee charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. As in benefit years 2014 through 2018, issuers seeking to participate in an FFE in the 2019 benefit year will receive two special benefits not available to the general public: (1) The certification of their plans as QHPs; and (2) the ability to sell health insurance coverage through an FFE to individuals determined eligible for enrollment in a QHP. These special benefits are provided to participating issuers through the following Federal activities for the 2019 benefit year in connection with the operation of FFEs:

- Provision of consumer assistance tools;
- Consumer outreach and education;
- Management of a Navigator program;
- Regulation of agents and brokers;
- Eligibility determinations;
- Enrollment processes; and
- Certification processes for QHPs (including ongoing compliance verification, recertification and decertification).

OMB Circular No. A–25R further states that user fee charges should generally be set at a level that is sufficient to recover the full cost to the Federal government of providing the service when the government is acting in its capacity as sovereign (as is the case when HHS operates an FFE). Activities performed by the Federal government that do not provide issuers participating in an FFE with a special benefit are not covered by this user fee.

Based on estimated contract costs, enrollment and premiums for the 2019 benefit year, we propose to maintain the 2019 benefit year user fee rate for all participating FFE issuers at 3.5 percent of total monthly premiums. We seek comment on this proposal.

State-based Exchanges on the Federal platform enter into a Federal platform

agreement with HHS to leverage the systems established for the FFEs to perform certain Exchange functions, and to enhance efficiency and coordination between State and Federal programs. Accordingly, in § 156.50(c)(2), we specified that an issuer offering a plan through an SBE–FP must remit a user fee to HHS, in the timeframe and manner established by HHS, equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for SBE–FPs for the applicable benefit year, unless the SBE–FP and HHS agree on an alternative mechanism to collect the funds from the SBE–FP or State instead of direct collection from the SBE–FP issuers. The benefits provided to issuers in SBE–FPs by the Federal government will include use of the Federal Exchange information technology and call center infrastructure used in connection with eligibility determinations for enrollment in QHPs and other applicable State health subsidy programs, as defined at section 1413(e) of the PPACA, and enrollment in QHPs under § 155.400. As previously discussed, OMB Circular No. A–25R established Federal policy regarding user fees, and specified that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The user fee rate for SBE–FPs is calculated based on the proportion of FFE costs that are associated with the FFE information technology infrastructure, the consumer call center infrastructure, and eligibility and enrollment services, and allocating a share of those costs to issuers in the relevant SBE–FPs. A significant portion of expenditures for FFE services are associated with the information technology, call center infrastructure, and eligibility determinations for enrollment in QHPs and other applicable State health subsidy programs as defined at section 1413(e) of the PPACA, and personnel who perform the functions set forth in § 155.400 to facilitate enrollment in QHPs. Based on this methodology, we propose to charge issuers offering QHPs through an SBE–FP a user fee rate of 3.0 percent of the monthly premium charged by the issuer for each policy under plans offered through an SBE–FP. This fee would support FFE operations associated with providing the services described above. We seek comment on this proposal.

We will continue to examine contract cost estimates for the special benefits provided to issuers offering QHPs on the FFEs and SBE–FPs for the 2019 benefit year as we finalize the FFE and SBE–FP user fee rates, which will be reflected in the final rule. Additionally, outreach and education efforts will be evaluated annually and funded at the appropriate level. We seek comment on the proposed FFE and SBE–FP user fee rates.

As we describe elsewhere in this proposed rule, for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed, we are proposing to remove employee eligibility, premium aggregation, and online enrollment functionality through the FF–SHOPs for FFE and SBE–FP SHOP issuers. Given the changes to the functionality for the FF–SHOPs, HHS would not provide these special benefits through the FF–SHOPs after the effective date of the rule finalizing this proposal. Therefore, HHS would not assess a user fee on issuers offering QHPs through FF–SHOPs for FFE or SBE–FP SHOP issuers because these user fees are currently only charged to issuers who receive special benefits from enrolling individuals through the FF–SHOPs' platform. In instances where enrollment did occur through the Federal platform, for example, for plan years beginning prior to the effective date of the final rule, HHS will continue charging SHOP issuers monthly FFE or SBE–FP user fees, as applicable.

2. Essential Health Benefits Package

Section 2707(a) of the PHS Act, as added by the PPACA, directs health insurance issuers that offer non-grandfathered health insurance coverage in the individual or small group market to ensure that such coverage includes the EHB package, which is defined under section 1302(a) of the PPACA to include coverage that provides for the EHB defined by the Secretary under section 1302(b) of the PPACA; limits cost sharing in accordance with section 1302(c) of the PPACA; and provides either the bronze, silver, gold, or platinum level of coverage, or is a catastrophic plan under sections 1302(d) and (e) of the PPACA. Section 1302(b) of the PPACA states that the Secretary is to define EHB, except that EHB must include at least the following general categories and the items and services covered within the categories: (1) Ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness services and chronic disease management; and (10) pediatric services, including oral and vision care. Additionally, section 1302(b)(2) of the PPACA states that the Secretary must ensure that the scope of EHB for the 10 EHB categories be equal to the scope of benefits provided under a typical employer plan, as determined by the Secretary. Furthermore, section 1302(b)(2) of the PPACA states, in defining and revising EHB, that the Secretary is to submit a report to the appropriate committees of Congress containing a certification from the CMS Chief Actuary that such EHB are equal in scope to the benefits provided under a typical employer plan. In defining and revising the 10 EHB categories, the Secretary must also provide notice and an opportunity for public comment. Additionally, section 1302(b)(4)(G) and (H) of the PPACA require the Secretary to periodically review and update the definition of EHB and provide a report to Congress that contains assessments related to the need to update the definition of EHB.

Section 1302(b)(4) of the PPACA requires the Secretary, in defining the EHB, to: (1) Ensure that such EHB reflect an appropriate balance among the categories so that benefits are not unduly weighted toward any category; (2) not make coverage decisions, determine reimbursement rates, establish incentive programs, or design benefits in ways that discriminate against individuals because of their age, disability, or expected length of life; (3) take into account the healthcare needs of diverse segments of the population, including women, children, persons with disabilities, and other groups; (4) ensure the health benefits established as essential not be subject to denial to individuals against their wishes on the basis of the individuals' age or expected length of life or of the individuals' present or predicted disability, degree of medical dependency, or quality of life; and (5) provide that a QHP shall not be treated as providing coverage for EHB unless it meets certain requirements for coverage of emergency services.

To implement section 1302(b) of the PPACA, HHS defined EHB based on a benchmark plan approach, which provided at § 156.100 for the States' selection from one of 10 base-benchmark plans, including the largest health plan by enrollment in any of the three largest small group insurance products by enrollment, any of the largest three employee health benefit plan options by enrollment offered and generally available to State employees in the State, any of the largest three

national Federal Employees Health Benefits Program (FEHBP) plan options by aggregate enrollment that is offered to all health-benefits-eligible Federal employees under 5 U.S.C. 8903, or the coverage plan with the largest insured commercial non-Medicaid enrollment offered by a health maintenance organization operating in the State. States were required at § 156.110 to supplement their base-benchmark plan from § 156.100 to ensure the 10 EHB categories were being covered to establish the State's EHB-benchmark plan. Section 156.110 also ensures that the EHB-benchmark plan meets the standards of nondiscrimination and balance of benefits, and allows habilitative services to be determined by the State.

We believe that States should have additional choices with respect to benefits and affordable coverage. As such, we are proposing to provide States with additional flexibility in their selection of an EHB-benchmark plan for plan year 2019 and later plan years. In addition to granting States more flexibility regulating their markets, we believe these changes would permit States to modify EHB to increase affordability of health insurance in the individual and small group markets beginning in 2019. We propose that the current EHB-benchmark plan selection would continue to apply for any year for which a State does not select a new EHB-benchmark plan under this proposal. We seek comment on all aspects of this proposal. We also seek comment on the timing of this proposed policy, and specifically whether this policy should start with the 2019 plan year, as proposed, or with the 2020 plan year.

For plan years further in the future, we are considering establishing a Federal default definition of EHB that would better align medical risk in insurance products by balancing costs to the scope of benefits. The benefits of a Federal default could outweigh the potential impact on flexibility afforded to States, but we are also considering allowing States continued flexibility to adopt their own EHB-benchmark plans, provided they defray costs that exceed the Federal default. The National Academy of Medicine previously recommended a similar approach to HHS in their report on *Essential Health Benefits: Balancing Costs and Coverage.*[43] We understand that in developing this type of default definition there are trade-offs in adjusting benefits and services. For instance, as part of this approach, we could establish a national benchmark plan standard for prescription drugs that could balance these tradeoffs and provide a consistent prescription drug default standard across States. We anticipate publishing further details on such an approach and gathering stakeholder input as we explore this longer-term approach. For now, we solicit initial comments on this longer-term approach, particularly with regards to setting a national prescription drug benefit standard under a Federal default EHB definition and the trade-offs in adjusting benefits from the current EHBs.

a. State Selection of Benchmark Plan for Plan Years Beginning Prior to January 1, 2019 (§ 156.100)

To reflect the proposed options in § 156.111 for States to adopt new EHB-benchmark plans for plan years 2019 and later, we propose to make conforming changes to § 156.100 to explicitly state that this selection applies only through plan years beginning in 2018, and § 156.111 applies for plan years beginning after 2018.

b. State Selection of EHB-Benchmark Plan for Plan Years Beginning on or After January 1, 2019 (§ 156.111)

i. States' EHB-Benchmark Plan Options (§ 156.111(a))

We propose adding new § 156.111, which would provide States with the flexibility to update their EHB-benchmark plans more frequently and to select among more options. Specifically, we propose that a State may change its EHB-benchmark plan by: (1) Selecting the EHB-benchmark plan that another State used for the 2017 plan year[44] under § 156.100 and § 156.110; (2) replacing one or more EHB categories of benefits under § 156.110(a) in its EHB-benchmark plan used for the 2017 plan year with the same categories of benefits from another State's EHB-benchmark plan used for the 2017 plan year under § 156.100 and § 156.110; or (3) otherwise selecting a set of benefits that would become the State's EHB-benchmark plan, provided that the EHB-benchmark plan does not exceed the generosity of the most generous of among a set of comparison plans. Under this third option, the comparison plans would be the State's EHB-benchmark plan used for the 2017 plan year and the plans described in § 156.100(a)(1) for the 2017 plan year, supplemented as necessary under § 156.110. These plans would include the largest health plan by enrollment in each of the three largest small group insurance products by enrollment from the State's 2017 EHB-benchmark plan options.[45] The intention of this proposal is to provide flexibility and the option for stability. Specifically, the proposal would allow States the flexibility to change their EHB-benchmark plans annually. At the same time, this proposed policy would also allow States that prefer to maintain their current EHB-benchmark plans to do so without action.

Option 1: Select Another State's EHB-Benchmark Plan

The first option proposed in paragraph (a)(1) would permit a State to select one of the EHB-benchmark plans used for the 2017 plan year by another State. This option would increase the number of selection options for each State without necessarily requiring extensive analysis on the part of a State because all States' current benchmark plan documents are publicly available.[46] We are not proposing to change the State mandate policy at § 155.170 under this option. Under this proposed policy, we propose that benefits mandated by State action prior to or on December 31, 2011, could continue to be considered EHB under § 155.170, and would not require the State to defray the costs. However, if a State selects an EHB-benchmark plan

[43] Institute of Medicine, ''Essential Health Benefits: Balancing Coverage and Cost.'' October 6, 2011. Available at *http://www.nationalacademies.org/hmd/Reports/2011/Essential-Health-Benefits-Balancing-Coverage-and-Cost.aspx.*

[44] The State's EHB-benchmark plans used for the 2017 plan year are based on plans from a previous plan year, but we occasionally refer to them as 2017 plans because these plans are applicable as the State's EHB-benchmark plans in 2017.

[45] The Essential Health Benefits: List of the Largest Three Small Group Products by State for 2017 is available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Top3ListFinal-5-19-2015.pdf.* States' EHB-benchmark plans used for the 2017 plan year are able at *https://www.cms.gov/;CCIIO/Resources/Data-Resources/Downloads/Final-List-of-BMPs_4816.pdf.*

[46] Benefits and limits described in the available benchmark plan documents on CMS's Web site may not be fully applicable due to other laws and regulations. For instance, under section 2711 of the PHS Act, as added by the PPACA, issuers may not impose dollar limits on EHBs. When dollar limits are specified in available benchmark plan documents, States would have removed the dollar limits or converted them to non-dollar limits when interpreting and applying EHB policy. CMS recognizes States as the primary enforcers of EHB policy. Thus, when a State would use a benchmark plan that originated in another State under any proposals under § 156.111, we would defer to the selecting State's implementation of the benefits and limits consistent with otherwise applicable law, even when such interpretation differs from the originating State's interpretation. This applies throughout the proposals under § 156.111. All States' current benchmark plan documents are posted on CCIIO's Web site at *https://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html.*

from another State using this option, the selecting State would still be required to defray the cost of any benefits included in that State's EHB-benchmark plan that are benefits mandated by the selecting State after December 31, 2011, and that are subject to defrayal under the current regulations.[47] For example, if State A selects the EHB-benchmark plan of State B, State A would be required to defray the cost of any benefits included in State B's EHB-benchmark plan that are required to be provided by State A's action after December 31, 2011, and that are subject to defrayal under current regulations. We solicit comments on this proposal, including on the application of the State mandate policy under this proposal and on whether other flexibilities are needed by States under this proposed option, such as allowing a State to select its EHB-benchmark plan from any of the 10 previous base-benchmark plan options available to the State or other States under § 156.100, supplemented as necessary under § 156.110.

Option 2: Replace Category or Categories From Another State's EHB-Benchmark Plan

Paragraph (a)(2) would allow a State to partially replace its current EHB-benchmark plan, using EHB-benchmark plans used by other States for the 2017 plan year. Under this option, we propose that a State may replace any EHB category or categories of benefits in its EHB-benchmark plan from the 10 required EHB categories with the same category or categories of benefits from another State's EHB-benchmark plan used for the 2017 plan year. For example, a State may select the prescription drug coverage from another State's EHB-benchmark plan (which might include a different formulary drug count) and a third State's EHB-benchmark plan hospitalization category. This option would allow States to make precise changes to their EHB-benchmark plans by adjusting specific categories of benefits.

Similar to the option proposed in paragraph (a)(1), we also propose that benefits mandated by State action prior to or on December 31, 2011, could continue to be considered EHB under this proposal in accordance with § 155.170, and would not require the State to defray their costs. However, if a State uses this option to replace one or more categories of its EHB-benchmark plan used for the 2017 plan year with a category or categories of benefits from another State's EHB-benchmark plan used for the 2017 plan year, the selecting State would be required to defray the cost of any benefits included in the categories of benefits from the other State's EHB-benchmark plan that are mandated by the selecting State's action after December 31, 2011 and that are subject to defrayal under current regulations. For example, if State A replaces a category of benefits in its EHB-benchmark plan with a category of benefits from State B's EHB-benchmark plan, State A must defray the cost of any benefits in that category mandated by State A after December 31, 2011 that are included in the replacement category of benefits and that are subject to defrayal under current regulations. We solicit comments on this proposed option, including on the application of the State mandate policy under this proposal and on whether other flexibilities are needed by States under this proposed option, such as allowing States to select their categories of benefits from any of the 10 previous base-benchmark plan options available to the State or other States under § 156.100, supplemented as necessary under § 156.110.

Option 3: Select a Set of Benefits To Become the State's EHB-Benchmark Plan

Lastly, under paragraph (a)(3), we propose that the State could select a set of benefits that would become its EHB-benchmark plan using a different process, so long as the new EHB-benchmark plan does not exceed the generosity of the most generous among a set of comparison plans. Under this option, the set of comparison plans would be the State's EHB-benchmark plan used for the 2017 plan year and the plans described in § 156.100(a)(1) that were available as base-benchmark plan options for the 2017 plan year, supplemented as necessary under § 156.110. These plans would include the largest health plan by enrollment in each of the three largest small group insurance products by enrollment from the State's base-benchmark options for the 2017 plan year. We believe this proposed limit on the generosity of the plan benefits would help to ensure that States select EHB in a manner that is equal to the scope of benefits provided under a typical employer plan, while minimizing the opportunity for a State to select EHB in a manner that would significantly decrease affordability for patients. While this proposed option would allow more flexibility to States in establishing an EHB-benchmark plan than other proposed options, this option would be the most resource intensive for the State. For example, a State selecting this option would need to have a formulary drug list that would be used to establish the State's EHB-benchmark plan drug count for the purposes of § 156.122(a)(1), which could be more labor intensive for the State than selecting another State's EHB-benchmark plan prescription drug category of benefits that already exists and is publicly available for review.

Furthermore, this option requires that the State determine an EHB-benchmark plan's generosity, and we propose that the State would determine if its proposed EHB-benchmark plan does not exceed the generosity of the most generous of a set of comparison plans using an actuarial certification, developed by an actuary who is a member of American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies. For this actuarial certification, we propose that the State could determine generosity in the same manner as we would use to measure whether the plan is equal in scope of benefits provided under a typical employer plan, described later in this section. We solicit comments on this proposed standard and approach to calculating the generosity of plans' benefits.

We also recognize that the increased flexibility offered to States under this proposed option to define an EHB-benchmark plan for 2019 and later years could allow a State to embed any desired benefit mandate into the EHB-benchmark plan, without any requirement to defray the obligation. For this reason, we propose to apply the benefit mandate defrayal policy under § 155.170 to this option. Specifically, we propose that benefits mandated by State action prior to or on December 31, 2011 could continue to be considered EHB under this proposal according to § 155.170, and would not require State defrayal. However, if a State selects its EHB-benchmark plan using this option, the State must continue to defray the cost of any benefits mandated by State action after December 31, 2011 that are subject to defrayal under current regulations. For example, if the State selects a set of benefits to become its EHB-benchmark plan under paragraph (a)(3), any benefits mandated by that State after December 31, 2011 that are subject to defrayal under current regulations would not be considered EHB, and the State would be required to defray the cost of any such benefits included in the State's EHB-benchmark plan under this proposed option.

[47] Pursuant to 45 CFR 155.170, the State must make payments to defray the cost of additional required benefits either to an enrollee, as defined in 45 CFR 155.20, or directly to the QHP issuer on behalf of the enrollee.

We solicit comments on this proposal and all of the proposed options in this section, including whether a different approach is needed to defray the cost of any benefits mandated by State action, on our proposed approach to limit a State's new EHB-benchmark plan such that it does not exceed the generosity of the comparison plans and on whether other options should be provided to States to select their EHB-benchmark plans beyond the three proposed options.

ii. The Requirements for States' EHB-Benchmark Plans (§ 156.111(b)–(d))

For all of the proposed options for States to select a new EHB-benchmark plan, we also propose that a State's EHB-benchmark plan must meet certain requirements established under the PPACA with regard to EHB coverage, scope of benefits, and notice and opportunity for public comment. In paragraph (b)(1), we propose to require that the State's EHB-benchmark plan provide an appropriate balance of coverage for the 10 EHB categories of benefits as established at § 156.110(a) and under section 1302(b)(1) of the PPACA. The intention of this proposed requirement is to ensure that the State's EHB-benchmark plan selection meets the requirement to cover at least the 10 EHB categories, including the items and services covered in those categories.

In paragraph (b)(2), we propose to define requirements regarding the scope of benefits that must be provided by a State's EHB-benchmark plan. In paragraph (b)(2)(i), we propose that the State's EHB-benchmark plan must be equal in scope of benefits to what is provided under a typical employer plan. This proposed requirement reflects section 1302(b)(2) of the PPACA, which requires the Secretary to ensure that the scope of the EHB is equal to the scope of benefits provided under a typical employer plan, as determined by the Secretary. We recognize that the scope of benefits covered by employer plans varies, including variations based on State laws, consumers' purchasing preferences, and local markets. We believe it is appropriate to recognize this variation in the definition of a typical employer plan. We also believe that, although State laws (for example, laws with benefit mandates) may affect the scope of benefits in plans available in a given State, it is important that a Federal definition of a typical employer plan maximize States' flexibility to choose an EHB-benchmark plan, so that States are not constrained in their selection. Therefore, we propose to define a typical employer plan as an employer plan within a product (as these terms are defined in § 144.103 of this subchapter) with substantial enrollment in the product of at least 5,000 enrollees sold in the small group or large group market, in one or more States, or a self-insured group health plan with substantial enrollment of at least 5,000 enrollees in one or more States. We also seek comment on whether the definition of a typical employer plan should reflect in substantial part a plan that would be typical in the State in question, and whether an appropriate way to measure typicality in that case would be to provide that the typical employer plan be defined to also have at least 100 enrollees enrolled in that plan or product in the applicable State. We seek comment broadly on whether typicality should be defined in other ways, including whether it should be based upon the State's 10 base-benchmark plan options for plan year 2017, supplemented as required to become the State's EHB-benchmark plan under § 156.110, or on whether the definition of a typical employer plan for this purpose should be limited to plans that already cover all 10 EHB categories. We also solicit comment on whether the proposed typical employer plan definition should exclude self-insured plans, since States may not have the ability to obtain the required information on those plans.

Under the proposed definition of a typical employer plan as a plan with enrollment of at least 5,000 enrollees in one or more States, we believe that the State's option to select another State's EHB-benchmark plan at proposed § 156.111(a)(1) would automatically meet this requirement because each of the available options is an employer plan that had substantial enrollment. We solicit comment on the proposed definition of a typical employer plan, including on whether we should provide additional guidance or requirements for the definition of a typical employer plan, such as requiring that the plan selected as a typical employer plan is from a recent year after December 31, 2013, requiring that the plan provide minimum value, or requiring that the plan selected as a typical employer plan not be an indemnity plan or an account-based plan like a health reimbursement arrangement. We also solicit comment on whether actuaries could develop a standard of practice for a benefit comparison calculation to determine that a plan is equal to the scope of benefits provided under a typical employer plan that could also apply to determine that a State's EHB-benchmark plan does not exceed the generosity of the most generous plan in accordance with Option 3 under proposed § 156.111(a)(3).

We specifically seek comment on CMS's draft example of an acceptable methodology for comparing benefits of a State's EHB-benchmark plan selection to the benefits of a typical employer plan.[48] The purpose of this draft document is to outline an example of one approach actuaries could follow when comparing benefits in order to complete the required actuarial certification and associated actuarial report under proposed § 156.111(e)(2)(i) for typicality described later in this section. We are particularly interested in comments on this draft methodology from the actuarial community. We further request that commenters submit comments to this draft document as part of their comments to this proposed rule.

In paragraph (b)(2)(ii), we propose that the State's EHB-benchmark plan must not have benefits unduly weighted towards any of the categories of benefits at § 156.110(a) as established under section 1302(b)(4)(A) of the PPACA. The purpose of this proposed provision is to ensure the State's EHB-benchmark plan selection reflects an appropriate balance among the categories. Additionally, in paragraph (b)(2)(iii), we propose that the State's EHB-benchmark plan must provide benefits for diverse segments of the population, including women, children, persons with disabilities, and other groups as established under section 1302(b)(4)(C) of the PPACA.

We propose at paragraph (c), that the State must provide reasonable public notice and an opportunity for public comment on the State's selection of an EHB-benchmark plan. We believe that some States already provided public notice and an opportunity for public comment in their current EHB-benchmark plan selection processes completed for prior plan years. Recognizing that States have their own processes in place to provide notice and opportunity for public comment, we propose that States would determine what constitutes a reasonable public notice and public comment process. We remind States that any public participation processes must continue to comply with applicable Federal civil rights laws, including national

[48] The *Draft Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection to Benefits of a Typical Employer Plan As Proposed under the HHS Notice of Benefit and Payment Parameters for 2019 (CMS–9930–P)* is available on CCIIO's Regulation and Guidance Web page at *https://www.cms.gov/cciio/resources/regulations-and-guidance/index.html.*

standards that ensure access to individuals with disabilities. We solicit comments on whether the State should be required to post the public notice on their Web site, whether other requirements are needed for States' public notice and comment processes, and what those requirements should be. We propose that this process would apply whenever a State changes its EHB-benchmark plan in accordance with proposed § 156.111(a).

Lastly, we propose at paragraph (d) that a State must notify HHS of the selection of a new EHB-benchmark plan by a date to be determined by HHS for each applicable plan year. We also propose that if the State does not make a selection by the annual selection date, the State's EHB-benchmark plan for the applicable plan year would be that State's EHB-benchmark plan applicable for the prior plan year.

Taken together, these proposed requirements are intended to align with statutory requirements. With the exception of the proposed change in this proposed rule to the substitution provision at § 156.115(b), we intend to retain the current issuer requirements related to EHB at §§ 156.115, 156.122,[49] and 156.125 and those requirements would continue to apply to all plans subject to the EHB requirements.

In addition to these proposed requirements in selecting the State's EHB-benchmark plan, States may also wish to consider the impact of the EHB-benchmark plan's scope of benefits on the availability of premium tax credits and cost-sharing reductions for enrollees in the State, as the premium tax credit is based on the amount of premiums allocable to EHB and cost-sharing reductions provide reduced cost sharing for EHB only.[50] We solicit comments on these proposals and whether other requirements are needed.

iii. Data Collection for State's EHB-Benchmark Plans for 2019 Plan Year and Later (§ 156.111(e))

For States that opt to select a new EHB-benchmark plan under § 156.111(a) in any given year, we propose to establish the data collection requirements under proposed § 156.111(e). We propose a State must submit documents in a format and manner specified by HHS by a date determined by HHS.

Specifically, paragraph (e)(1) would require documentation that would confirm that the State's EHB-benchmark plan complies with the requirements under proposed § 156.111(a), (b) and (c), which includes the requirement that the 10 EHB categories of benefits are covered under the State's EHB-benchmark plan. This documentation would also include information on which selection option under proposed § 156.111(a) the State is using, including whether the State is using another State's EHB-benchmark plan.

For a State selecting an EHB-benchmark plan under proposed § 156.111(a)(2) or (3), paragraph (e)(2) would require the State to submit an actuarial certification and an associated actuarial report from an actuary, who is a member of the American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies, affirming that the State's EHB-benchmark plan is equal in scope of benefits provided under a typical employer plan. We solicit comments on whether this actuarial certification should also be required for a State selecting an EHB-benchmark plan under proposed § 156.111(a)(1). Additionally, we also propose that if the State is selecting its EHB-benchmark plan using § 156.111(a)(3) that allows the State to otherwise select a set of benefits that would become its EHB-benchmark plan, that this actuarial certification would affirm that the new EHB-benchmark plan does not exceed the generosity of the most generous among the set of comparison plans specified in paragraph (a)(3). Specifically, we propose that the actuarial certification and associated actuarial report would be required to be in accordance with generally accepted actuarial principles and methodologies. This would include complying with all applicable Actuarial Standards of Practice (ASOP) (including but not limited to ASOP 41 on actuarial communications). For example, ASOP 41 includes disclosure requirements, including those that apply to the disclosure of information on the methods and assumptions being used.

The purpose of this provision is to ensure that the scope of EHB is equal in scope of benefits provided under a typical employer plan and to provide the information to support the certification from the Chief Actuary of CMS for the Secretary to submit along with a report to Congress, consistent with section 1302(b)(2)(B) of the PPACA. As described previously, we are seeking comment on a draft methodology for comparing benefits of a State's EHB-benchmark plan selection to the benefits of a typical employer plan.[51] We solicit comment on this proposed actuarial certification and associated actuarial report and on whether the draft methodology should be the required approach for the State's actuarial certification and associated actuarial report.

Paragraph (e)(3) would require the State to submit the State's EHB-benchmark plan document that reflects the benefits and limitations, including the medical management requirements, a schedule of benefits and, if the State is selecting its EHB-benchmark plan using the option in paragraph (a)(3) of this section, a formulary drug list in a format and manner specified by HHS similar to current § 156.120. The purpose of this provision is to ensure that the State's EHB-benchmark plan has a clearly defined set of covered benefits and limits. For a State that chooses an EHB-benchmark plan under proposed § 156.111(a)(1), the State may submit the plan document from the other State's EHB-benchmark plan used for the 2017 plan year to fulfill this proposed requirement. For a State that selects an EHB-benchmark plan under proposed § 156.111(a)(2), the State would create a combined plan document by pulling parts of the plan documents from the other State's or States' benchmark plan documents. States may need to make conforming edits in the other States' plan documents to align language and terminology when pulling language from other States' plan documents. For a State that chooses the option proposed

[49] 45 CFR 156.122(a)(1) establishes that, generally, a health plan does not provide EHB unless it covers at least the greater of: (1) One drug in every United States Pharmacopeia (USP) category and class; or (2) the same number of prescription drugs in each category and class as the EHB-benchmark plan. Under the current version of the USP Medicare Model Guidelines (MMG) drug classification system used for the EHB drug count at § 156.122(a)(1), this proposal means that all plans required to comply with EHB will continue to have to cover at least one drug in the Anti-Addiction/Substance Abuse Treatment Agents (Opioid Reversal Agent) class. Naloxone is currently the only active ingredient in the Opioid Reversal Agent class, and as a result all plans required to comply with EHB would be required to continue to cover at least one form of naloxone under this proposed policy. This was previously addressed in the 2018 Letter to Issuers in the Federally-facilitated Marketplaces available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2018-Letter-to-Issuers-in-the-Federally-facilitated-Marketplaces-and-February-17-Addendum.pdf.*

[50] The definition of EHB also has an impact on the annual limitation on cost sharing at section 1302(c) of the PPACA (which is incorporated into section 2707(b) of the PHS Act) and the prohibition of annual and lifetime dollar limits at section 2711 of the PHS Act, as added by the PPACA.

[51] The *Draft Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection to Benefits of a Typical Employer Plan As Proposed under the HHS Notice of Benefit and Payment Parameters for 2019 (CMS–9930–P)* is available on CCIIO's Regulation and Guidance Web page at *https://www.cms.gov/cciio/resources/regulations-and-guidance/index.html.*

at § 156.111(a)(3), the State may need to develop a plan document for this purpose. Additionally, under proposed § 156.111(e)(3), if the State is selecting its EHB-benchmark plan using the option in § 156.111(a)(3) of this section, we propose that the State must also include a formulary drug list for the State's EHB-benchmark plan in a format and manner specified by HHS. Specifically, the State would need to submit a formulary drug list in the format and manner specified by HHS, which is a separate template from the plan document. We also propose for the purposes of a benefit, such as pediatric dental, that is defined by another program under the State's EHB-benchmark plan, the State may submit a separate document that reflects the benefits and limitations, including the medical management requirements and a schedule of benefits comparable to how States that defined their dental coverage using their State's CHIP programs have done previously. Otherwise, regardless of which option the State is using to select a new EHB-benchmark plan, the State would be expected to submit one comprehensive plan document for the entire State's EHB-benchmark plan benchmark selection.

Lastly, paragraph (e)(4) would require the State to submit documentation specified by HHS, which is necessary to operationalize the State's EHB-benchmark plan. This documentation would be used to provide public resources on a State's EHB-benchmark plan and support related templates and tools. We propose that this documentation would include having the State submit a complete and accurate EHB summary chart that reflects the State's EHB-benchmark plan and aligns with the documentation that we currently make publicly available on a State's EHB-benchmark plan. The purpose of this provision is to ensure that State's EHB-benchmark plan can be operationalized. For States that choose § 156.111(a)(1) or (a)(2) where the State is developing its benchmark plan based on another State's EHB-benchmark plan, the State could develop this document utilizing information from the EHB summary chart that is currently publicly available.[52]

Like our current approach to the EHB-benchmark plan policy, we propose that HHS would post the State's EHB summary document and the State's EHB-benchmark plan document that reflects the benefits and limitations, including the medical management requirements and a schedule of benefits that may include a new formulary drug count on CCIIO's Web site. In addition to posting those documents, we are also considering posting the State's EHB-benchmark plan confirmations proposed at § 156.111(e)(1). In preparation for the short timeframes for States to submit such documents in time for issuers to design plans for plan years 2019 and 2020, we propose that the deadline for States' submission of the required documents for the State's EHB-benchmark plan option would be March 16, 2018, for the 2019 plan year and July 1, 2018, for the 2020 plan year.[53] Due to the short timeframes for 2019, we would not be able to update the Plans and Benefits Template Add-in file used in the Plans and Benefits Template for States for 2019.[54] For 2020, we would plan to update the Add-in file to reflect the State's EHB-benchmark plan.

We propose that in order for a State's selection of a new EHB-benchmark plan from the proposed options to be accepted, the State's new EHB-benchmark plan must comply with the associated EHB regulatory and statutory requirements, including those under this proposed rule. If a State's EHB-benchmark plan selection does not meet these regulatory and statutory requirements, the State's current EHB-benchmark plan would continue to apply. We solicit comments on the proposed processes and deadlines for the 2019 and 2020 plan years.[55] We also solicit comments on the proposed data collection and associated documents and whether other specifications for these documents are needed.

c. Provision of EHB (§ 156.115)

We are also proposing additional flexibility for States by revising the rules regarding EHB benefit category substitution. Currently, EHB compliant plans are required to provide benefits that are substantially equal to the EHB-benchmark plan, but are allowed to substitute benefits within categories, if allowed by the State, provided that the benefits are actuarially equivalent to the benefit that is being replaced. Substitutions of prescription drug benefits are not permitted.[56] We first introduced the concept of benefit substitution in the 2011 EHB Bulletin.[57] The EHB Bulletin considered whether to permit benefit substitution between benefit categories. Some commenters supported wide latitude for substitution, while others opposed substitution both within and across categories. In the EHB Rule, we finalized at § 156.115(b)(1) that substitution could only occur within the statutorily required benefit categories (other than prescription drug benefits), not between different benefit categories.

In an effort to promote greater flexibility, consumer choice, and plan innovation through coverage and plan design options, we propose modifying paragraph (b)(1)(ii) to allow for substitution to occur within the same EHB category *and* between EHB categories, as long as the substituted benefit is actuarially equivalent to the benefit being replaced and is not a prescription drug benefit. The plan with substitutions must still provide benefits that are substantially equal to the EHB-benchmark plan, must provide an appropriate balance among the EHB categories such that benefits are not unduly weighted towards any category, and must provide benefits for diverse segments of the population. It is generally the State's responsibility to assess that EHB compliant plans adhere to these requirements.

We believe this modification at § 156.115(b)(1)(ii) balances the value of comparability of plan benefits with opportunities for plan innovation and provision of benefit choice in the market. Under this approach, to comply with the EHB requirements, plans that exercise the flexibility to substitute benefits within or between EHB categories must be able to demonstrate actuarial equivalency of substituted

[52] All States' current benchmark plan documents are posted on CCIIO's Web site at *https://www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html.*

[53] Due to the proposed tight timeframe for 2019, we would not be able to allow States to submit additional documentation or changes to submitted documents after the deadline. Any questions or issues that a State has about the EHB-benchmark plan documents would need to be asked and resolved prior to the State's submission deadline.

[54] Instead, we would only plan to post the State's EHB-benchmark documents, including an updated drug count, on CCIIO's Web site. This means that for 2019 the State would be expected to instruct its issuers on how to manually change the State's current Add-in file to align with the State's EHB-benchmark plan.

[55] For the 2019 plan year, HHS would post States' EHB-benchmark plan documents after the proposed State submission deadline, which would likely be in April 2018.

[56] See § 156.115(b)(1)(iii), as established in the EHB Rule. Additionally, § 156.122(a)(1) specifies that plans that provide EHB must cover at least the greater of: (i) One drug in every United States Pharmacopeia (USP) category and class; or (ii) The same number of prescription drugs in each category and class as the EHB-benchmark plan. Additionally, as discussed in the HHS Notice of Benefit and Payment Parameters for 2016 Final Rule (80 FR 10817) preamble for § 156.122, if a plan is covering drugs beyond the number of drugs covered by the benchmark, all of these drugs are EHB and must count towards the annual limitation on cost sharing.

[57] Essential Health Benefits Bulletin, Center for Consumer Information and Insurance Oversight (December 16, 2011), available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/essential_health_benefits_bulletin.pdf.*

benefit categories in accordance with the requirements in paragraph (b)(2) of this section. These protections would ensure that substitution within or between benefit categories would balance adequate coverage for patients with plan innovation.

We also note that nothing in this proposal would prohibit plans required to provide EHB from imposing non-dollar limits, unless otherwise prohibited by Federal law.[58] In addition, we note that the regulation would continue to defer to States, which would continue to have the option to set criteria for benefit substitution, enforce a stricter standard on benefit substitution, or prohibit it altogether consistent with paragraph (b) of this section. We solicit comments on this proposed change, including on whether other flexibilities with regard to substitution are needed and whether additional standards are necessary to assess the scope and quality of benefits being substituted between categories. Additionally, we are particularly interested in comments on this proposal that provide examples of how issuers may be able to utilize this additional proposed flexibility to meaningfully substitute benefits between categories. We also seek comment on examples of substitution that issuers would be interested in pursuing.

d. Premium Adjustment Percentage (§ 156.130)

Section 1302(c)(4) of the PPACA directs the Secretary of HHS to determine an annual premium adjustment percentage, which is used to set the rate of increase for three parameters detailed in the PPACA: The maximum annual limitation on cost sharing (defined at § 156.130(a)); the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code; and the assessable payment amounts under section 4980H(a) and (b) of the Code. Section 156.130(e) provides that the premium adjustment percentage is the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013, and that this percentage will be published in the annual HHS notice of benefit and payment parameters.

Under the methodology established in the 2015 Payment Notice and amended in the 2015 Market Standards Rule for estimating average per capita premium for purposes of calculating the premium adjustment percentage, the premium adjustment percentage is calculated based on the estimates and projections of average per enrollee employer-sponsored insurance premiums from the NHEA, which are calculated by the CMS Office of the Actuary. Accordingly, using the employer-sponsored insurance data, the premium adjustment percentage for 2019 is the percentage (if any) by which the most recent NHEA projection of per enrollee employer-sponsored insurance premiums for 2018 ($6,396) exceeds the most recent NHEA estimate of per enrollee employer-sponsored insurance premiums for 2013 ($5,110).[59] Using this formula, the proposed premium adjustment percentage for 2019 is 1.2516634051 or approximately 25 percent. Based on the proposed 2019 premium adjustment percentage, we propose the following cost-sharing parameters for calendar year 2019.

i. Maximum Annual Limitation on Cost Sharing for Calendar Year 2019

Under § 156.130(a)(2), for the 2019 calendar year, cost sharing for self-only coverage may not exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage for 2019, and for other than self-only coverage, the limit is twice the dollar limit for self-only coverage. Under § 156.130(d), these amounts must be rounded down to the next lowest multiple of 50 dollars. Using the premium adjustment percentage of 1.2516634051 for 2019 as proposed above, and the 2014 maximum annual limitation on cost sharing of $6,350 for self-only coverage, which was published by the IRS on May 2, 2013,[60] we propose that the 2019 maximum annual limitation on cost sharing would be $7,900 for self-only coverage and $15,800 for other than self-only coverage. This represents an approximately 7 percent increase above the 2018 parameters of $7,350 for self-only coverage and $14,700 for other than self-only coverage.

e. Reduced Maximum Annual Limitation on Cost Sharing (§ 156.130)

Sections 1402(a) through (c) of the PPACA direct issuers to reduce cost sharing for EHBs for eligible individuals enrolled in a silver level QHP. In the 2014 Payment Notice, we established standards related to the provision of these cost-sharing reductions. Specifically, in part 156, subpart E, we specified that QHP issuers must provide cost-sharing reductions by developing plan variations, which are separate cost-sharing structures for each eligibility category that change how the cost sharing required under the QHP is to be shared between the enrollee and the Federal government. At § 156.420(a), we detailed the structure of these plan variations and specified that QHP issuers must ensure that each silver plan variation has an annual limitation on cost sharing no greater than the applicable reduced maximum annual limitation on cost sharing specified in the annual HHS notice of benefit and payment parameters. Although the amount of the reduction in the maximum annual limitation on cost sharing is specified in section 1402(c)(1)(A) of the PPACA, section 1402(c)(1)(B)(ii) of the PPACA states that the Secretary may adjust the cost-sharing limits to ensure that the resulting limits do not cause the AVs of the health plans to exceed the levels specified in section 1402(c)(1)(B)(i) of the PPACA (that is, 73 percent, 87 percent, or 94 percent, depending on the income of the enrollee). Accordingly, we propose to continue to use a method we established in the 2014 Payment Notice for determining the appropriate reductions in the maximum annual limitation on cost sharing for cost-sharing plan variations. As we proposed above, the 2019 maximum annual limitation on cost sharing would be $7,900 for self-only coverage and $15,800 for other than self-only coverage. We analyzed the effect on AV of the reductions in the maximum annual limitation on cost sharing described in the statute to determine whether to adjust the reductions so that the AV of a silver plan variation will not exceed the AV specified in the statute. Below, we describe our analysis for the 2019 benefit year and our proposed results.

Consistent with our analysis in the 2014 through 2018 Payment Notices, we

[58] *See* Frequently Asked Questions on Essential Health Benefits Bulletin (February 17, 2012), Q9, available at *https://www.cms.gov/CCIIO/Resources/Files/Downloads/ehb-faq-508.pdf and* the EHB rule. As finalized in the EHB Rule, issuers of QHPs were permitted to make actuarially equivalent substitutions within statutory categories under § 156.115(b)(1)(ii). Therefore, and as further explained in the EHB FAQ, plans are permitted to impose non-dollar limits, consistent with other guidance, that are at least actuarially equivalent to the annual dollar limits.

[59] We note that the 2013 premium used for this calculation has been updated to reflect the latest NHEA data. See ''NHE Projections 2016–2025—Tables'' available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html* in Tables 1 and 17. A detailed description of the NHE projection methodology is available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/proj2016.pdf.*

[60] *See http://www.irs.gov/pub/irs-drop/rp-13-25.pdf.*

developed three test silver level QHPs, and analyzed the impact on AV of the reductions described in the PPACA to the estimated 2019 maximum annual limitation on cost sharing for self-only coverage ($7,900). The test plan designs are based on data collected for 2017 plan year QHP certification to ensure that they represent a range of plan designs that we expect issuers to offer at the silver level of coverage through the Exchanges. For 2019, the test silver level QHPs included a PPO with typical cost-sharing structure ($7,900 annual limitation on cost sharing, $2,350 deductible, and 20 percent in-network coinsurance rate), a PPO with a lower annual limitation on cost sharing ($5,250 annual limitation on cost sharing, $3,050 deductible, and 20 percent in-network coinsurance rate), and an HMO ($7,900 annual limitation on cost sharing, $3,375 deductible, 20 percent in-network coinsurance rate, and the following services with copayments that are not subject to the deductible or coinsurance: $500 inpatient stay per day, $500 emergency department visit, $25 primary care office visit, and $55 specialist office visit). All three test QHPs meet the AV requirements for silver level health plans.

We then entered these test plans into the proposed 2019 AV Calculator and observed how the reductions in the maximum annual limitation on cost sharing specified in the PPACA affected the AVs of the plans. We found that the reduction in the maximum annual limitation on cost sharing specified in the PPACA for enrollees with a household income between 100 and 150 percent FPL (2/3 reduction in the maximum annual limitation on cost sharing), and 150 and 200 percent of the FPL (2/3 reduction), would not cause the AV of any of the model QHPs to exceed the statutorily specified AV levels (94 and 87 percent, respectively). In contrast, the reduction in the maximum annual limitation on cost sharing specified in the PPACA for enrollees with a household income between 200 and 250 percent of FPL (1/2 reduction), would cause the AVs of two of the test QHPs to exceed the specified AV level of 73 percent. As a result, we propose that the maximum annual limitation on cost sharing for enrollees in the 2017 benefit year with a household income between 200 and 250 percent of FPL be reduced by approximately 1/5, rather than 1/2. We further propose that the maximum annual limitation on cost sharing for enrollees with a household income between 100 and 200 percent of the FPL be reduced by approximately 2/3, as specified in the statute, and as shown in Table 10. These proposed reductions in the maximum annual limitation on cost sharing should adequately account for unique plan designs that may not be captured by our three model QHPs. We also note that selecting a reduction for the maximum annual limitation on cost sharing that is less than the reduction specified in the statute would not reduce the benefit afforded to enrollees in aggregate because QHP issuers are required to further reduce their annual limitation on cost sharing, or reduce other types of cost sharing, if the required reduction does not cause the AV of the QHP to meet the specified level.

In prior years, we have found that for individuals with household incomes of 250 to 400 percent of the FPL, without any change in other forms of cost sharing, any reduction in the maximum annual limitation on cost sharing will cause an increase in AV that exceeds the maximum 70 percent level set in the statute. In the Market Stabilization Rule, we analyzed the effect of reducing the maximum annual limitation on cost sharing based on how we calculated the 2018 reduced maximum annual limitation on cost sharing. We stated that we were not certain what the AV spread of plan designs will be under the finalized policy, whether issuers will in fact reduce the AVs of their base silver plans to the lower end of the de minimis range, and whether issuers will retain plan designs above the 70 percent AV range and that we would monitor 2018 standard silver plan designs. As a result, we did not reduce the maximum annual limitation on cost sharing for individuals with household incomes between 250 and 400 percent FPL.[61]

We seek comment on this analysis and the proposed reductions in the maximum annual limitation on cost sharing for 2019.

We note that for 2019, as described in § 156.135(d), States are permitted to submit for approval by HHS State-specific datasets for use as the standard population to calculate AV.[62] No State submitted a dataset by the September 1, 2017 deadline.

TABLE 10—REDUCTIONS IN MAXIMUM ANNUAL LIMITATION ON COST SHARING FOR 2019

Eligibility category	Reduced maximum annual limitation on cost sharing for self-only coverage for 2019	Reduced maximum annual limitation on cost sharing for other than self-only coverage for 2019
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(i) (that is, 100–150 percent of FPL)	$2,600	5,200
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(ii) (that is, 150–200 percent of FPL)	2,600	5,200
Individuals eligible for cost-sharing reductions under § 155.305(g)(2)(iii) (that is, 200–250 percent of FPL)	6,300	12,600

f. Application to Stand-Alone Dental Plans Inside the Exchange (§ 156.150)

Section 1302(d)(2) of the PPACA directs the Secretary to issue regulations on the calculation of AV and its application to the levels of coverage. In the 2013 EHB Rule, HHS finalized the requirements for the calculation of AV for stand-alone dental plans. Specifically, § 156.150 prohibits SADPs from using the AV Calculator used by other individual and small group market plans and requires SADPs to cover the pediatric dental EHB at one of two AV levels, within an allowable de minimis variation of ± 2 percentage points.

We are proposing to remove the requirement for SADP issuers to meet

[61] 2014 Payment Notice, 78 FR at 15481; Market Stabilization Rule. 82 FR at 18370–18371.

[62] The annual deadline for submitting State specific data for the AV Calculator was announced August 15, 2014. See *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/final-state-avc-guidance.pdf.*

the low (70 percent ± 2 percentage points) and high (80 percent ± 2 percentage points) AV levels specified in § 156.150(b). Specifically, we are proposing to remove paragraph (b). SADP issuers would offer the pediatric dental EHB without selecting or calculating an AV level of that coverage. SADP issuers would continue to be held to the annual limitation on cost sharing for the pediatric EHB, as required in paragraph (a), and provide the pediatric dental EHB as required by § 155.1065, in order to be certified as QHPs.

The PPACA does not specifically require SADP issuers to offer coverage at the high and low levels of AV. By removing the AV level requirement, SADP issuers will have the opportunity to offer more flexible plan designs to consumers. In previous comments, SADP issuers had noted that it is difficult to meet the low AV requirements and offer preventive care without cost sharing, which consumers are accustomed to in the large group market. Issuers could offer SADPs at varying premiums and levels of coverage, so long as they continue to offer the pediatric dental EHB and annual limitations on cost sharing. We believe that this will allow consumers to select from a greater variety of plans and find one that is more likely to meet their specific needs.

We seek comment on this proposal.

3. Qualified Health Plan Minimum Certification Standards

a. Qualified Health Plan Certification (Subpart C)

In the Market Stabilization final rule, HHS finalized several standards to affirm the traditional role of States in overseeing their health insurance markets while reducing the regulatory burden of participating in Exchanges for issuers. We believe that robust participation of QHP issuers in Exchanges will facilitate consumer access to affordable coverage. In recognition of the call to return to States their traditional authority to regulate health plans and to streamline QHP certification processes, HHS proposes to continue to enhance the State flexibilities in QHP certification that began for plan year 2018 by identifying areas where States are already performing reviews that are duplicative of the Federal QHP certification process and incorporating these reviews into the QHP certification process. In addition to empowering States, these proposals would reduce issuer burden.

In the Market Stabilization final rule, we finalized two proposals related to QHP certification for plan year 2018 around network adequacy (§ 156.230) and essential community providers (§ 156.235) that we now propose for the 2019 benefit year and beyond. Specifically, with respect to network adequacy, we propose to rely on the States' reviews in States in which an FFE is operating, provided the State has a sufficient network adequacy review process. For the 2019 benefit year and beyond, we propose to defer to the States' reviews in States with the authority to enforce standards that are at least equal to the ''reasonable access standard'' defined in § 156.230 and means to assess issuer network adequacy. In States that do not have the authority and means to conduct sufficient network adequacy reviews, we propose for the 2019 benefit year and beyond to rely on an issuer's accreditation (commercial, Medicaid, or Exchange) from an HHS-recognized accrediting entity, which we propose would include the three accrediting entities HHS has previously recognized for the accreditation of QHPs: The National Committee for Quality Assurance, URAC, and Accreditation Association for Ambulatory Health Care.[63] Unaccredited issuers would be required to submit an access plan as part of the QHP application. To show that the QHP's network meets the requirement in § 156.230(a)(2), the access plan would need to demonstrate that an issuer has standards and procedures in place to maintain an adequate network consistent with the National Association of Insurance Commissioners' Health Benefit Plan Network Access and Adequacy Model Act (the Model Act is available at *http://www.naic.org/store/free/MDL-74.pdf*). We propose to further coordinate with States to monitor network adequacy, for example, through complaint tracking. With respect to QHP certification review for the essential community provider (ECP) standard, we propose for the 2019 benefit year and beyond that we will continue to allow issuers to use the ECP write-in process to identify ECPs that are not on the HHS list of available ECPs and will maintain the 20 percent ECP standard. We believe this standard will substantially reduce the regulatory burden on issuers while preserving adequate access to care provided by ECPs. As in previous years, if an issuer's application does not satisfy the ECP standard, the issuer would be required to include as part of its application for QHP certification a satisfactory narrative justification describing how the issuer's provider networks, as presently constituted, provide an adequate level of service for low-income and medically underserved individuals and how the issuer plans to increase ECP participation in the issuer's provider networks in future years. At a minimum, such narrative justification would include the number of contracts offered to ECPs for the applicable plan year; the number of additional contracts an issuer expects to offer and the timeframe of those planned negotiations; the names of the specific ECPs to which the issuer has offered contracts that are still pending; and contingency plans for how the issuer's provider network, as currently designed, would provide adequate care to enrollees who might otherwise be cared for by relevant ECP types that are missing from the issuer's provider network.

We also previously outlined areas where HHS will rely on State reviews of QHP certification standards for States with FFEs starting in plan year 2018, including States with FFEs that perform plan management functions in partnership with HHS, in The Guidance to States on Review of Qualified Health Plan Certification Standards in Federally-facilitated Marketplaces for Plan Years 2018 and Later,[64] released on April 13, 2017. We intended these changes to help streamline the QHP certification process and avoid duplicative Federal and State efforts. In that guidance, we provided that in FFE States that do not perform plan management functions, HHS will continue to review QHP data for these States, but will rely on State review for licensure and good standing standards required at § 156.200(b)(4), and for network adequacy standards required at § 156.230. For FFEs in States performing plan management functions, HHS will continue to rely on State plan data review for QHP certification standards, including for service area and prescription drug formulary outliers and non-discrimination in cost sharing. We will continue to review plan data relating to Federal funds or plan display on *HealthCare.gov*, such as cost-sharing reduction plan variation at § 156.420 and annual re-enrollment at § 155.335(j). We do not propose any changes to the approach described in this guidance.

To further streamline QHP certification by avoiding duplicative

[63] Recognition of Entities for the Accreditation of Qualified Health Plans 77 FR 70163 (November 23, 2012) and Approval of an Application by the Accreditation Association for Ambulatory Health Care (AAAHC) To Be a Recognized Accrediting Entity for the Accreditation of Qualified Health Plans 78 FR 77470 (December 23, 2013).

[64] *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/QHP-Certifcation-Reviews-Guidance-41317.pdf.*

reviews, we also announced in the QHP Rate Outlier Analysis for Plan Year 2018 and Beyond [65] that we would rely on States to identify rate outliers for purposes of QHP certification,[66] except for those States that do not have an Effective Rate Review Program. These changes were intended to allow States and issuers greater flexibility in facilitating the certification of plans best suited to their markets, while avoiding duplicative State and Federal activities. We do not propose any changes to the approach described in this guidance.

For Plan Years 2019 and later, HHS proposes to further expand the role of States in the QHP certification process for FFEs, including FFEs where the State performs plan management functions. Specifically, we propose to defer to States for additional review areas, including accreditation requirements at § 156.275, compliance reviews at § 156.715, minimum geographic area of the plan's service area at § 155.1055, and quality improvement strategy reporting at § 156.1130, if feasible and appropriate. We believe States currently perform reviews in these areas that are duplicative of the Federal reviews for QHP certification. As a result, we do not believe this policy would require States to undertake additional reviews or change existing reviews to match the Federal standards for QHPs. We seek comment on whether States are performing work in these areas, and whether there are more or different areas of review for which it would be appropriate for the FFEs to defer to State reviews for QHP certification. We seek comment regarding the potential benefits as well as challenges or unintended consequences that States and issuers may encounter if States performed increased roles in QHP certification reviews by taking on the reviews noted above, or other, additional reviews. We also seek comment on the impact for QHP issuers participating in multiple States and across Exchange types. HHS anticipates outlining plan year 2019 QHP certification standards in future guidance, including outlining areas where States performing plan management functions have flexibility to follow a different approach. We also propose to amend § 156.200(b)(2) by adding a cross reference to proposed § 155.706 to align with other proposals in this rule.

b. Additional Standards Specific to SHOP for Plan Years Beginning Prior to January 1, 2018 (§ 156.285)

As discussed in the following section, we propose to modify the regulatory requirements regarding additional standards specific to SHOP for plan years beginning on or after January 1, 2018 and to introduce those requirements in a new § 156.286. To reflect the proposal that the requirements currently in § 156.285 would apply only for plan years beginning before January 1, 2018, we propose to amend the heading of § 156.285 and add paragraph (f), to state that the section would only apply for plan years that begin prior to January 1, 2018. We discuss the proposed new standards applicable for plan years beginning on or after January 1, 2018 in the following section. These changes would be effective on the effective date of the final rule, if finalized as proposed.

c. Additional Standards Specific to SHOP for Plan Years Beginning on or After January 1, 2018 (§ 156.286)

Section 156.285 currently describes the requirements on QHP issuers participating in SHOPs to accept enrollment and payment information from a SHOP on behalf of an employer or enrollee. As discussed above, we propose to amend § 156.285 to make it only applicable for plan years beginning prior to January 1, 2018, and to modify the additional standards specific to QHP issuers participating in SHOPs applicable for plan years beginning on or after January 1, 2018 through the introduction of a new § 156.286. New § 156.286 would include only those standards that have been applicable under § 156.285 that would continue to apply to the SHOPs under the proposed approach discussed earlier in this preamble, with minor modifications and clarifications. The proposals described in this section would be effective on the effective date of the final rule, if finalized as proposed.

We propose to retain § 156.285(a) as § 156.286(a), but, to reflect the proposal that a SHOP would not be required to process enrollments and payments, to require issuers to accept payment not only from the SHOP, but from a qualified employer or enrollee or a SHOP. We also propose not to include the requirement currently in § 156.285(a)(4)(ii), as the Federally-facilitated SHOPs would no longer be involved in premium payments. For the same reason, we also propose a narrower version of § 156.285(b) as § 156.286(b), requiring only that issuers adhere to the enrollment periods and processes established by the SHOP consistent with § 155.726, and establish uniform enrollment timelines and processes for qualified employers and group members. We also propose in § 156.286(c) to include only those requirements from § 156.285(c) that do not relate to the payment and enrollment processes that we have proposed would no longer be required.

We also propose not to include a paragraph mirroring paragraph (d) of § 156.285. This would reflect our proposal to remove the requirements contained in current § 155.735, and generally not to impose coverage related timelines on issuers of QHPs through the SHOPs for plans beginning on or after January 1, 2018. We propose to include a paragraph mirroring § 155.285(e) as § 156.286(d).

Finally, under our proposed approach, SHOPs would no longer be required to provide employee enrollment functionality. When enrollments are completed by working with SHOP issuers or SHOP-registered agent or brokers, it may not always be immediately apparent to the issuer whether the enrollment is through the SHOP, and whether it is part of an employer's offering a choice of plans. To ensure that issuers offering QHPs through a SHOP do so in a manner that is consistent with our proposed interpretation of the SHOP provisions of the statute, we propose to add new paragraphs (e) and (f) in § 156.286. These would require that QHP issuers offering a QHP through the SHOP accept enrollments from groups in accordance with the employer choice policies applicable to the SHOP under § 155.706(b)(3), that they maintain processes sufficient to identify whether a group market enrollment is an enrollment through the SHOP, and they maintain records of SHOP enrollments for a period of 10 years following the enrollment. Proposed paragraph (f) also would require issuers to utilize a uniform enrollment form, as required by section 1311(c)(1)(F) of the PPACA. As noted in the preamble to § 155.716, we intend to update the single employer application to reflect our proposed changes in § 155.731. An issuer would be considered to satisfy this proposed requirement if it used that application form.

Finally, we propose in paragraph (g) to state that the requirements contained within § 156.286 are only applicable for plan years beginning on or after January

[65] *https://www.regtap.info/uploads/library/QHP_RateOutlier_FAQ_5CR_071017.pdf.*

[66] This review generally identifies rates that are relatively low compared to other QHP rates in the same rating area. The identification of a QHP rate as an outlier does not necessarily indicate inappropriate rate development; instead, this information helps inform the determination of whether certifying the QHP to be offered on the Exchange would be in the interest of consumers.

1, 2018, effective on the effective date of the final rule, if finalized as proposed.

d. Meaningful Difference Standard for Qualified Health Plans in the Federally-Facilitated Exchanges (§ 156.298)

We propose to remove § 156.298 to eliminate meaningful difference standards for QHPs offered through a Federally-facilitated Exchange or State-Based Exchange on the Federal platform. Under this standard, in order to be certified as a QHP, a plan must be meaningfully different from all other QHPs offered by the same issuer of that plan within a service area and level of coverage in the Exchange. As defined in § 156.298(b), QHPs are considered meaningfully different from other plans if a reasonable consumer would be able to identify one or more material differences among five key characteristics between the plan and other plans to be offered by the same issuer.

This meaningful difference standard was implemented to make it easier for consumers to understand differences between plans, and choose the right plan option for them. However, with fewer issuers participating in the Exchange, and fewer plans for consumers to choose from, we propose to remove these standards, as we no longer believe the requirement is necessary. We believe removing the meaningful difference standard would encourage plan design innovation, by providing more flexibility to issuers in designing plans, and thus increase plan offerings and choice for consumers.

e. Other Considerations

We seek comment on ways in which HHS can foster market-driven programs that can improve the management and costs of care and that provide consumers with quality, person-centered coverage. As we stated in the 2017 and 2018 Payment Notices, we believe that innovative issuer, provider, Exchange, and local programs or strategies can successfully promote and manage care, in a manner that contributes to better health outcomes and lower rates while creating important differentiation opportunities for market participants. We seek comment on ways in which we can facilitate such innovation, and in particular on whether there are regulations or policies in place that we should modify in order to better meet the goals of affordability, quality, and access to care.

We are particularly interested in receiving comments on how we may encourage value based insurance design within the individual and small group markets and ways to support issuers in using cost sharing to incentivize more cost-effective enrollee behavior and higher quality health outcomes, in accordance with section 2713(c) of the PHS Act. Currently, under our rules, issuers have considerable discretion in the design of cost-sharing structures, subject to certain statutory AV requirements, non-discrimination law and rules, and other applicable law, such as the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

We would like to encourage issuers to offer HDHPs that can be paired with an HSA as a cost effective options for enrollees. While the proportion of available HSA-eligible HDHPs has been stable in the FFEs, the percentage of enrollees in HDHPs has decreased slightly over the last 3 years as there are certain technical barriers for issuers in offering HDHPs in the EHB compliant market.[67] We are particularly interested in exploring how to use plan display options on HealthCare.gov to promote the availability of HDHPs to applicants, and seek comment on how best to do so.

We are also interested in value based insurance designs that focus on cost effective drug tiering structures; address overused, higher cost health services; provide innovative network design that incentivizes enrollees to use higher quality care; and promote use of preventive care and wellness services. We solicit comments on how HHS can better encourage these types of plan designs, and whether any existing regulatory provisions or practices discourage such designs.

4. Standards for Downstream and Delegated Entities (§ 156.340)

This section discusses the responsibilities of a QHP issuer and its applicable downstream entities. We propose to amend paragraph (a)(2) to add a cross reference to proposed § 155.706 to align with other proposals made throughout this proposed rule.

5. Eligibility and Enrollment Standards for Qualified Health Plan Issuers on State-Based Exchanges on the Federal Platform (§ 156.350)

Section 156.350 describes the eligibility and enrollment standards for issuers that offer QHP coverage in the SBE–FPs. Currently, § 156.350(a)(1) and (2) state that for a QHP issuer to participate in an SBE–FP for SHOP, it must comply with the requirements at § 156.285(a)(4)(ii) and § 156.285(c)(5) and (c)(8)(iii), respectively. However, as discussed elsewhere in this proposed rule, to align with our proposal regarding the SHOPs, we are proposing that these referenced requirements at § 156.285 would not be applicable for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed. We therefore propose to amend § 156.350(a)(1) and (a)(2) to specify that they only apply through plan years beginning prior to January 1, 2018.

We seek comment on these proposals.

6. Minimum Essential Coverage

a. Other Coverage That Qualifies as Minimum Essential Coverage (§ 156.602)

A CHIP program is a type of government-sponsored coverage, defined under title XXI of the Act that provides low-cost health coverage to children in low-income families that do not otherwise have health coverage. States may be eligible to receive Federal funds to initiate and expand such programs. A CHIP buy-in program, a ''full pay'' option where a covered family pays the full premium typically without any Federal or State assistance, often provides similar or identical benefits as the State CHIP program for children in families that do not financially qualify for the State's CHIP program.[68] CHIP buy-in programs are not authorized or funded under title XXI of the Act, and therefore are not government-sponsored minimum essential coverage under section 5000A(f)(1)(A) of the Code. However, CHIP buy-in programs may be recognized as minimum essential coverage by the Secretary in consultation with the Secretary of the Treasury, pursuant to the Secretary's authority under section 5000A(f)(1)(E) of the Code.

In considering whether to recognize coverage as minimum essential coverage under the application process provided for in § 156.604, HHS generally evaluates whether the coverage complies with substantially all the requirements of title I of the PPACA that apply to non-grandfathered coverage in the individual market, including the essential health benefits requirements.

[67] For instance, the maximum annual limitation on cost sharing established at section 1302(c) of the PPACA is increasing at a faster rate than the maximum out of pocket cost limits for HDHPs under section 223 of the Code. Therefore, a plan that utilizes the maximum annual limitation on cost sharing under the PPACA would not meet the requirements to be an HDHP under the Code that could be paired with an HSA.

[68] Under IRS Notice 2015–37, individuals who may enroll in a CHIP buy-in program designated as MEC are eligible for MEC under the CHIP buy-in program for purposes of the premium tax credit under section 36B of the Code only if they are enrolled in the program.

Many CHIP buy-in programs have benefits identical to those offered through the State's CHIP program under title XXI; however, those benefits might not meet the ''substantially all'' standard as currently interpreted by HHS, due primarily to differences between the CHIP buy-in benefits and those offered under the EHB-benchmark plan. While the EHB benchmark plan includes benefits to address the healthcare needs of all individuals, including older adults, the CHIP buy-in programs only offer coverage to children. Consequently, States may need to increase the benefits, and as a result, the cost of CHIP buy-in programs in order to meet the ''substantially all'' standard. Based on discussions with States that sponsor CHIP buy-in programs, we understand that administering two programs with different benefits creates a resource burden on States.

Section 156.602 specifies the types of coverage that are designated as minimum essential coverage pursuant to the Secretary's authority under section 5000A(f)(1)(E) of the Code. We propose to amend this section to include coverage under a CHIP buy-in program that provides identical coverage to that State's CHIP program under title XXI of the Act.

We seek comment on this proposal, including its effects on the individual market risk pool.

We also seek comment on whether CHIP buy-in programs that provide greater coverage should be categorically designated as minimum essential coverage, without submitting an application, or whether such programs must submit an application so that HHS can evaluate any differences from the State's CHIP program under title XXI to ensure that the program substantially resembles the State's CHIP program under title XXI. For example, a CHIP buy-in program could impose less cost sharing or more generous benefits than the State's CHIP program under title XXI. We also seek comment on whether other types of government-sponsored buy-in programs, such as Medicaid buy-in programs, should be recognized as minimum essential coverage without having to submit an application, and whether this proposal should apply to such programs.

b. Requirements for Recognition as Minimum Essential Coverage (§ 156.604)

We recognize that the benefits in some CHIP buy-in programs are similar but not identical to the State's CHIP program under title XXI; for example, they impose greater cost sharing or reduced benefits in comparison with the State's CHIP program under title XXI.

Under the proposed changes to § 156.602, CHIP buy-in programs with benefits that differ at all from the State's CHIP program under title XXI would still be required to submit an application with HHS if they wish to be recognized as minimum essential coverage. HHS would evaluate such programs based on the ''substantially all'' standard that currently applies under § 156.604. We seek comment on whether HHS should create a new standard of review under which such programs must ''substantially resemble'' the State's CHIP program under title XXI to qualify as minimum essential coverage under § 156.604. The ''substantially resemble'' standard would not be as stringent as the ''substantially all'' standard, but would give HHS the flexibility to evaluate CHIP buy-in programs based on whether they are providing coverage similar to the State's CHIP program under title XXI and are meeting the health requirements of the children enrolled in the coverage. We are not proposing to codify the ''substantially resemble'' standard in § 156.604; however, we propose that the Secretary use the Secretary's discretion and authority under section 5000A(f)(1)(E) of the Code to recognize as minimum essential coverage a CHIP buy-in program that provides coverage similar to the State's CHIP program under title XXI or when the facts and circumstances indicate that the CHIP buy-in program should be recognized as minimum essential coverage. We seek comment on this proposal, including its effects on the individual market risk pool.

7. Quality Rating System (§ 156.1120)

We recognize that social risk factors play a major role in health, and one of our core objectives is to improve patients' outcomes including reducing health disparities. In addition, we seek to ensure that the quality of care furnished by providers and health plans is assessed as fairly and accurately as possible under HHS quality reporting programs, including the Quality Rating System established under section 1311(c)(3) of the PPACA, while helping to ensure that individuals and populations receive high quality, person-centered care. In response to several comments we received from the Request for Information, we continue to assess ways to reduce burden and promote State flexibility in the implementation of all statutorily required Exchange quality programs, including the Quality Rating System, and we continue to prioritize strategies to improve the value for consumers. We received many comments in response to our request for public comment as part of the annual Quality Rating System Call Letter process, on whether we should account for social risk factors in the Quality Rating System, which provides quality ratings (or star ratings from 1 to 5 stars) that account for member experience, medical care and health plan administration for QHPs, offered through an Exchange. We are not proposing amendments to the Quality Rating System in this rule. We continue to evaluate what method or combination of methods would be most appropriate for accounting for social risk factors in the Quality Rating System as well as other HHS quality reporting programs. We have closely reviewed related reports by the Office of the Assistant Secretary for Planning and Evaluation [69] and the National Academies of Sciences, Engineering, and Medicine.[70] In addition, we continue to await the results of the National Quality Forum trial [71] on risk adjustment for quality measures. We continue to advance healthcare quality across QHPs, as well as providers, to improve outcomes of their enrollees with social risk factors without masking potential disparities or minimizing incentives to improve the outcomes for disadvantaged populations.

We seek comment as part of this rulemaking on types of social risk factors that may be most appropriate as well as the methods to account for social risk factors for QHP issuer quality reporting. Examples of social risk factors include: Low income subsidy; race and ethnicity; and geographic area of residence. Approaches to account for social risk factors include stratifying measure scores or risk adjustment of a particular measure. We seek comment on which social risk factors could be used alone or in combination, current data sources where this information would be available, and whether other data should be collected to better capture the effects of social risk. We will

[69] Office of the Assistant Secretary for Planning and Evaluation. Report to Congress: Social Risk Factors and Performance under Medicare's Value-based Purchasing Programs. (December 21, 2016). Available at *https://aspe.hhs.gov/pdf-report/report-congress-social-risk-factors-and-performance-under-medicares-value-based-purchasing-programs.*

[70] National Academies of Sciences, Engineering, and Medicine. Accounting for Social Risk Factors in Medicare Payment. (January 10, 2017). Available at *http://nationalacademies.org/hmd/reports/2017/accounting-for-social-risk-factors-in-medicare-payment-5.aspx.*

[71] National Quality Forum socioeconomic status (SES) trial period Web site at *http://www.qualityforum.org/ProjectDescription.aspx?projectID=80124.*

take commenters' input into consideration as we continue to assess the appropriateness and feasibility of accounting for social risk factors in the Quality Rating System.

8. Direct Enrollment With the QHP Issuer in a Manner Considered To Be Through the Exchange (§ 156.1230)

We propose to amend paragraph (b)(2) of § 156.1230 to conform with the proposed amendments to § 155.221. The proposed change would require that, prior to a QHP issuer's Internet Web site being used to complete a QHP selection, the QHP issuer must engage a third party entity in accordance with § 155.221 to demonstrate operational readiness and compliance with applicable requirements. For a discussion of the provisions of this proposed rule related to third party entities performing operational readiness reviews, please see the preamble to § 155.221.

F. Part 157—Employer Interactions With Exchanges and SHOP Participation

1. Qualified Employer Participation Process in a SHOP for Plan Years Beginning Prior to January 1, 2018 (§ 157.205)

As discussed in the following section, we propose to modify the regulatory requirements regarding the qualified employer participation process in a SHOP for plan years beginning on or after January 1, 2018 and to introduce those requirements in a new § 157.206. To reflect the proposal that the requirements currently in § 157.205 would apply only for plan years beginning before January 1, 2018, we propose to amend the heading of § 157.205 and add paragraph (h), to state that the section would apply only for plan years that begin prior to January 1, 2018. These changes would be effective on the effective date of the final rule, if finalized as proposed.

2. Qualified Employer Participation Process in a SHOP for Plan Years Beginning on or After January 1, 2018. (§ 157.206)

Section 157.205 describes requirements for participating SHOP employers. To reflect the proposal to allow SHOPs to operate in a leaner fashion, we are proposing several changes to the requirements related to qualified employer participation process in a SHOP for plan years beginning on or after January 1, 2018, and propose to introduce these requirements in § 157.206. With the exception of the proposed changes to the process described here, the process would remain the same as in § 157.205. The proposals described in this section would be effective on the effective date of the final rule, if finalized as proposed.

Paragraph (d) of § 157.205 requires a qualified employer to submit any contribution towards the premiums of any qualified employee according to the standards and processes described in § 155.705. Because we are proposing that the requirements in § 155.705 regarding employer contribution methods would not apply for plan years beginning on or after January 1, 2018, we also propose that the requirement in § 157.705(d) would not apply for those plan years.

Paragraph (e)(1) of § 157.205 describes obligations of qualified employers to employees hired outside of the initial or annual open enrollment periods. We propose in § 157.206(d) that qualified employers must provide employees hired outside of the initial or annual open enrollment period with information about the enrollment process. We propose that the requirement in paragraph (e)(1) of § 157.705, which requires qualified employers to provide these employees with an enrollment period in accordance with § 155.725(g), would not be included in § 157.206, as we are proposing that the requirement in § 155.725(g) would not be applicable for plan years beginning on or after January 1, 2018. We also propose that the requirement in § 157.205(e)(2) to provide information about the enrollment process in accordance with § 155.725 would not apply for plan years beginning on or after January 1, 2018 to reflect the proposal that the process provided for in many of the provisions in § 155.725 would not apply for those plan years.

We also propose that the requirements in § 157.205(f) regarding the process for notifying the SHOP in the event the eligibility status of an employee, or employee's dependent has changed would not apply for plan years beginning on or after January 1, 2018. Under the proposed approach for plan years beginning on or after January 1, 2018, SHOPs would not be required to process employee enrollment, so there would be no reason for all qualified employers to provide such information.

Further, we propose that the requirement in § 157.205(g) that qualified employers adhere to the annual employer election period under § 155.725(c) would not apply for plan years beginning on or after January 1, 2018. Elsewhere, we propose that the annual employer election period provision in § 155.725(c) would not apply for those plan years, and this proposal would reflect that removal.

Finally, we propose in paragraph (e) of § 157.206 to include new requirements for qualified employers reflective of the proposed approach for SHOPs generally. First, since we propose in § 155.716(f) that an employer's determination of eligibility to participate in the SHOP remains valid until the employer makes a change that could end its eligibility under § 155.710(b), we propose in § 157.205(e)(1) that employers must submit a new application to the SHOP if the employer makes a change that could end its eligibility under § 155.710 or withdraw from participation in the SHOP. Second, because under our proposed changes SHOPs would not be required to process group enrollments, and therefore would not necessarily communicate with QHP issuers about employer eligibility determinations, we propose to require employers to notify the QHP issuer of an unfavorable eligibility determination. However, we propose that the employer be required to provide the notification within 5 business days of the end of any applicable appeal process under § 155.741. Specifically, the end of the appeal process could occur when the time to file an appeal lapses without an appeal being filed, when the appeal is rejected or dismissed, or when the appeal process concludes with an adjudication by the appeals entity, as applicable. We also propose in paragraph (e)(3) to describe the employer's obligations regarding loss of eligibility to participate in a SHOP or termination of enrollment or coverage through the SHOP, if this proposed approach were to be finalized. Given that under the proposed approach there would not necessarily be communication between the SHOP and a participating QHP issuer regarding employer eligibility, enrollment, or terminations, there may be no way for the SHOP to notify an issuer in the event an employer becomes ineligible to participate in SHOP. Therefore, we propose to add paragraph (e)(3) to require employers to notify an issuer of a loss of eligibility to participate in SHOP, or a desire to terminate SHOP enrollment or coverage.

We propose in paragraph (f) of § 157.205 that the section would apply for plan years beginning on or after January 1, 2018, only. If finalized, these changes would become effective as of the effective date of the final rule.

We seek comment on this proposal.

G. Part 158—Issuer Use of Premium Revenue: Reporting and Rebate Requirements

1. Reporting of Federal and State Taxes (§ 158.162)

Section 2718 of the PHS Act requires that Federal and State taxes be reported, but that such amounts are to be excluded from premium revenue when calculating an issuer's MLR and accompanying rebates. However, the statute does not define what is included in Federal and States taxes. The MLR December 1, 2010, interim final rule (75 FR 74864) interprets this language and broadly describes Federal and State taxes that must be reported but are excluded from premiums in the MLR and rebate calculations, and Federal and State taxes that must be reported and are not excluded from premiums in MLR and rebate calculations. During our review of MLR reports submitted by issuers, HHS noted that some issuers were excluding employment taxes (such as the Federal Insurance Contributions Act (FICA), the Railroad Retirement Tax Act (RRTA), and the Federal Unemployment Act (FUTA) taxes; State unemployment/reemployment insurance and State employment training taxes; and other similar taxes and assessments) from earned premiums in their MLR and rebate calculations, whereas most issuers were including employment taxes in earned premiums in the MLR and rebate calculations. In order to provide consistency and clarity for MLR reporting, HHS amended § 158.162 in the 2016 Payment Notice (80 FR 10750) to specify that all issuers must include employment taxes in earned premiums and must not deduct such taxes in the MLR and rebate calculations starting with the 2016 MLR reporting year.

However, in light of the changes in the market landscape since § 158.162 was amended in early 2015, HHS is considering whether revising the decision on the treatment of employment taxes may help improve market stability, particularly in the individual market, by providing an incentive for issuers to enter or remain in the market. In addition, in response to the Request for Information, we received several comments in favor of allowing issuers to deduct such taxes from these calculations. Therefore, we are inviting comments on whether, in order to encourage issuer participation and competition in the markets, HHS should revise paragraph (a)(2) and paragraph (b)(2)(iv) of § 158.162 to allow all issuers to deduct Federal and State employment taxes from premiums in their MLR and rebate calculations, starting with the 2017 MLR reporting year for reports to be filed by July 31, 2018. We are not reconsidering the treatment of the other taxes that cannot be excluded from premiums in MLR and rebate calculations (for example, Federal taxes on investment income and capital gains) because we believe those taxes can be distinguished from employment taxes and the NAIC had explicitly recommended to HHS that such taxes should not be excluded from premiums.[72]

We solicit comments on this approach from all stakeholders, including on whether we should instead amend the MLR regulations to collect the employment tax data separately from other tax data as an informational item on the MLR Annual Reporting Form to gather data to inform a decision regarding whether to amend the regulation for future years, and whether changing the treatment of employment taxes would be likely to help improve market stability and competition.

2. Allocation of Expenses (§ 158.170)

For a discussion of the proposed amendment to § 158.170(b) regarding the description of the allocation method for quality improvement activity (QIA) expenses, please see the preamble to § 158.221.

3. Formula for Calculating an Issuer's Medical Loss Ratio (§ 158.221)

We propose amending § 158.221 by adding new paragraph (b)(8) to provide issuers with an option to report quality improvement activity expenses as a single fixed percentage of premium amount starting with the 2017 MLR reporting year (for reports to be filed by July 31, 2018). We also propose making conforming amendments to § 158.170(b) (Allocation of expenses) in order to recognize the new proposed option for reporting QIA expenses.

Section 2718(c) of the PHS Act tasked the NAIC with establishing standardized definitions and methodologies for calculating MLR and rebates, subject to the certification of the Secretary. Consistent with the NAIC's recommendation to HHS,[73] the MLR interim final rule, published on December 1, 2010 (75 FR 74863), allows issuers to include in the MLR numerator expenditures for five categories of activities that improve health care quality. Accordingly, issuers are currently required to report QIA expenditures in alignment with the five separate categories codified in § 158.150(b)(2)(i)–(v). Additionally, § 158.170 requires issuers to use and disclose specific allocation methods to report expenses, including QIA expenditures.

However, in the course of conducting the MLR audits, HHS observed that the current MLR regulations require a substantial effort by issuers to accurately identify, track and report QIA expenses. HHS has also observed that, between 2011 and 2015, issuers that did report QIA expenses have reported spending, on average, a consistent percentage of premium on total QIA: approximately 0.7 percent in 2011, and 0.8 percent in 2012 through 2015.

Given issuers' relatively low and consistent reported expenditures on QIA and the significant burden associated with identifying, tracking and reporting these expenditures, we propose adding § 158.221(b)(8) to permit issuers an option to report on their MLR reporting form a single QIA amount equal to 0.8 percent of earned premium in the relevant State and market, in lieu of tracking and reporting the issuer's actual expenditures for QIA, as defined in § 158.150 and § 158.151. Under this proposal, all issuers would be able to include 0.8 percent of earned premium in their MLR numerator as QIA expenses for the relevant State and market. This is in line with a comment received in response to the Request for Information requesting that the MLR formula be simplified. The accompanying proposed amendments to § 158.170(b) would require issuers that elect the option to include 0.8 percent of earned premium for QIA expenses to indicate as such when describing the allocation method used for QIA expenses. Issuers that spend more than 0.8 percent of earned premium on QIA would have the option to report the total actual, higher amount spent and, if choosing this option, would have to report QIA in the five categories described in § 158.150(b)(2)(i)–(v), as well as comply with the allocation of expenses requirements established under § 158.170. We seek comment on this proposal.

[72] National Association of Insurance Commissioners—Model Regulation Service, Regulation for Uniform Definitions and Standardized Methodologies for Calculation of the Medical Loss Ratio for Plan Years 2011, 2012 and 2013 per Section 2718 (b) of the Public Health Service Act (Oct 27, 2010), *available at http://www.naic.org/documents/committees_ex_mlr_reg_asadopted.pdf.*

[73] National Association of Insurance Commissioners—Model Regulation Service, Regulation for Uniform Definitions and Standardized Methodologies for Calculation of the Medical Loss Ratio for Plan Years 2011, 2012 and 2013 per Section 2718 (b) of the Public Health Service Act (Oct 27, 2010), *available at http://www.naic.org/documents/committees_ex_mlr_reg_asadopted.pdf.*

4. Potential Adjustment to the MLR for a State's Individual Market (Subpart C)

We propose to amend 45 CFR part 158, subpart C to modify the process and criteria for the Secretary to determine whether to adjust the 80 percent MLR standard in the individual market in a State. This proposal is consistent with comments we received on the Request for Information requesting that issuers be allowed to include additional expenses in their MLR calculation, since States would be able to more easily request reductions of the individual market MLR standard, which would effectively enable issuers in those States to spend more premium on additional expenses.

Section 2718(d) of the PHS Act provides that the Secretary may adjust the MLR standard in the individual market if the Secretary determines it appropriate on account of the volatility of the individual market due to the establishment of Exchanges. The MLR December 1, 2010, interim final rule (75 FR 74864) set forth the framework for a State to request such an adjustment and the process and criteria for the Secretary to determine whether to grant a State's request. Subpart C of 45 CFR part 158 specifies that the adjustment request must be initiated by the State, the adjustment may be granted for up to 3 years at a time, the information that the State must provide to support its request, and the criteria that HHS may consider in making a determination. It also requires the Secretary to invite public comments on the adjustment requests, allows States to hold optional public hearings, and enables States to request reconsideration of adverse determinations.

Section 158.301 specifies that an adjustment may be granted only if there is a reasonable likelihood that application of the 80 percent MLR standard may destabilize the individual market in a State. Because in the current environment, it generally is not the MLR standard in isolation but rather factors that, taken together, can contribute to instability of the individual market in certain States, the current framework restricts the States' ability to obtain adjustments to the MLR standard as part of innovative solutions for stabilizing their individual markets. Therefore, as outlined below, we propose to make amendments throughout subpart C of part 158 to allow for adjustments to the individual market MLR standard in any State that demonstrates that a lower MLR standard could help stabilize its individual market, and to streamline the process for applying for such adjustments to reduce burdens for States and HHS.

a. Standard for Adjustment to the Medical Loss Ratio (§ 158.301)

Currently, § 158.301 permits the Secretary to adjust the MLR standard that must be met by issuers offering coverage in the individual market in a State for a given MLR reporting year, if the Secretary determines that the 80 percent MLR standard may destabilize the individual market in that State. For the reasons described above, we propose to amend § 158.301 to permit the Secretary to adjust the individual market MLR standard in any State if the Secretary determines that there is a reasonable likelihood that an adjustment to the 80 percent MLR standard will help stabilize the individual market in that State. We seek comment on this proposal.

b. Information Regarding the State's Individual Health Insurance Market (§ 158.321)

We propose to amend § 158.321 to modify the information that a State must submit to the Secretary with its request for an adjustment to the 80 percent MLR standard in its individual market. Currently, § 158.321 requires the State to describe the State MLR standard and formula for assessing compliance (§ 158.321(a)), its market withdrawal requirements (§ 158.321(b)), and the mechanisms available to the State to provide consumers with options for alternate coverage (§ 158.321(c)). This information is used to determine what a State is able to do to mitigate instability in its individual market without an adjustment to the MLR standard. Because we seek to make the MLR adjustment process less burdensome on States and make adjustments available to enable States to develop innovative solutions for stabilizing their individual markets, we propose to remove the requirements in § 158.321(a) through (c). Further, all States must follow the Federal minimum standards for the MLR calculation, market withdrawals, and guaranteed issue and limits on health status ratings; therefore, we believe it is not necessary for a State to include this information as part of its MLR adjustment request. Additionally, we propose to redesignate paragraph (d) as paragraph (a) and to revise the redesignated paragraph to describe the information the State must submit regarding the State's individual health insurance market, as outlined below.

Current regulations require a State to provide detailed individual market enrollment and premium data for each issuer at the product level as well as each issuer's market share of the individual market in the State (§ 158.321(d)(1)). We consider this requirement unduly burdensome and propose to replace it at § 158.321(a)(2) with a requirement to submit information on total number of enrollees (life-years and covered lives) for each type of coverage sold or renewed in the State's individual market, as described in more detail below. We believe that enrollment data on life-years and covered lives for each type of individual market coverage, rather than the number of individual enrollees by product, would provide sufficient information because the much more granular product-level detail is not necessary for HHS to evaluate the likelihood and magnitude of enrollees potentially moving from one type of coverage to the other and the impact this may have on the State individual market's risk pool and market competition. ''Life-years,'' which the MLR Annual Reporting Form Instructions define as member-months divided by 12, generally represent average enrollment over the course of a year, while ''covered lives'' are defined in those Form Instructions as enrollment on the last day of the year. Similarly, we propose to eliminate the requirement currently in § 158.321(d)(1) to submit product-level premium data in favor of the total earned premium data in the proposed § 158.321(a)(1) as described below, and to eliminate the § 158.321(d)(1) requirement to submit the issuer's individual market share because HHS can determine it based on the MLR data available to HHS.

Section 158.321(d)(2) also currently requires States to submit information regarding the total earned premium (§ 158.321(d)(2)(i)), agent and broker commissions (§ 158.321(d)(2)(iv)), and risk-based capital (RBC) level (§ 158.321(d)(2)(viii)), for each issuer that offers individual market coverage to more than 1,000 enrollees. We consider this information to continue to be relevant to determining the health of a State's individual market and whether an adjustment to the MLR standard could help stabilize the market. We therefore propose to continue to require States to include information on total earned premium (proposed § 158.321(a)(1)) and total agent and broker commission expenses (proposed § 158.321(a)(3)) for each type of coverage sold or renewed in the State's individual market, as described in more detail below, as well as the RBC level (proposed § 158.321(a)(5)), which, due to the manner in which RBC is calculated, would only be appropriate to

report at the issuer level, rather than for each type of coverage. We also propose to revise the accompanying regulation text for these data elements for readability. We further propose that State requests should include information on total incurred claims (proposed § 158.321(a)(1)) for each type of individual market coverage described below, in lieu of the current more burdensome requirement to provide reported and estimated individual market MLRs (§ 158.321(d)(2)(ii) through (iii)).

We propose to modify these requirements to require States to only include the information for each issuer actively offering individual market coverage. In most States, only a few issuers are actively participating, while the majority of issuers that have policies in force are not active and generally cover a much smaller percentage of the market. HHS can obtain the limited information on such issuers that would be relevant to analyzing a State's request from the combination of the MLR data available to HHS and the data on active issuers provided by the State, rather than requiring a State to submit data on these issuers as part of its request for an adjustment. We also propose to add a new § 158.321(b) to require that a State request include the individual market data required in the proposed new § 158.321(a)(1) through (4) and (6) separately for each issuer actively offering individual market plans in that State group by the following categories, as applicable: On-Exchange, off-Exchange, grandfathered health plans as defined in § 147.140, coverage that meets the criteria for transitional policies outlined in applicable guidance,[74] and non-grandfathered single risk pool coverage, in order to enable the Secretary to assess the situation in the State's individual market and to appropriately evaluate the State's proposal. Proposed new § 158.321(b) would also require the State to report the RBC information at the issuer level for each issuer actively offering coverage in the State's individual market. A State would not be required to provide information on student health insurance coverage as defined in § 147.145 or individual market excepted benefits as defined in § 148.220.

To further reduce the burden on States, we propose to remove the requirements to provide net underwriting profit for each issuer's total business in the State and after-tax profit and profit margin for the individual market and total business in the State (§ 158.321(d)(2)(vii)), as well as to rename the remaining requirement to provide the individual market ''net underwriting profit'' to ''net underwriting gain'' to more accurately reflect the accounting term (proposed § 158.321(a)(4)). We believe data on the individual market net underwriting gain provides sufficient information because an issuer's total gain or loss in a State does not necessarily impact the issuer's decision to participate in the individual market. We also propose to delete the requirement to provide information on estimated MLR rebates (§ 158.321(d)(2)(v)) to reduce the burden on States because HHS can estimate rebate amounts based on available data. Additionally, we propose to revise the language at current paragraph § 158.321(d)(2)(ix), proposed to be redesignated at § 158.321(a)(6), to require the State to provide information not only on notices by issuers covered in § 158.321(a) of market exits, but also the equally or more pertinent issuer notices of beginning to offer coverage in the individual market, as well as ceasing or commencing offering individual market coverage on the Exchange or in specific geographic areas (for example, counties); and to add a new § 158.321(c) to require similar information on issuers not actively offering coverage in the individual market that have indicated an intent to enter or exit the individual market, including ceasing or commencing offering individual market coverage on the Exchange or in specific geographic areas. Lastly, we recognize that in many situations the information proposed to be required in § 158.321(a) will only be available for the preceding calendar year, but we propose to provide States with an option to also include information for the current year (where available), which may be more relevant if a State makes a request in a later part of the year.

We seek comment on this proposal.

c. Proposal for Adjusted Medical Loss Ratio (§ 158.322)

To reduce the burden on States, we propose to remove paragraphs (a), (c) and (d) of § 158.322, which would remove the requirements for a State to justify how its proposed adjustment was determined, and to estimate rebates that would be paid with and without an adjustment because HHS can make these estimates instead of the State. Consistent with our proposed changes to § 158.301, we propose to revise § 158.322 to require the State to both provide its proposed, adjusted MLR standard and explain how this proposed standard would help stabilize its individual market. We also propose to delete current paragraph (b), which requires an explanation of how an adjustment would permit issuers to adjust current business models and practices in order to meet an 80 percent MLR as soon as is practicable, to further reduce burden on States submitting adjustment requests.

We seek comment on this proposal.

d. Criteria for Assessing Request for Adjustment to the Medical Loss Ratio (§ 158.330)

Section 158.330 lists the criteria that the Secretary may consider in determining whether to approve a State request to adjust the 80 percent MLR standard for the individual market. We are proposing amendments throughout the section to reflect the proposal in § 158.301 to allow adjustments if the Secretary determines the adjustment would help stabilize the individual market in that State, and the proposed changes to the information requirements in § 158.321. These changes are intended to further streamline the process and reduce burdens for States and HHS. Specifically we propose conforming amendments to the introductory text of § 158.330 to provide that the Secretary may consider the identified criteria when assessing whether an adjustment to the individual market MLR standard would be reasonably likely to help stabilize the individual market in a State that has requested such an adjustment. We propose to replace the information currently outlined at § 158.330(a)(1)–(4) regarding individual market issuers reasonably likely to exit the State with information regarding the number and financial performance of issuers actively offering individual market coverage on-Exchange, off-Exchange, grandfathered health plans as defined in § 147.140, coverage that meets the criteria for transitional policies outlined in applicable guidance, and non-grandfathered single risk pool coverage; the number of issuers reasonably likely to cease or begin offering such individual market coverage in the State; and the likelihood that an adjustment would increase competition in the State's individual market, including in underserved areas (proposed § 158.330(a)). We propose to delete the existing criteria captured at § 158.330(b) related to consideration of the number of individual market enrollees covered by issuers that are reasonably likely to exit the State's individual market absent

[74] See, for example, CMS ''Insurance Standards Bulletin Series—Information—Extension of Transitional Policy through Calendar Year 2018 (February 23, 2017) available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Extension-Transitional-Policy-CY2018.pdf.*

the requested adjustment because the goal of a State request for adjustment may be to ensure that health insurance coverage is available to all, rather than a certain percentage of, consumers who want it, and that consumers not only have coverage, but also a choice of several issuers. We propose conforming amendments to the criteria currently captured at § 158.330(c), proposed to be redesignated at § 158.330(b), regarding whether an adjustment might improve consumers' access to agents and brokers. Similar to the proposed amendments to § 158.321 described above to remove the requirement for States to provide information on available mechanisms to provide alternate coverage, we propose to replace the current criteria outlined at § 158.330(d)(1)–(5) with consideration of information on the capacity of any new issuers or issuers remaining in the individual market to write additional business in the event one or more issuers were to cease or begin offering individual market coverage on Exchanges, in certain geographic areas, or in the entire individual market in the State (proposed § 158.330(c)). We propose to retain and modify the existing criteria at § 158.330(e), proposed to be redesignated at § 158.330(d), on the impact on premiums charged, and on benefits and cost sharing provided, to consumers by issuers remaining in or entering the individual market in the event one or more issuers were to cease offering individual market coverage on the Exchange, in certain geographic areas, or in the entire individual market in the State. Finally, the proposed amendments retain the existing criteria at § 158.330(f), proposed to be redesignated at § 158.330(e), for consideration of any other relevant information submitted by the State.

We seek comment on this proposal.

e. Treatment as a Public Document (§ 158.341)

Because the format in which States may submit requests for adjustments may not comply with Federal requirements for documents posted on Federal Web sites, some of these documents may not be able to be posted directly to the applicable Federal Web site. For example, a State may submit spreadsheets containing data or copies of issuer letters in a format that is not accessible for individuals with visual impairments. However, HHS is committed to transparency and making this information promptly available to the public. Therefore, we propose to amend § 158.341 to reflect that Federal requirements for documents posted on Federal Web sites may not permit these documents to be posted, and to specify that instructions for the public to access information on requests for adjustment to the MLR standard submitted by States will be provided on the Secretary's Internet Web site.

f. Subsequent Requests for Adjustment to the Medical Loss Ratio (§ 158.350)

We propose to make conforming amendments to § 158.350, which describes the information that a State must submit with a subsequent request for an adjustment to the MLR standard, to make this information consistent with our proposed changes to § 158.301 and § 158.330.

We seek comment on this proposal.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. This proposed rule contains information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 12. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the required issues under section 3506(c)(2)(A) of the PRA for the following information collection requirements.

A. Wage Estimates

To derive wage estimates, we generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for fringe benefits and overhead) for estimating the burden associated with the ICRs.[75] Table 11 in this proposed rule presents the mean hourly wage (calculated at 100 percent of salary), the cost of fringe benefits and overhead, and the adjusted hourly wage.

As indicated, employee hourly wage estimates have been adjusted by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. Nonetheless, there is no practical alternative, and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

TABLE 11—ADJUSTED HOURLY WAGES USED IN BURDEN ESTIMATES

Occupation title	Occupational code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Business Operation Specialist *	13–1199	$31.59	$31.59	$63.18
Operations Manager	11–1021	58.70	58.70	117.40
Software Developers, Systems Software	15–1133	53.17	53.17	106.34
Actuary	15–2011	54.87	54.87	109.74
Actuary *	15–2011	40.41	40.41	80.82
Financial Examiner *	13–2061	33.02	33.02	66.04
Financial Analyst *	13–2051	34.39	34.39	68.78

[75] See May 2016 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates at *https://www.bls.gov/oes/current/oes_nat.htm.* For State Government Employees see NAICS 999200—State Government, excluding schools and hospitals (OES Designation) *https://www.bls.gov/oes/current/naics4_999200.htm.*

TABLE 11—ADJUSTED HOURLY WAGES USED IN BURDEN ESTIMATES—Continued

Occupation title	Occupational code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Financial Manager*	11–3031	45.83	45.83	91.66
Lawyer*	23–1011	44.87	44.87	89.74
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	43–6014	17.38	17.38	34.76
Commissioner**	.....	58.45	58.45	116.90
Market Research Analyst	13–1161	33.95	33.95	67.90

*Denotes occupations were wages were obtained for State Government employees (*https://www.bls.gov/oes/current/naics4_999200.htm*).
**Data on compensation of State Insurance Commissioners collected by the Council of State Governments and compiled by Ballotpedia (*http://www.ballotpedia.org*). The wage data used in the burden estimates include the cost of fringe benefits and the adjusted hourly wage.

B. ICRs Regarding State Flexibility for Risk Adjustment (§ 153.320)

We are proposing to allow State regulators to request a reduction in the calculation of Statewide average premium, beginning for the 2019 benefit year. HHS would require any State that intends to request this flexibility to submit its proposal for an adjustment to the Statewide average premium in the small group market within 30 calendar days after publication of the proposed HHS notice of benefit and payment parameters for the applicable benefit year for timely review and issuer notification prior to rate setting. The burden associated with this requirement is the time and effort for the State regulators to submit its proposal to HHS. We estimate that it will take a business operations specialist 32 hours (at a rate of $63.18 per hour) to prepare the request and 16 hours for a senior manager (at a rate of $117.40 per hour) to review the request and transmit it electronically to HHS. We estimate that each State seeking a reduction in the average premium calculation will incur a burden of 48 hours at a cost of approximately $3,900 per state to comply with this reporting requirement (32 hours for the insurance operations analyst and 16 hours for the senior manager). Although we are unable to precisely estimate the number of States that will make this request, we expect that no more than 25 States will make these requests annually, resulting in a total annual burden of approximately 1,200 hours with an associated total cost of $97,504. We seek comment on this estimated burden. We propose to revise the current information collection approved under OMB control number 0938–1155: Standards Related to Reinsurance, Risk Corridors, Risk Adjustment, and Payment Appeals, to account for this additional burden.

C. ICRs Regarding Risk Adjustment Data Validation and 500 Billable Member Months (§ 153.630)

We propose that, beginning with 2017 benefit year risk adjustment data validation, issuers with 500 billable member months or fewer that elect to establish and submit data to an EDGE server would not be subject to the requirement to hire an initial validation auditor or submit initial validation audit results. Issuers at or below the 500 billable member months threshold would have their risk score adjusted by a default error rate equal to the lower of either the national average negative error rate, or the average negative error rate within a State, as set forth in the 2018 Payment Notice. We note that, beginning with 2018 benefit year risk adjustment data validation, these issuers would not be subject to random sampling under the materiality threshold discussed below, and would continue to not be subject to the requirement to hire an initial validation auditor or submit initial validation audit results, but would have their risk scores adjusted by a default error rate annually. We note that if the proposal to implement a central tendency approach to payment adjustments is finalized, then it is possible no adjustment would occur for issuers below this threshold.

HHS estimates that not requiring issuers that have 500 or fewer billable member months Statewide to conduct an initial validation audit beginning in the 2017 benefit year would exempt 50 issuers from an initial validation audit and reduce administrative costs for each issuer by 828 hours with an estimated cost reduction on average of up to $100,000. The total burden reduction for all 50 issuers would be 41,400 hours with an associated reduction in cost or $3,520,000. The postponement of the materiality threshold to the 2018 benefit year would not impact issuer burden relative to previous estimates for the risk adjustment data validation program included in the 2014 and 2015 Payment Notices, particularly given that the program has been converted to a pilot for the first 2 years of operation. We propose to revise the current information collection approved under OMB control number 0938–1155: Standards Related to Reinsurance, Risk Corridors, Risk Adjustment, and Payment Appeals, to account for this reduction in burden.

D. ICRs Regarding Health Insurance Issuer Rate Increases: Disclosure and Review Requirements—Applicability (§ 154.103)

We propose to modify § 154.103(b) to exempt student health insurance coverage as defined in 45 CFR 147.145 from the Federal rate review requirements. Because we would no longer be reviewing rates for student health insurance coverage, we expect to collect less information for the 2019 plan or policy year than collected for previous years. This would lead to a reduction in burden related to the submission and review for issuers and States. We estimate that 75 student health insurance issuers will no longer be required to submit rate increases to HHS. We estimate that each rate review submission takes 11 hours for an actuary (at a rate of $109.74 per hour) to prepare, and that each issuer would submit an average of 2.5 plans, at an estimated annual cost of $3,018, resulting in a total reduction in the annual burden to issuers of approximately 2,063 hours and an associated reduction in cost of approximately $226,339. We estimate that States would no longer submit rate increases for 188 student health insurance plans to HHS. We estimate a reduction in burden to States of one hour per plan for an actuary (at a rate of $80.82 per hour) to prepare and electronically submit the appropriate materials, for a total reduction in burden of approximately 188 hours annually with an associated cost reduction of approximately $15,194. We propose to

revise our current burden estimate approved under OMB control number 0938–1141: Rate Increase Disclosure and Review Reporting Requirements, to reflect the reduced burden on States and issuers.

E. ICRs Regarding Rate Increases Subject to Review (§ 154.200)

We propose to amend § 154.200 to establish a 15 percent default threshold for reasonableness review. We expect this to reduce burden for some issuers because Part II of the Rate Filing Justification (Consumer Justification Narrative) is only required for increases that meet or exceed the threshold. Based on rate filings for the 2018 plan year, we estimate a burden reduction of approximately 17 percent, or 129 fewer Narratives. We reached this estimate by counting the number of submissions with a product subject to review due to an increase between 10 percent and 14.9 percent. We estimate that each Consumer Justification Narrative takes 0.5 hours for an actuary (at a rate of $109.74 per hour) to prepare and electronically transmit this document to HHS. We estimate a total reduction in burden of 65 hours and an associated cost reduction is $7,078. We propose to revise our current burden estimate approved under OMB control number 0938–1141: Rate Increase Disclosure and Review Reporting Requirements, to reflect the reduced burden on issuers.

F. ICRs Regarding the Small Business Health Options Program (SHOP)

We are proposing to grant additional flexibilities, effective on the effective date of the final rule, if finalized as proposed, and applicable for plan years beginning on or after January 1, 2018, to SHOPs, to qualified employers and employees enrolling in SHOP plans, and to participating QHP issuers and SHOP-registered agents and brokers in how they interact with a SHOP. Under the proposals outlined throughout this document, SHOPs would no longer be required to provide enrollment, premium aggregation services, and online enrollment functionality through a SHOP Web site. Instead, small groups would enroll in a SHOP plan through a SHOP-registered agent or broker or through a participating QHP issuer participating in a SHOP. If this rule is finalized as proposed, the FF–SHOPs would follow the approach as outlined. SBEs would have the flexibility to operate a SHOP in a way that meets the needs of their State and complies with the regulatory flexibilities outlined herein.

Under the proposed approach, several pieces of information currently being collected by a SHOP would no longer be collected by a SHOP, or, the way in which the information is collected would change. For example, employers, employees, and agents and brokers may be required to provide the information currently collected by a SHOP to an issuer for the purposes of enrollment in a SHOP plan. The SHOP however, would not be the entity collecting the information and the Federal government thus would experience a reduction in burden. Under the proposals described throughout this rule, employers and employees would no longer be required to visit a SHOP Web site in order to enroll in a SHOP plan and a SHOP would no longer be required to have the capability or the need to collect enrollment information. Employers would however, be required to apply to the SHOP to obtain an eligibility determination, as described in § 155.710, at which point the employer would be asked to provide: (1) Employer name and address of employer's locations; (2) Information sufficient to confirm the employer is a small employer; (3) Employer Identification Number (EIN); and (4) Information sufficient to confirm that the employer is offering, at a minimum, all full-time employees coverage in a QHP through a SHOP. Under current regulations, the employer provides, and a SHOP collects, this information as part of enrolling in a SHOP QHP through a SHOP. HHS previously estimated that an employer needed two hours to complete the eligibility determination when it was included as part of enrolling in a SHOP QHP and that 6,000 employers would complete an application annually to determine their eligibility through a SHOP Web site. Based on these criteria, HHS estimated that the total annual burden for 6,000 employers was 12,000 hours, with a total annual cost of $561,240 to complete the SHOP application and eligibility determination process. With the proposed flexibilities, HHS estimates that for each employer, an administrative assistant would need less than 5 minutes (at rate of $34.76 per hour) to complete the required eligibility determination. Under the proposed flexibilities, employers would also no longer be required to create an account on an FF–SHOP Web site in order to complete the eligibility determination or enroll in a SHOP QHP. Therefore, HHS estimates that it would cost an employer approximately $3 to complete an eligibility determination. Assuming that 6,000 employers would complete an eligibility determination, HHS estimates that the total annual burden would be approximately 500 hours, with an estimated total cost of $17,400. This would result in a net burden reduction of 11,500 hours and a net cost reduction of approximately $543,840 annually. Under the proposals in § 157.206(e)(1), employers would be responsible for submitting a new eligibility determination or, submitting a notice of withdrawal, in the event the group experienced a change that would impact the group's eligibility to participate in a SHOP. Under the proposals in § 157.206(e)(2), employers would also be required to notify their QHP issuer(s) of a determination of ineligibility. Finally, employers would also, under § 157.206(e)(3) be required to notify their issuer(s) of their intent to no longer participate in a SHOP. While these proposals would require employers to communicate with issuers in ways they do not under current SHOP enrollment practices, HHS does not anticipate that these practices would increase the burden on employers as they, under current practice, must notify the SHOP of changes in eligibility and termination. Although the proposals in § 155.716 impose an information collection requirement, the information that would be collected is no different from what is already approved under OMB control number 0938–1193: Data Collection to Support Eligibility Determinations and Enrollment for Small Businesses in the Small Business Health Options, and therefore we are not proposing to revise the information collection at this time.

Employees, under the proposals to § 155.716 would not experience an increase in burden. Under the proposals described throughout this proposed rule, employees would no longer be required to visit an FF–SHOP Web site to create an account, or, for any application or enrollment purpose, but they may need to provide similar information to an agent or broker or issuer as a condition of enrollment into a SHOP QHP. HHS previously estimated that 60,000 employees completed an application annually, each spending approximately one hour to complete an online application through an FF–SHOP Web site. The estimated annual burden was 60,000 burden hours with an annual cost of $1,025,400. With the proposed flexibilities to a SHOP as described in this rule, HHS predicts that the burden on employees to complete an online application would shift as no application would be provided through a SHOP Web site, but the information may be required by an agent or broker or an issuer in order for the employee to complete an enrollment into a SHOP

QHP. The proposals described throughout this proposed rule will allow agents and brokers and issuers to enroll consumers in SHOP plans using the channels they are most familiar with, potentially reducing the burden of enrolling SHOP groups. This information collection is currently approved under OMB control number 0938–1194: Data Collection to Support Eligibility Determinations and Enrollment for Employees in the Small Business Health Options Program. Therefore, we are not proposing to revise the information collection at this time.

Current regulations, found throughout §§ 155.705, 155.715, 155.720, 155.725, require SHOPs to generate certain notices. These notices may include: (1) Notices of annual election periods, (2) notices to employers of employee coverage terminations, (3) notices of application inconsistencies, (4) notices of appeal rights and instructions, (5) notices of employee and employer eligibility, (6) notices of employer withdrawal, (7) (in FF–SHOPs only) notices to employees if a dependent turns 26 and is no longer eligible for dependent coverage, (8) billing invoices, successful and unsuccessful payment confirmation notices, and (9) past due payment notices. In prior guidance, HHS previously estimated costs for paper notices in an FF–SHOP. In that estimate, HHS assumed that 80 percent of enrollees requested electronic notices and 20 percent of enrollees requested paper notices. HHS estimated that mailing paper notices costs a SHOP Exchange $0.53 per notice. HHS determined that SHOPs sent approximately 48,000 notices to enrollees when (1) a dependent became ineligible to remain on the plan, (2) successful payment was processed, and (3) a payment was unsuccessful in the last year. Assuming that 20 percent of enrollees would opt to receive paper notices instead of electronic notifications, HHS estimated that approximately 9,600 notices would be sent, costing FF–SHOPs approximately $5,088. Under the proposed flexibilities, the SHOPs would only be required to send notices of employer eligibility and appeals. This cost would not directly be transferred to issuers as issuers may already be required to send such notices per other applicable State and Federal Law. This collection is currently approved under OMB control number 0938–1207: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment. If this approach is finalized as proposed, issuers would be required to collect premiums, as premium aggregation services would no longer be provided by the SHOPs that take advantage of the proposed flexibilities. HHS does not anticipate a significant increase of issuers' burden in this scenario, as it is not significantly different from their current operating practices.

G. ICRs Regarding States Defining the Essential Health Benefits (§ 156.111(e))

We propose at § 156.111(e) to revise the collection of data for selection of States' EHB-benchmark plans for plan years beginning on or after January 1, 2019. This proposal includes the documentation that States would be required to submit if the State chooses to change its EHB-benchmark plan. For this purpose, we propose to amend the currently approved information collection (OMB Control Number: 0938–1174) to reflect the proposed policy. Because § 156.111(e) would replace the current data collection requirements at § 156.120, we would update the current EHB-benchmark plan selection to account for the proposed new regulation and any associated burden with this requirement that would fall on those States that choose to reselect their EHB-benchmark plan. Under the previous benchmark plan selection policy, 29 States selected one of the 10 base-benchmark plan options and 22 States defaulted. The current policy did not allow for States to make an annual selection. The proposed regulation would allow States to modify their EHB-benchmark plans annually, but would not require them to respond to this ICR for any year for which they did not change their EHB-benchmark plan. As such, for purposes of this proposed regulation, we estimate that 10 States would choose to make a change to their EHB-benchmark plans in any given year (total of 30 States over 3 years within the authorization of this ICR) and would respond to this ICR.

The proposals at § 156.111(e)(1) would require the State to provide confirmation that the State's EHB-benchmark plan selection complies with certain requirements, including those under proposed § 156.111(a), (b), and (c). To complete this requirement, we estimate that a financial examiner would require 4 hours (at a rate of $66.04 per hour) to fill out, review, and transmit a complete and accurate document. We estimate that it would cost each State $264 to meet this reporting requirement, with a total annual burden for all 10 States of 40 hours and an associated total cost of $2,642.

The proposals in § 156.111(e)(2) would further require the State to submit an actuarial certification and associated actuarial report of the methods and assumptions when selecting proposed options under § 156.111(a)(2) and (3). Specifically, the actuarial certification that is being collected under this ICR would be required to include an actuarial report that complies with generally accepted actuarial principles and methodologies. This would include complying with all applicable ASOPs (including ASOP 41 on actuarial communications). For example, ASOP 41 on actuarial communications includes disclosure requirements, including those that apply to the disclosure of information on the methods and assumptions being used for the actuarial certification and report. The actuarial certification for this proposed requirement is provided in a template and includes an attestation that the standard actuarial practices have been followed or that exceptions have been noted. The signing actuary would be required to be a Member of the American Academy of Actuaries. We are also seeking comment on a draft document entitled *Draft Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection to Benefits of a Typical Employer Plan As Proposed under the HHS Notice of Benefit and Payment Parameters for 2019 (CMS–9930–P)*[76] that would provide an example of method an actuary could use to develop this actuarial certification and report.

We estimate that an actuary, who is a member of the American Academy of Actuaries, would require 16 hours (at a rate of $80.82 per hour) on average for § 156.111(e)(2). This would include the certification and associated actuarial report from an actuary to affirm, in accordance with generally accepted actuarial principles and methodologies that the State's EHB-benchmark plan definition is equal in scope of benefits provided under a typical employer plan. Additionally, this estimate of 16 hours would also apply if the State is selecting its EHB-benchmark plan using the option proposed at § 156.111(a)(3). The option proposed at § 156.111(a)(3) would also require the actuary to affirm

[76] The *Draft Example of an Acceptable Methodology for Comparing Benefits of a State's EHB-benchmark Plan Selection to Benefits of a Typical Employer Plan As Proposed under the HHS Notice of Benefit and Payment Parameters for 2019 (CMS–9930–P)* is available on CCIIO's Regulation and Guidance Web page at *https://www.cms.gov/cciio/resources/regulations-and-guidance/index.html.*

that the State's selected EHB-benchmark plan does not exceed the generosity of the most generous among a set of comparison plans proposed § 156.111(a)(3), including the State's EHB-benchmark plan used for the 2017 plan year and any of the State's base-benchmark plan options for the 2017 plan year described in § 156.100(a)(1), supplemented as necessary under § 156.110. For these calculations, the actuary would need to conduct the appropriate calculations to create and review an actuarial certification and associated actuarial report, including minimal time required for recordkeeping. The precise level of effort for the actuary certification and associated actuarial report under § 156.111(e)(2) would likely vary depending on the State's approach to its EHB-benchmark plan and this certification requirement. For example, the State may only need to do one plan comparison for the purposes of both of these proposed certification requirements. Specifically, the State could use the same plan, such as the State's EHB-benchmark plan used for the 2017 plan year, to determine that the new State's EHB-benchmark plan is equal to the scope of benefits provided under a typical employer plan. The State could also use those findings to determine that because the new State EHB-benchmark plan is equal in scope of benefits to the State's EHB-benchmark plan used for the 2017 plan year, the new State EHB-benchmark plan does not exceed the generosity of the most generous of the set of comparison plans. We estimate that a financial examiner would require one hour (at a rate of $66.04 per hour) to review, combine, and electronically transmit these documents to HHS, as part of a State's EHB-benchmark plan submission. Because this section of the proposed regulation would only apply to options 2 and 3 under proposed § 156.111(a)(2) and (3), we are estimating that only two thirds of States (7 of the 10 States) would need to complete and submit this proposed documentation requirement. Therefore, we estimate that each State would incur a burden of 17 hours with an associated cost of $1,359, with a total annual burden for 7 states of 119 hours at associated total cost of $9,514. We seek comment on this estimate.

The proposals at § 156.111(e)(3) would further require each State to submit its new EHB-benchmark plan documents. The level of effort associated with this requirement could depend on the State's selection of the EHB-benchmark plan options under the proposed regulation at § 156.111(a). However, for the purposes of this estimate, we estimate that it would require a financial examiner (at a rate of $66.04 per hour) 12 hours on average to create, review, and electronically transmit the State's EHB-benchmark plan document that accurately reflects the benefits and limitations, including medical management requirements and a schedule of benefits, resulting in a burden of 12 hours and an associated cost of $792, with a total annual burden for all 10 states of 120 hours and an associated cost of $7,925. The burden for producing these documents is significantly higher than previous estimates because the previous data collection generally only required the State (or issuer) to transmit the selected benchmark plan document. In contrast, in some cases, the proposed § 156.111(a) may result in the State needing to create a completely new document or significantly modify the current document to represent the plan document. Additionally, this estimate of 12 hours also includes the burden necessary for a State selecting the option at proposed § 156.111(e)(3) where the State would also be required to submit a formulary drug list for the State's EHB-benchmark plan in a format and manner specified by HHS. Specifically, the burden for the State selecting this option would also likely vary as the State could use an existing formulary drug list or create its own formulary drug list separately for this purpose. To collect the formulary drug list, the State would be required to use the template provided by HHS and submit the formulary drug list as a list of RxNorm Concept Unique Identifiers (RxCUIs).

Lastly, the proposal at § 156.111(e)(4) would require the State to submit the documentation necessary to operationalize the State's EHB-benchmark plan. This reporting requirement includes the EHB summary file that is currently posted on CCIIO's Web site, used as part of the QHP certification process, and integrated into HHS's IT Build systems that feed into the data that is displayed on *HealthCare.gov*. While this document would not be a new document, the burden associated with this document would be new for States. We estimate that it would require a financial examiner 12 hours, on average, (at a rate of $66.04 per hour) to create, review, and electronically submit a complete and accurate document to HHS resulting in a burden of 12 hours and an associated cost of $792, with a total annual burden for all 10 states of 120 hours and an associated cost of $7,925.

Under the current policy, the burden estimates 226 respondents per year, for a total yearly burden total of 165 annual burden hours and a total annual associated cost of $8,094 to meet these reporting requirements. Under the proposed policy related to EHB, we estimate that the total number of respondents would be 10 per year, for a total yearly burden of 399 hours and an associated cost of $28,005 to meet these reporting requirements. The estimated burden associated with the proposed changes represents an increase of 234 hours (increase from 165 hours to 399 hours) and an annual costs increase of $19,911 (from $8,094 to $28,005) over the approved information collection (OMB Control Number: 0938–1174).

As part of the update to this OMB Control Number: 0938–1174, we are also seeking comment on requirements for SADPs to submit voluntary reporting. This collection includes data on whether the issuer intends to offer SADP coverage, the anticipated Exchange market in which coverage would be offered, and the State and service area in which the issuer offers coverage. The burden associated with meeting this requirement includes the time and effort needed by the issuer to report on whether it intends to offer SADP coverage. We estimate that it will take one half hour for a health insurance issuer to meet this reporting requirement. We estimate that approximately 175 issuers will respond to this data collection. Therefore, we anticipate that the reporting requirement would require a market research analyst one half-hour annually to identify and submit the responsive records to CMS (at a rate of $67.90 per hour), for a total cost of $34 a year per reporting entity. This would result in an annual burden of 87.5 hours for all 175 issuers and a resulting estimated annual cost of $5,941. OMB approvals are issued for three years; therefore, the aggregate burden for three years would be approximately 263 hours with an associated cost of approximately $17,824. We seek comment on these proposed estimates.

H. ICRs Regarding Medical Loss Ratio (§§ 158.170, 158.221, 158.320–323, 158.340, 158.346, and 158.350)

We are proposing to amend § 158.221 to allow issuers the option to report quality improvement activity expenses as a single fixed percentage of premium amount, and make conforming amendments to § 158.170. We do not anticipate that implementing this provision would require significant changes to the MLR annual reporting

form and the associated burden. The burden related to this collection is currently approved under OMB control number 0938–1164; Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements.

We are also proposing to amend Subpart C to modify the data and narratives which a State must submit as part of the State's request for an adjustment to the MLR standard in the individual market for that State. There is no standardized application form associated with a State's request, but each request must contain certain data elements in order to receive consideration by the Secretary, which are described in §§ 158.320–158.323, 158.340, 158.346, and 158.350. The burden related to the proposed requirements was previously approved under OMB control number 0938–1114, Medical Loss Ratio (IFR) Information Collection Requirements and Supporting Regulations; the approval expired in 2014. We intend to reinstate this information collection, with modifications to reflect our proposed revisions to subpart C of part 158. This document serves as the 60-day notice to afford the public an opportunity to comment on this collection of information requirement. To obtain copies of a supporting statement and any related forms for the proposed collection summarized in this document, you may make your request using one of following: (1) Access CMS's Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995;* (2) email your request, including your address, phone number, OMB Control Number 0938–1114, and CMS document identifier CMS–10361, to *Paperwork@cms.hhs.gov;* or (3) call the Reports Clearance Office at (410) 786–1326.

We are proposing to eliminate collection of the following information from a State requesting an adjustment: The State MLR standard and formula for assessing compliance (§ 158.321(a)), its market withdrawal requirements (§ 158.321(b)), and the mechanisms available to the State to provide consumers with options for alternate coverage (§ 158.321(c)); as well as the net underwriting profit for the total business in the State and the after-tax profit and profit margin for the individual market and total business in the State (§ 158.321(d)(2)(vii)), and the estimated rebate (§ 158.321(d)(2)(v)) of each issuer with at least 1,000 enrollees in the State. We expect this proposal to reduce the burden on States seeking an adjustment. We are also proposing to replace the requirement that a State requesting an adjustment must submit enrollment and premium data for every individual market issuer at the product level (§ 158.321(d)(1)) and the reported and estimated MLRs (§ 158.321(d)(2)(ii) and (iii)) for issuers with at least 1,000 enrollees, with total enrollment (life-years and covered lives), premium, and total incurred claims for only active individual market issuers, separately for five types of individual market coverage: on-Exchange plans, off-Exchange plans, grandfathered health plans as defined in § 147.140, coverage that meets the criteria for transitional policies outlined in applicable guidance, and non-grandfathered single risk pool coverage. States would not be required to provide information on student health insurance coverage as defined in § 147.145 or excepted benefits as defined in § 148.220. We expect this proposal to result in a net reduction in burden on States seeking an adjustment. We are also proposing to continue to collect data on total agents' and broker's commission expenses and net underwriting gain (proposed to be redesignated from § 158.321(d)(2)(iv) and (vi) to § 158.321(a)(3) and (4), respectively) for only active individual market issuers, but separately for the five types of coverage described above. We would continue to collect information on risk-based capital levels (proposed to be redesignated from § 158.321(d)(2)(viii) to § 158.321(a)(5)) at the issuer level. While this proposal would require more breakdown of the data than § 158.321 currently requires, in most States there are more issuers with at least 1,000 enrollees than there are active issuers in the individual market, and consequently we expect that this proposal would have no net impact on the burden. Additionally, we are proposing to update § 158.321(d)(2)(ix) to collect more specific information on issuer notices to the State of changes to participation in the State's individual market, rather than focusing exclusively on notices to exit the individual market. We do not expect this proposal to have an appreciable impact on the burden. We are further proposing to eliminate the requirement that a State requesting an adjustment provide information explaining and justifying how its proposed adjustment was determined and estimating rebates that would be paid with and without an adjustment (§ 158.322(a), (c), and (d)); as well as to replace what information a State must provide pursuant to § 158.322(b) with a requirement to explain how the adjustment would help stabilize the State's individual market. We expect this proposal to reduce the burden. Lastly, we are proposing to update what information a State must submit with a subsequent request for adjustment pursuant to § 158.350. We do not expect this proposal to change the burden.

Based on preliminary data analysis and previous State requests for adjustments, we estimate that approximately 22 States would submit applications in the first year that the proposed MLR adjustment process is codified. We estimate that it would take approximately 140 hours on average for each State to complete the application, including gathering and analyzing data, synthesizing information, and developing a proposal for an adjusted MLR standard. Specifically, we assume that the application would take a financial analyst approximately 96 hours (at a rate of $68.78 per hour), an actuary 6 hours (at a rate of $80.82 per hour), a financial manager 10 hours (at a rate of $91.66 per hour), a lawyer 24 hours (at a rate of $89.74 per hour), and the Commissioner 4 hours (at a rate of $116.90 per hour) to assemble and review the various components of the application, resulting in total of burden for each state of 140 hours with an associated cost of $10,626 per response, representing an estimated total burden reduction of 45 hours per response. The documents would be submitted electronically at minimal cost. We estimate that the total burden for 22 states to submit a request for an adjustment to the individual market MLR standard would be 3,080 hours with an associated cost of approximately $233,767, with an estimated net total reduction in burden of 620 hours. We recognize that this burden may vary between States, as some States may have better access to the required application information elements, while other States may have to seek some of the required information from health insurance issuers in their States, which could increase their burden. Some States may, if providing the requested information is an undue burden, ask the Secretary to consider their application without some of the information elements. We seek comment regarding this information collection requirement.

I. Summary of Annual Burden Estimates for Proposed Requirements

TABLE 12—PROPOSED ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s)	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($)
§ 153.320	0938–1155	25	25	48	1,200	97,504.00	97,504.00
§ 156.111(e)(1)	0938–1174	*10	10	4	40	2,641.60	2,641.60
§ 156.111(e)(2)	0938–1174	*7	7	17	119	9,514.12	9,514.12
§ 156.111(3)(3)	0938–1174	*10	10	12	120	7,924.80	7,924.80
§ 156.111(e)(4)	0938–1174	*10	10	12	120	7,924.80	7,924.80
§§ 158.320–323, 158.340, 158.346–350	0938–1114	22	22	140	3,080	233,766.72	233,766.72
	0938–1174	175	175	0.5	87.5	5,941.25	5,941.25
Total	.....	207	234	.....	4766.5	365,217.29	365,217.29

*Denote the same entities. For purposes of calculating the total, the highest value is used only once.
**There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 12.

J. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS's Web site at *www.cms.hhs.gov/PaperworkReductionActof1995*, or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule and identify the rule (CMS–9930–P), the ICR's CFR citation, CMS ID number, and OMB control number.

ICR-related comments are due January 2, 2018.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

This rule proposes standards related to the risk adjustment program for the 2019 benefit year, as well as certain modifications that will promote State flexibility and control over their insurance markets, reduce burden on stakeholders, and protect consumers from increases in premiums due to issuer uncertainty. The Premium Stabilization Rule and previous Payment Notices provided detail on the implementation of the risk adjustment program, including the specific parameters applicable for the 2014, 2015, 2016, 2017, and 2018 benefit years. This rule proposes additional standards related to essential health benefits; cost-sharing parameters; qualified health plan certification; the Exchanges, including terminations, exemptions, eligibility and enrollment; AV for stand-alone dental plans; MEC; the rate review program; the medical loss ratio program; the Small Business Health Options Program; and FFE and SBE–FP user fees.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year).

OMB has determined that this proposed rule is ''economically significant'' within the meaning of section 3(f)(1) of Executive Order 12866, because it is likely to have an annual effect of $100 million in any 1 year. Accordingly, we have prepared an RIA that presents the costs and benefits of this proposed rule.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule—(1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by OMB. HHS has concluded that this rule is likely to have economic impacts of $100 million or more in at least 1 year, and therefore, meets the definition of ''significant rule'' under Executive Order 12866. Therefore, HHS has provided an assessment of the potential costs, benefits, and transfers associated with this rule.

The provisions in this proposed rule aim to improve the health and stability of the Exchanges, and to provide States

with additional flexibility and control over their insurance markets. They would reduce regulatory burden, and reduce administrative costs for issuers and States, and would lower net premiums for consumers. Through the reduction in financial uncertainty for issuers and increased affordability for consumers, these provisions are expected to increase access to affordable health coverage. Although there is some uncertainty regarding the net effect on enrollment and premiums, we anticipate that the provisions of this proposed rule would help further HHS's goal of ensuring that all consumers have access to quality, affordable healthcare; that markets are stable; and that Exchanges operate smoothly.

In accordance with Executive Order 12866, HHS has determined that the benefits of this regulatory action justify the costs.

Although it is difficult to discuss the wide-ranging effects of these provisions in isolation, the overarching goal of the premium stabilization, market standards, and Exchange-related provisions and policies in the PPACA is to make affordable health insurance available to individuals who do not have access to affordable employer-sponsored coverage or government-sponsored coverage. The provisions within this proposed rule are integral to the goal of expanding coverage. For example, the risk adjustment program helps prevent risk selection and decrease the risk of financial loss that health insurance issuers might otherwise expect in 2019.

HHS anticipates that the provisions of this proposed rule will help further the Department's goal of ensuring that all consumers have access to quality and affordable health care and are able to make informed choices, that Exchanges operate smoothly, that the risk adjustment program works as intended, and that States have more control and flexibility over essential health benefits, QHP certification and the operation and establishment of Exchanges. Affected entities such as QHP issuers would incur costs to comply with the proposed provisions, for example, those related to the functions of a SHOP; including calculating the minimum participation rate at the employer level and processing SHOP enrollments for employers and employees; and States would incur costs to comply with provisions regarding essential health benefits. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

C. Impact Estimates of the Payment Notice Provisions and Accounting Table

In accordance with OMB Circular A–4, Table 13 depicts an accounting statement summarizing HHS's assessment of the benefits, costs, and transfers associated with this regulatory action.

This proposed rule implements standards for programs that will have numerous effects, including providing consumers with access to affordable health insurance coverage, reducing the impact of adverse selection, and stabilizing premiums in the individual and small group health insurance markets and in an Exchange. We are unable to quantify certain benefits of this proposed rule—such as any reduction in burden related to changes in the timing related to States posting proposed and final rate filing information; increased flexibility for Exchanges related to the removal of certain requirements for Navigator programs and non-Navigator assistance personnel entities; increased access to the direct enrollment pathway stemming from permitting a third-party entity to conduct operational readiness reviews for agents, brokers, and issuers; benefits to Exchanges related to proposed simplifications of verification requirements; benefits to consumers, issuers or Exchanges related to the changes related to the special enrollment periods; increased flexibility for States relating to the proposals regarding the SHOP enrollment process; potential decreases in premiums to consumers related to removing actuarial value standards for SADPs; and reductions in burden associated with CHIP buy-in plans with identical coverage to the CHIP program under title XXI of the Act in the applicable State being automatically recognized as MEC—and certain costs—such as the costs incurred by small employers, agents and brokers, and potential increases in out-of-pocket costs to consumers related to removing actuarial value standards for SADPs; and costs to issuers, brokers, agents, and employers related to changes in SHOP enrollment procedures. The effects in Table 13 reflect qualitative impacts and estimated direct monetary costs and transfers resulting from the provisions of this proposed rule for health insurance issuers. The annualized monetized costs described in Table 13 reflect direct administrative costs to health insurance issuers as a result of the proposed provisions, and include administrative costs associated with States requesting a reduction in the calculation of Statewide average premium for the State's small group market for the purpose of risk adjustment, the reduction in costs relating to issuers and States having to no longer submit rate increases for student health insurance plans to HHS, and costs associated with States seeking an adjustment to the MLR standard in the State's individual market that are estimated in the Collection of Information section of this proposed rule. The annual monetized transfers described in Table 13 include costs associated with SBE–FP user fees, the risk adjustment user fee paid to HHS by issuers, and reductions in rebate payments from issuers to consumers related to QIA and MLR adjustments. We are proposing to collect a total of $38 million in risk adjustment user fees or $1.68 per enrollee per year from risk adjustment issuers, which is less than the $40 million in contract costs expected for benefit year 2017 when we established a similar $1.68 per-enrollee-per-year risk adjustment user fee amount. As in 2018, the risk adjustment user fee contract costs for 2019 include additional costs for risk adjustment data validation; however, we expect reduced costs related to issuer outreach and education as issuers gain familiarity with the risk adjustment program, and enrollment remains steady in 2019 HHS risk adjustment covered plans compared to the billable member month enrollment estimated for 2018. Also, we expect a decrease in FFE user fee collections necessary as we estimate lower contract costs due to streamlining of FFE operations and an increase in premiums but also lower enrollment, resulting in a proposed user fee rate of 3.5 percent for 2019, which is the same as the FFE user fee rate established for 2014 through 2018 benefit years. However, the decrease in user fee collections required to support FFE functions for the 2019 benefit year will be similar to the updated costs for the 2018 benefit year, and the user fee rate will yield the same amount of transfers from FFE issuers to the Federal government as in the prior benefit year. Therefore, there are no changes to the FFE user fee transfers to include in Table 13. We are also proposing an SBE–FP user fee rate to be set at 3.0 percent for benefit year 2019, which is higher than the 2.0 percent SBE–FP user fee rate we finalized for the 2018 benefit year. In this rule, we are also proposing to cease charging user fees on SHOP issuers offering plans through an FFE or SBE–FP starting for plan years beginning on and after January 1, 2018.

TABLE 13—ACCOUNTING TABLE

Benefits

Qualitative:
- Greater market stability resulting from improvements to the risk adjustment methodology.
- Potential increased enrollment in the individual market stemming from lower premiums, leading to improved access to health care for the previously uninsured, especially individuals with medical conditions, which will result in improved health and protection from the risk of catastrophic medical expenditures.[a]
- More informed Exchange QHP certification decisions.
- Increased coverage options for small businesses and employees with less adverse selection.
- Cost savings to consumers and issuers due to reduced administrative costs for issuers.
- Reduced costs and burden for States with CHIP buy-in plans automatically recognized as recognized as MEC.[b]
- Potential decreases in premiums associated with States opting to select a new EHB-benchmark plan.
- Reduced burden to Exchanges, due to the removal of the requirements that each Exchange must have at least two Navigator entities, and that one of these entities must be a community and consumer-focused nonprofit group, and the removal of the requirement that each Navigator (and each non-Navigator entity subject to § 155.215) maintain a physical presence in the Exchange service area.
- Reduced costs and burden and increased flexibility to agents and brokers performing direct enrollment and their third party auditors due to the removal of the requirement to obtain HHS approval to perform reviews.
- Reduction in administrative costs to issuers due to the removal of the meaningful difference standard, and proposed changes to the SHOPs.
- Reduction in costs and burden to issuers by establishing a 15 percent default threshold for rate increase reasonableness review.

Costs	Estimate (million)	Year dollar	Discount rate (percent)	Period covered
Annualized Monetized ($/year)	−$28	2016	7	2018–2022
	−26.75	2016	3	2018–2022

Quantitative:
- Costs incurred by issuers and States to comply with provisions in the proposed rule as detailed in the Collection of Information Requirements section, taking into account the reduction in burden and costs for issuers and States due to the elimination of the requirement to submit rate reviews to HHS for student health insurance coverage[b] and increase in the rate review threshold and the reduction in burden and costs to States related to the requests for adjustment to the MLR standard in their individual markets.
- Reduction in costs to issuers due to changes to the requirements for risk adjustment data validation.
- Reduction in potential costs to Exchanges since they will no longer be required to conduct sampling as a verification process for eligibility for employer-based insurance starting plan year 2018, and can instead conduct an alternate process through plan year 2019.
- Regulatory familiarization costs.

Qualitative:
- Costs due to increases in providing medical services (if health insurance enrollment increases).
- Costs to issuers of redesigning SADPs to account for the removal of actuarial value standards for SADPs.
- Potential increases in out of pocket costs associated with States opting to select a new EHB-benchmark plan.

Transfers	Estimate (million)	Year dollar	Discount rate (percent)	Period covered
Federal Annualized Monetized ($/year)	$16.2	2017	7	2018–2022
	17	2017	3	2018–2022
Other Annualized Monetized ($/year)	87	2017	7	2018–2022
	87	2017	3	2018–2022

Quantitative:
- Decrease in transfers from health insurance issuers to the Federal government of $2 million related to the decrease in annual cost of risk adjustment user fees for 2019–2021 (the total risk adjustment user fee amount for 2018 was $40 million and was previously estimated to remain the same for years 2019–2021).
- Increased transfers from SBE–FP issuers to the Federal government of $20 million due to increase in user fee rate from 2.0 set in 2018 to 3.0 percent proposed for 2019.
- Decrease in user fee transfers from SHOP issuers offering plans through an FFE or SBE–FP to the Federal government of approximately $6 million in 2019.
- Reduced transfers from consumers to health insurance issuers in the form of rebates of $75 million to $87 million due to proposed amendments to the medical loss ratio requirements.[c]

Qualitative:
- Lower premium rates in the individual market due to the improved risk profile of the insured, competition, and pooling.
- A decrease in the premiums and risk adjustment transfers in the small group market as a result of potential State requests to reduce the Statewide average premium for the purposes of the risk adjustment transfer formula in the small group market.
- Potential increases in premiums associated with adjustments to MLR.
- Potential decreases in premiums associated with removal of AV standards for SADPs.
- Potential increases in out of pocket costs associated with removal of AV standards for SADPs.

[a] Removal of AV standards for SADPs may reduce enrollment due to reductions in coverage and potential higher out-of-pocket costs.

[b] The reduction in burden and costs associated with student health insurance and CHIP buy-in plans could result in lower premiums for these groups.

[c] For the purpose of calculating total transfers, the upper bound was used.

This RIA expands upon the impact analyses of previous rules and utilizes the Congressional Budget Office's (CBO) analysis of the PPACA's impact on Federal spending, revenue collection, and insurance enrollment. The PPACA ends the transitional reinsurance program and temporary risk corridors program after the benefit year 2016. Therefore, the costs associated with those programs are not included in Tables 14 or 15 for fiscal years 2019–2022. Table 14 summarizes the effects of the risk adjustment program on the Federal budget from fiscal years 2018 through 2022, with the additional, societal effects of this proposed rule discussed in this RIA. We do not expect the provisions of this proposed rule to significantly alter CBO's estimates of the budget impact of the premium stabilization programs that are described in Table 14. We note that transfers associated with the risk adjustment program were previously estimated in the Premium Stabilization Rule; therefore, to avoid double-counting, we do not include them in the accounting statement for this proposed rule (Table 13).

In addition to utilizing CBO projections, HHS conducted an internal analysis of the effects of its regulations on enrollment and premiums. Based on these internal analyses, we anticipate that the quantitative effects of the provisions proposed in this rule are consistent with our previous estimates in the 2018 Payment Notice for the impacts associated with the advance payment of premium tax credits, the premium stabilization programs, and FFE user fee requirements.

TABLE 14—ESTIMATED FEDERAL GOVERNMENT OUTLAYS AND RECEIPTS FOR THE RISK ADJUSTMENT, REINSURANCE, AND RISK CORRIDORS PROGRAMS FROM FISCAL YEAR 2018–2022

[In billions of dollars]

Year	2018	2019	2020	2021	2022	2018–2022
Risk Adjustment, Reinsurance, and Risk Corridors Program Payments	5	5	5	6	6	27
Risk Adjustment, Reinsurance, and Risk Corridors Program Collections *	5	5	6	6	6	28

Note 1: Risk adjustment program payments and receipts lag by one quarter. Receipt will fully offset payments over time.

Note 2: The CBO score reflects an additional $1 million in payments in FY 2018 that are collected in prior fiscal years. CBO does not expect a shortfall in these programs.

Source: Congressional Budget Office. *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2017 to 2027* Table 2. September 2017. Available at *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53091-fshic.pdf*.

1. Risk Adjustment

The risk adjustment program is a permanent program created by the PPACA that transfers funds from lower risk, non-grandfathered plans to higher risk, non-grandfathered plans in the individual and small group markets, inside and outside the Exchanges. We established standards for the administration of the risk adjustment program, in subparts D and G of part 153 in Title 45 of the CFR.

A State approved or conditionally approved by the Secretary to operate an Exchange may establish a risk adjustment program, or have HHS do so on its behalf. As described in the 2014 through 2018 Payment Notices, if HHS operates risk adjustment on behalf of a State, it will fund its risk adjustment program operations by assessing a risk adjustment user fee on issuers of risk adjustment covered plans. For the 2019 benefit year, we estimate that the total cost for HHS to operate the risk adjustment program on behalf of States for 2019 will be approximately $38 million, slightly less than in 2018, and that the risk adjustment user fee would be approximately $1.68 per enrollee per year. This user fee reflects contract costs to support the risk adjustment data validation process in 2019, lower costs related to risk adjustment issuer outreach and education, and lower enrollment in risk adjustment covered QHPs, which results in the same user fee rate as the 2018 benefit year after rounding to the nearest cent.

We believe that our proposal to blend the coefficients calculated from the 2016 benefit year EDGE enrollee-level data with 2014 and 2015 MarketScan® data will provide stability within the risk adjustment program and minimize volatility in changes to risk scores from the 2018 benefit year to the 2019 benefit year due to differences in the datasets' underlying populations.

We are proposing to allow States to request a reduction in the Statewide average premium in the small group market. We expect this proposed policy would reduce premiums and transfers in the small group markets proportional to the percent by which the States choose to reduce the transfers. However, because the risk adjustment program is budget neutral, any State decision to reduce the Statewide average premium used to calculate risk adjustment transfers will have no net impact on risk adjustment transfers.

2. Risk Adjustment Data Validation

This proposed regulation includes changes to the requirements for risk adjustment data validation that overall would reduce regulatory burden and costs for issuers of risk adjusted plans. HHS believes the proposal to only adjust issuers' risk adjustment risk scores whose data validation error rates materially deviate from the national central tendency of error rates would help market stability by increasing issuers' ability to predict risk adjustment transfers and liquidity needs. We anticipate that, under this proposal, most issuers required to participate in risk adjustment data validation would not have their risk scores adjusted, based on our analysis of error rates in the Medicare risk adjustment data validation program.

The proposal to retroactively adjust transfers for issuers that exited a State market would result in transfer adjustments for a small subset of issuers that previously would not have had their transfers adjusted, but HHS does not expect this policy to increase burden for these issuers, especially in light of the payment adjustment proposal described above.

HHS estimates that not requiring issuers that have 500 or fewer billable member months Statewide to conduct an initial validation audit beginning in the 2017 benefit year would reduce the administrative burden and costs on those issuers. The reduction in burden and costs related to this ICR has been discussed previously in the Collection of Information Requirements section.

Under the proposed change to the sampling methodology, issuers that were the sole issuer in a risk pool would still need to provide a sample for data validation, but the sample would not include enrollees from the risk pool where they were the sole issuer. Therefore, this proposal would not have a significant impact on costs or burden for affected issuers.

We propose to amend § 153.630(b)(6) to state that a provider licensed to diagnose mental illness that is prohibited by State privacy laws from furnishing a complete medical record for data validation may furnish a signed mental or behavioral health assessment that providers routinely prepare. For risk adjustment data validation purposes, we assume a mental or behavioral health assessment is signed by a qualified provider who is licensed by the State to diagnose mental illness and, to the extent permissible under governing privacy and confidentiality laws, contains: (i) The enrollee's name; (ii) gender; (iii) date of birth; (iv) current status of all mental or behavioral health diagnoses; and (v) dates of service. The burden associated with submitting medical records for RADV purposes and therefore, this proposal, is currently approved under OMB Control Number 0938–1155: Standards Related to Reinsurance, Risk Corridors, Risk Adjustment, and Payment Appeals.

We propose to amend § 153.630(b)(9) to state that, if an issuer of a risk adjustment covered plan (1) fails to engage an initial validation auditor; (2) fails to submit the results of an initial validation audit to HHS; (3) engages in misconduct or substantial non-compliance with the risk adjustment data validation standards and requirements applicable to issuers of risk adjustment covered plans; or (4) intentionally or recklessly misrepresents or falsifies information that it furnishes to HHS, HHS may impose CMPs in accordance with the procedures set forth in § 156.805(b) through (e). Because risk adjustment data validation has thus far operated as a pilot program, we cannot estimate the number of issuers that would be subject to CMPs. However, we do not expect that a significant number of issuers would engage in the extreme misconduct required to warrant a CMP under this proposal.

3. Rate Review

In § 154.103, we propose to exclude student health insurance coverage from the Federal rate review requirements. This would reduce burden related to rate review submission and review for issuers and States. In addition, providing States with more flexibility regarding timing of submission of rate filing justification, reducing the advance notification requirement for rate increase announcements, timing of posting proposed and final rate filing information, and changing the threshold for reasonableness review to a 15 percent increase rather than a 10 percent increase, would reduce regulatory burden for issuers and States. The reduction in burden and costs related to ICRs have been discussed previously in the Collection of Information Requirements section.

4. Additional Required Benefits (§ 155.170)

In the preamble to § 155.170, we propose to extend the applicability of the policies governing State-required benefits to the proposals described at § 156.111 that would provide States with new options for selecting their EHB-benchmark plans beginning for the 2019 plan year. Specifically, under any of the three proposed EHB-benchmark plan selection options, or if the State defaults to its current EHB-benchmark plan, the current policies regarding State-required benefits would continue to apply if the proposals at § 156.111 are finalized. Because these policies would continue to be in effect, we do not anticipate any additional burden on States or issuers due to this proposal.

5. Standards for Navigators and Certain Non-Navigator Assistance Personnel (§§ 155.210 and 155.215)

We propose to amend § 155.210(c)(2) to remove the requirements that each Exchange must have at least two Navigator entities and that one of these entities must be a community and consumer-focused nonprofit group. We also propose to amend §§ 155.210(e)(7) and 155.215(h) to remove the requirements that Navigators and non-Navigator assistance personnel entities subject to those regulations maintain a physical presence in the Exchange service area. The proposed amendments to § 155.210(c)(2) would reduce the burden on Exchanges to have at least two separate Navigator entities, and as a result, Exchanges may be able to reduce funding amounts while still meeting program requirements. Removing these requirements would help promote flexibility and autonomy for each Exchange to structure its Navigator program, and to award grant funding to the number and type of entities that would be most effective for that specific Exchange service area. To the extent that Exchanges take advantage of these flexibilities, consumers may have fewer options of Navigator grantees and may not have access to a Navigator grantee or a non-Navigator assistance personnel entity that maintains a physical presence in the Exchange service area. Exchanges continue to have the flexibility to fund more than one Navigator grantee and SBEs continue to have the flexibility to require that Navigators maintain a physical presence in the Exchange service area.

6. Standards for Third-Party Entities To Perform Audits of Agents, Brokers, and Issuers Participating in Direct Enrollment (§ 155.221)

The proposed regulations would replace the existing requirement that an HHS-approved third party perform audits of agents and brokers participating in direct enrollment to instead permit a third-party entity to conduct operational readiness reviews for agents, brokers, and issuers participating in direct enrollment. HHS anticipates this approach would reduce the regulatory burden on agents, brokers, and issuers utilizing this section for enhanced direct enrollment oversight. HHS also anticipates that this proposal would reduce the burden on third-party auditors performing reviews under § 155.221, as those entities would no longer be required to obtain HHS approval to perform the reviews. Furthermore, we believe this proposal would expand the available number of qualified third-party auditors by removing any time and operational restrictions imposed by the HHS pre-approval requirement, which would provide more flexibility to agents, brokers, or issuers as they complete operational readiness reviews. Additionally, we believe this proposal would enable more agents, brokers and issuers to demonstrate operational readiness by reducing the burden on HHS for conducting reviews, expediting the ability of these entities to demonstrate readiness, and increasing the feasibility of approval for use of innovative pathways, thereby creating more opportunities for enrollment in QHP coverage for consumers, potentially increasing enrollment. HHS anticipates that some of the burden would be lessened by the fact that many agent, brokers, or issuers would already have the established privacy and security controls, and may have existing relationships with auditors that could be leveraged for these reviews. We would provide additional technical details regarding compliance with the specific requirements under these rules in guidance in the future. It is difficult to estimate a nationwide effect with

precision. We seek comment on the impact of this policy.

7. Eligibility Standards (§ 155.305)

The requirement in § 155.305(f)(4)(ii) that the Exchange must send direct notification to the tax filer before denying eligibility for APTC to consumers who fail to file and reconcile went into effect in mid-January 2017; therefore, it did not impact operations for the 2017 open enrollment period, which was nearly over then. At that point in time, for the FFE, the household contacts for non-filers had been notified of their tax filer's non-compliance, and APTC had been discontinued at auto re-enrollment for those who did not file a Federal income tax return according to IRS data or inform the FFE that they had filed a Federal tax return and reconciled past APTC. Requiring the Exchange to deny APTC for failure to file and reconcile even in the absence of ''direct notification . . . to the tax filer'' is unlikely to add new burden since Exchanges have not yet implemented § 155.305(f)(4)(ii). We do not believe that Exchanges have built an FTI-compliant noticing infrastructure since the publication of the final rule establishing § 155.305(f)(4)(ii) that they would need to dismantle if this proposal is finalized. However, if § 155.305(f)(4)(ii) remains in effect, Exchanges will incur significant costs, as discussed above, to build the infrastructure necessary to directly notify tax filers about their tax filing status while protecting FTI.

8. Verification Requirements (§ 55.320)

Verification Requirements in this proposed rule would also amend § 155.320(d)(4) to allow an Exchange to conduct an HHS-approved alternative process instead of sampling, as provided under paragraph (d)(4)(ii) through benefit year 2019. We believe this would relieve Exchanges from the burden of investing resources to conduct sampling when the FFEs' study of a sampling-like process found that this method of verification may not be cost-effective for some Exchanges at this time. We estimate the burden associated with sampling based in part on the alternative process used for the FFEs. HHS incurred approximately $750,000 in costs to design and operationalize this study and the study indicated that $353,581 of APTC was potentially incorrectly granted to individuals who inaccurately attested to their eligibility for or enrollment in a qualifying eligible employer-sponsored plan. We placed calls to employers to verify 15,125 cases but were only able to verify 1,948 cases. A large number of employers either could not be reached or were unable to verify a consumer's information, resulting in a verification rate of approximately 13 percent. The sample-size involved in the 2016 study did not represent a statistically significant sample of the target population and did not fulfill all regulatory requirements for sampling under paragraph (d)(4)(i) of § 155.320.

Taking additional costs into account—namely, the cost of sending notices to employees as required under paragraph (d)(4)(i)(A), the cost of building the infrastructure and implementing the first year of operationalizing this process, and the cost of expanding the number of cases to a statistically significant sample size of approximately 1 million cases—we estimate that the overall cost of implementing sampling would be approximately $8 million for the FFE, and between $2 million and $7 million for other Exchanges, depending on their enrollment volume and existing infrastructure. Therefore, we estimate that the average per-Exchange cost of implementing sampling that resembles the FFE's approach would be approximately $4.5 million for a total cost to State-based Exchanges of $54 million, when assuming 12 State-based Exchanges (operating in 11 States and the District of Columbia). This cost estimate does not, however, take into account the cost of notifying consumers when the information provided by their employer changes their eligibility determination described under paragraph (d)(4)(i)(E), the cost of providing employees consumer support that may be needed to understand notices and any change in eligibility, or the cost of ending those consumers' APTCs, when necessary. This estimate also does not account for the unique operating costs of each Exchange, the proposed change to paragraph (d)(4) to allow Exchanges to continue to use an alternate process through benefit year 2019, and the flexibility afforded Exchanges described at § 155.315(h) and referenced in § 155.320(a)(2).

We believe these changes would lessen the financial and technical burdens on Exchanges under current regulation and allow Exchanges to conduct an alternative process to sampling under paragraph (d)(4) as approaches to sampling are refined and data bases are compiled over time. We seek comment on the reduction in burden associated with extending the option to allow Exchanges to fulfill verification requirements by conducting an HHS-approved alternative process to sampling through plan year 2019.

9. Special Enrollment Periods (§ 155.420)

We do not anticipate that the revisions to § 155.420 would create any costs or burdens. The proposed revisions in paragraph (b)(2)(i) align regulatory policy for special enrollment periods based on a court order with other similar special enrollment period types, and create operational efficiencies for Exchanges by streamlining effective date options across similar special enrollment period qualifying events related to a qualified individual gaining or becoming a dependent. For example, this revision to the regulation would enable the FFE to use a simpler online, automated application pathway for more special enrollment period-eligible consumers, meaning that fewer consumers will need to use a manual and costly casework process to use their special enrollment period. For limited cases when casework support is required, operations would also be simplified.

Similarly, the revision to paragraph (d)(1)(iii) allows Exchanges to provide similar treatment to all women losing non-MEC pregnancy-related coverage, which enables a more streamlined special enrollment period eligibility process.

Additionally, amending paragraph (a)(5) to exempt qualified individuals from the prior coverage requirement that applies to certain special enrollment periods if, for at least 1 of the 60 days prior to the date of their qualifying event, they lived in a service area where there were no QHPs offered through an Exchange may provide a pathway to coverage for a small group of individuals, and is not anticipated to impact the Exchange risk pool. The Exchange already exempts qualified individuals who may not previously have had access to QHP coverage through an Exchange, including those who were previously living in a foreign country or United States territory and Indians as defined by section 4 of the Indian Health Care Improvement Act. Therefore, we do not believe that adding an additional small population to this exemption will create additional costs or burdens.

Finally, because simplified special enrollment period eligibility policy provides improved pathways to continuous coverage for special enrollment period-eligible consumers, we anticipate that the revisions would reduce burden on consumers, have a positive effect on the risk pool, and not result in additional costs or burdens for issuers.

10. Effective Dates for Terminations (§ 155.430)

Permitting all enrollee-initiated terminations to become effective on the date of enrollee request or a later date of their choosing and removing the special termination effective date for newly eligible Medicaid/CHIP/basic health plan consumers streamlines termination effective dates for Exchanges and reduces complication and confusion among consumers and issuers. There are no new costs incurred by Exchanges or issuers by aligning these termination dates, as Exchanges and issuers are well acquainted with same-day termination transactions. However, enrollees who receive retroactive coverage under Medicaid may be unable to recoup QHP premiums paid. Nevertheless, operationalizing the aligned termination dates may reduce system errors and related casework, as well as confusion for consumers, issuers, and caseworker and call center staff based on contradictory rules for different scenarios.

11. Eligibility Standards for Exemptions (§ 155.605)

We do not anticipate that the proposed amendment to § 155.605(d) would create additional costs or burdens. The proposed amendment to § 155.605(d)(2)(iv) would enable the Exchanges to process the consumer's exemption from the individual shared responsibility provision due to lack of affordable coverage based on projected income, for those not eligible for employer-sponsored coverage, when there is no bronze plan available by allowing the Exchanges to process the consumer's exemption based on the lowest cost Exchange metal level plan available in the individual market through the Exchange in the State in the rating area in which the individual resides. This proposal would not increase the burden on consumers or Exchanges. Without these revisions, individuals may lack access to qualifying or affordable health coverage, but be unable to qualify for an exemption from the individual shared responsibility provision to purchase qualifying health coverage and the associated financial penalty due to the lack of coverage in their area or the inability to calculate whether coverage is unaffordable. This proposal would also not result in additional costs or burdens for issuers.

12. Small Business Health Options Program (Part 155, Subpart H, § 155.200, §§ 156.285 and 156.286, § 156.350, §§ 157.205 and 157.206)

HHS is proposing to grant additional flexibilities, for plan years beginning on or after January 1, 2018, to small employers enrolling in SHOP QHPs and to participating QHP issuers in how they interact with a SHOP. If finalized, these changes would become effective as of the effective date of the final rule. Under this proposed rule, several existing requirements on SHOPs would not apply for plan years beginning on or after January 1, 2018, allowing SBEs the flexibility to operate a SHOP in a way that makes sense for the small businesses in their State, with reduced limitations imposed by Federal regulation. The FF–SHOPs, if this rule is finalized as proposed, would take advantage of the flexibility of the enrollment approach described through this proposed rule and operate in a leaner fashion. Under the proposed approach, SHOPs would no longer be required to enroll small groups in SHOP QHPs through a SHOP Web site. Instead, small employers would enroll through a participating QHP issuer, or a SHOP-registered agent or broker.

HHS believes that the proposed changes would reduce burden on participating QHP issuers, small employers, and agents and brokers for several reasons. Under the proposed approach to SHOP enrollment for plan years beginning on or after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed, participating QHP issuers would enroll small groups through their existing enrollment channels—utilizing their existing technologies and processes. Small groups enrolled in SHOP QHPs for plan years before January 1, 2018 would not be affected by the proposed changes to enrollment through a SHOP until they would be due to renew in a SHOP QHP for the 2018 plan year. While some additional requirements would be imposed onto issuers, if this approach were to become final, HHS anticipates that any additional burden on issuers as a result of the changes proposed in this rule, if finalized, would be negated in an ultimate net reduction in burden as many Federal regulations are being removed and any additional requirements onto issuers mainly consist of practices they currently perform in the private market.

In the 2018 Payment Notice, HHS finalized the removal of a participation provision that had required certain QHP issuers to participate in an FF–SHOP in order to participate in an FFE. As a result, HHS expects that there will be a significant decrease in the number of issuers in the FF–SHOPs in the 2018 plan year and therefore, also expects fewer enrollments in the FF–SHOPs and SBE–FPs utilizing the Federal platform for SHOP. As of January 1, 2017, approximately 7,554 employer groups were enrolled in the FF–SHOPs, covering 38,749 lives. With the anticipated significant decreases in QHP issuer participation and enrollment beginning in 2018, it is not cost effective for the Federal government to continue to maintain certain FF–SHOP functionalities, collect significantly reduced user fees on a monthly basis, maintain the technologies required to maintain an FF–SHOP Web site and payment platform, generate enrollment and payment transaction files, and perform enrollment reconciliation.

Under the proposed approach, issuers would still be subject to their State requirements, and HHS would minimize Federal requirements related to SHOP plans (that is, notice requirements, etc.) for plan years beginning on or after January 1, 2018. For example, issuers are often required by State law to generate enrollment and payment notices, and would continue to generate any State-required notices under the proposed SHOP enrollment approach. Under the proposed approach, the FF–SHOPs would no longer generate enrollment notices, but the notice requirements for the FF–SHOPs would not necessarily be transferred directly to participating QHP issuers. HHS can imagine a scenario where an issuer might generate an additional notice to a SHOP consumer that they are not required by Federal law to send, but may be required by State law, to send.

Issuers, under the proposed approach would still be required to accept enrollment from employers that offer their employees a choice of plans. HHS can foresee a circumstance where an employer offers its employees a choice of plans, across plan categories, and where the employees choose to enroll in plans offered by multiple issuers. In this circumstance, it would also be possible that an issuer would receive one application for enrollment from a group. Under the proposed approach to SHOP enrollment, the issuer would be required to accept that single enrollment so long as the employer's group has met the minimum participation rate for their State, or is enrolling between November 15 and December 15, when the minimum participation rate rules do not apply. Given the expected decrease in issuer participation in the SHOP beginning in plan year 2018, HHS believes that a circumstance, similar to

the one discussed above may occur. In the absence of premium aggregation services, issuers, under the proposed approach would be working directly with an employer, or their appointed SHOP-registered agent or broker for matters of enrollment and premium billing and payment. Under the proposed regulations, issuers would be required to enroll consumers into plans, even if only one employee of a group would like to enroll. Further, if this proposal were to become final, issuers would also be required to process enrollments into SHOP QHPs, and, handle appeals (other than appeals related to employer eligibility), administer special enrollment periods and terminations. Issuers would still be subject to the market wide effective dates outlined in § 147.104(b)(1)(i)(C). While HHS believes that issuers currently perform the majority of these tasks, issuers may experience an increase in burden as it relates to the volume of consumers enrolling in their SHOP QHPs. Overall, HHS believes that under this approach, issuers would see a net cost savings, as their business processes for SHOP enrollments could be more closely aligned with their current business practices for enrollments outside the SHOP, and they would no longer be remitting user fees for FF–SHOP and SBE–FP SHOP enrollments.

As noted, SBEs would be given the flexibility to adopt an enrollment approach through which enrollments occur directly with issuers or SHOP-registered agents or brokers, to continue to operate with the same functionalities as they currently do or to develop new practices as permitted by the proposals in this rule. In any case, SBEs would need to meet only the proposed regulations, therefore minimizing the overall amount of regulatory requirements that SBEs would otherwise need to meet. HHS believes that the proposed new flexibility for SBEs will result in an overall reduction in burden and cost for SBEs because we are providing SBEs with the flexibility to pursue the enrollment approach that best meets their needs, because we are reducing the overall regulatory requirements for the SHOP Exchanges, and for the same reasons described above regarding why the proposed enrollment approach would reduce burdens on the FF–SHOP and its stakeholders.

Under the proposed approach for plan years beginning on or after January 1, 2018, HHS believes that employers seeking to purchase FF–SHOP coverage would experience a reduction in regulatory burden related to enrollment, despite the fact that they may be required to visit at least two Web sites (the SHOP Web site and the issuer's Web site) prior to completing an enrollment in SHOP coverage as they would be able to enroll in coverage through a SHOP-registered agent or broker or through a participating QHP issuer—using issuers' streamlined enrollment technologies. Employers would also be required, under the proposals described throughout this document to notify their QHP issuer of their eligibility to purchase a SHOP QHP and of their ineligibility, if their eligibility were to be revoked. We believe this would still be less cumbersome than the existing eligibility and enrollment process.

Under the proposed approach, some employers, specifically those who offer their employees a choice of plans, would experience an increase of administrative burden with the removal of a SHOP's premium aggregation services. Without a SHOP's premium aggregation services, employers would have to collect the enrollment and payment information needed from each of the issuers whose plans the employer intends to offer to its employees. In the event employees select plans from multiple insurance companies, the employer would be responsible for distributing the applications for enrollment to the individual issuers, collecting payments from the employees and sending the individual payments to each issuer. Due to the expected decrease in issuer participation in the FF–SHOPs, some SHOP employers will likely only have one issuer offering FF–SHOP plans in their area and would not be able to offer their employees a choice of plans across issuers. In addition, historically, a majority of employers have not offered employee choice across different issuers. Therefore HHS does not believe the potential increased burden in this area due the proposed removal of premium aggregation services to be significant. Employers would still be able to view a listing of all of the SHOP QHPs available, by plan category and issuer on a SHOP Web site. HHS expects that the actual process of enrolling in SHOP QHPs under this approach would be less burdensome than the existing enrollment approach through a SHOP Web site. As previously mentioned, HHS anticipates significantly lower issuer participation in the SHOP in the 2018 plan year. A decrease in issuer participation unfortunately also results in less choice for consumers. While employers could experience an increase in burden, under the proposed flexibilities for SHOPs, HHS anticipates the benefits of the proposed approach would ultimately outweigh the minimal additional costs employers could face, if these proposals were to be finalized.

Further, because the Federal government would experience a dramatic reduction in the role it plays in operating an FF–SHOP and the contract support that it requires in order to support it. In 2016, the cost of running the FF–SHOP Web site was approximately $30 million, and HHS expects annual expenditures to drop significantly—by at least 90 percent—within a few years, as it responsibly wind-downs the integration of the FF–SHOPs.

13. User Fees (§ 156.50)

To support the operation of FFEs, we require in § 156.50(c) that a participating issuer offering a plan through an FFE or SBE–FP must remit a user fee to HHS each month equal to the product of the monthly user fee rate specified in the annual HHS notice of benefit and payment parameters for the applicable benefit year and the monthly premium charged by the issuer for each policy under the plan where enrollment is through an FFE. In this proposed rule, for the 2019 benefit year, we propose a monthly FFE user fee rate equal to 3.5 percent and for an SBE–FP equal to 3.0 percent of the monthly premium. This increase in SBE–FP user fee rate from 2.0 percent in 2018 to 3.0 percent in 2019 will increase transfers from SBE–FP issuers to the Federal government by $20 million. Additionally, we propose to cease charging monthly user fees to SHOP issuers offering plans through an FFE or SBE–FP for plan years beginning on and after January 1, 2018, effective on the effective date of the final rule, if finalized as proposed. This proposal will decrease user fee transfers from SHOP issuers offering plans through an FFE or SBE–FP of approximately $6 million.

14. Provision of EHB

In § 156.111, we propose to provide States with more flexibility by offering States three new methods for selecting their State EHB-benchmark plans. Under this proposal, if the State does not select one of the three methods for changing its EHB-benchmark plan, the State would default to its current EHB-benchmark plan. We recognize that, to the extent that States take advantage of the proposed EHB-benchmark plan selection options at § 156.111, States, issuers, and consumers would experience an increase in burden to develop new policies and implement new plan designs. We anticipate that

most States would need to invest resources to analyze the three new EHB-benchmark selection options to make an informed selection, even if a State defaults. Several States may select one of the new options, and would need additional resources to facilitate a public notice and comment period; develop and submit the necessary documents specified by HHS (including the requisite actuarial certification) to effectuate the State's selection; and, if making changes to their EHB-benchmark plan for 2019, to instruct their issuers on how to manually change the Add-in file used in the Plans and Benefits Template to align with the State's EHB-benchmark plan, as discussed in preamble.[77] Additionally, in States that choose to select their EHB-benchmark plan under any of the three available proposed options, issuers offering plans that provide EHB would incur additional administrative costs associated with designing plans compliant with the State's newly selected EHB-benchmark plan.

Due to the many PPACA policies directly or indirectly tied to EHB, HHS recognizes the impact this proposed policy would have on parties beyond issuers required to provide EHB-compliant plans. For example, the State's new EHB-benchmark selection could impact how HHS reviews and recognizes plans seeking minimal essential coverage designation,[78] how issuers set their annual limitation on cost-sharing, and how issuers determine which benefits may not be subject to annual and lifetime dollar limits.[79]

It is our aim that the flexibility under the proposed policy would allow for States and issuers to be more innovative in designing benefit structures and affordable health plans that benefit the consumer. However, we realize that this proposed policy would have varying impact on consumers depending on how a State chooses to implement the proposed policy. Consumers enrolled in individual and small group market plans would be impacted by changes to EHB in that their benefits may change and in some cases premiums could increase or decrease depending upon State implementation of the proposed policies. Additionally, in States that use one of the proposed methods to select a new EHB-benchmark plan, the new EHB-benchmark plan selection may impact the amount of premium tax credit (PTC) and CSRs for enrollees in the State. For these consumers, subsidies would increase or decrease when compared to their State's current EHB-benchmark plan. PTC is available only for that portion of a plan's premium attributed to EHB. To the extent that a State's EHB-benchmark plan, under the proposal, leads to lower premiums for the second lowest cost silver plan, PTC would be reduced, but not the percent of income a consumer with PTC is expected to contribute to their premium. This effect would represent a transfer from consumers who receive PTC to the Federal government. Individual and small group market enrollees who do not receive PTC would experience lower premiums for less comprehensive coverage that could result in more affordable coverage options but possibly higher out-of-pocket costs for the consumer.

We anticipate that States are more likely to select EHB-benchmark plans under this proposal such that premiums are reduced. The proposal, however, provides some flexibility for States to select EHB-benchmark plans in a manner that would increase premiums, for example by selecting another State's EHB-benchmark plan that provides greater benefits than the State's current EHB-benchmark plan. To the extent that a State's EHB-benchmark plan leads to higher premiums for the second lowest cost silver plan, PTC would be increased.

Consumers who have specific health needs may also be impacted by the proposed policy. In the individual and small group markets, depending on the selection made by the State in which the consumer lives, consumers with less comprehensive plans may no longer have coverage for certain services. In other States, again depending on State choices, consumers may gain coverage for some services.

As explained above, HHS anticipates that modifying § 156.111 as proposed would generate additional costs for States, issuers, and certain consumers in the short run. However, although we are uncertain as to how States might take advantage of this flexibility and States are not required to make any changes under this policy, we also believe the additional flexibility in plan and benefit design might produce premium savings, outweighing the potential burdens. The proposed polices offer issuers in States that utilize the proposed flexibility to select a new EHB-benchmark plan the opportunity to lower plan premiums, which would increase affordability of health insurance for consumers in the individual and small group markets who do not receive PTC and do not require the benefits that are no longer considered EHB.

When adjusting coverage of services under the proposed options, we encourage States to consider the spillover effects in addition to the costs and utilization of these services. Spillover effects include increased use of other services, such as increased used of emergency services or increased use of public services provided by the State or other government entities, when a certain service is no longer covered by insurance. Depending on the State population's use of services and health care needs, States may arrive at different conclusions about the effects of adjusting a particular benefit. Because we do not know how States would choose to adjust their benchmark plans, we are not able to predict the effects these modifications may have on costs.

Additionally, we also proposed at § 156.115 to allow for benefit substitution to occur within the same EHB category or between EHB categories to offer additional issuer flexibility. Because issuers are already familiar with substituting benefits within benefit categories, we do not believe that broadening the policy to allow benefit substitution between benefit categories would create additional burden for issuers. This proposal would increase the burden on consumers who choose between plans offered in the individual and small group markets as they would need to spend more time and effort comparing benefits offered by different plans in order to determine what, if any, benefits have been substituted and what plan would best suit their health care and financial needs. We also note that States are generally primarily responsible for enforcement of EHB and continue to have the option to set criteria for benefit substitution. Additionally, by allowing substitution between categories, States may encounter difficulties in ensuring that all categories are filled in such a way that amounts to EHB.

We solicit comments on the impact of the proposed EHB policy and on whether other impacts should be considered.

[77] For certain States, taking action on the EHB-benchmark plan may require legislature action or other high level state approval.

[78] Consumers generally must maintain minimum essential coverage or obtain an exemption to avoid the individual shared responsibility payment. As noted in the preamble to § 156.602 in this proposed rule, in considering whether to recognize coverage as MEC under the application process provided for in § 156.604, HHS generally evaluates whether the coverage complies with substantially all the requirements of title I of the PPACA that apply to non-grandfathered coverage in the individual market, including the EHB requirements.

[79] The definition of EHB also has an impact on the annual limitation on cost sharing at section 1302(c) of the PPACA (which is incorporated into section 2707(b) of the PHS Act) and the prohibition of annual and lifetime dollar limits at section 2711 of the PHS Act, as added by the PPACA.

15. Application to Stand-Alone Dental Plans Inside the Exchange (§ 156.150)

In this proposed rule, we are proposing to remove AV requirements for SADP issuers. We estimate that the proposed change in AV could lead to a reduction in premiums for certain SADPs. Issuers may choose to offer more SADPs at varying premiums and levels of coverage. The offering of more SADPs and SADPs with lower premiums may lead to increased enrollment in SADPs. Because certain eligible taxpayers could use premium tax credit to pay for the portion of SADP premiums attributable to EHB, a reduction in premiums would likely reduce the benchmark premium for purposes of the premium tax credit, leading to a small transfer from credit recipients to the government. If enrollment increases due to potentially lower premiums there could be an overall increase in the total premium tax credit payments by the government. The net effect is uncertain. We seek comment on the impact of this proposed change.

16. Qualified Health Plan Certification

For plan years 2019 and later, we propose to further expand the role of States in the QHP certification process for FFEs, including FFEs where the State performs plan management functions. Specifically, we propose to defer to States for additional review areas, including accreditation requirements at § 156.275, compliance reviews at § 156.715, minimum geographic area of the plan's service area at § 155.1055, and quality improvement strategy reporting at § 156.1130, if feasible and appropriate. We also propose to extend, for the 2019 benefit year and beyond, the QHP certification review standards related to network adequacy and essential community providers that we finalized in the Market Stabilization rule. We do not anticipate these proposals would increase burden on States because we believe these reviews are already being performed by States. We anticipate a slight reduction in burden for issuers due to not needing to undergo duplicative reviews and a reduction in costs to the Federal government. We seek comment on whether there are burdens we are not considering.

In § 156.298, we propose to remove the meaningful difference standard. If the meaningful difference standard is removed, issuers would have a potential reduction in administrative costs since they would no longer have to implement their internal assessments as to whether their plan offerings meet this standard. Consumers may have more QHPs to select from. However, we do not have evidence from any Exchange that removing the meaningful difference standard would create any new burden on consumers.

We also anticipate that the proposal to remove the meaningful difference standard would reduce the regulatory burden on SBE–FPs. Under § 155.200(f)(2)(iv), SBE–FPs are required to establish and oversee requirements for their issuers that are no less stringent than the meaningful difference standard as it applies to issuers participating in the FFEs. Under our proposal, SBE–FPs would no longer need to establish such a standard or oversee it.

17. Provisions Related to Cost Sharing (§ 156.130)

The PPACA provides for the reduction or elimination of cost sharing for certain eligible individuals enrolled in QHPs offered through the Exchanges. This assistance helps many low- and moderate-income individuals and families obtain health insurance—for many people, cost sharing is a barrier to obtaining needed health care.[80]

We set forth in this proposed rule the reductions in the maximum annual limitation on cost sharing for silver plan variations. Consistent with our analysis in previous Payment Notices, we developed three model silver level QHPs and analyzed the impact on their AVs of the reductions described in the PPACA to the estimated 2019 maximum annual limitation on cost sharing for self-only coverage. We do not believe these changes will result in a significant economic impact. Therefore, we do not believe the provisions related to cost-sharing reductions in this proposed rule will have an impact on the program established by and described in past Payment Notices.

We also proposed the premium adjustment percentage for the 2019 benefit year. Under § 156.130(e), and under the methodology established in the 2015 Payment Notice and amended in the 2015 Market Standards Rule for estimating average per capita premium for purposes of calculating the premium adjustment percentage, the premium adjustment percentage is the percentage (if any) by which the average per enrollee premium for employer-sponsored health insurance coverage for the preceding calendar year exceeds such average per enrollee premium for employer-sponsored health insurance for 2013. The annual premium adjustment percentage sets the rate of increase for three parameters detailed in the PPACA: The annual limitation on cost sharing (defined at § 156.130(a)), the required contribution percentage used to determine eligibility for certain exemptions under section 5000A of the Code, and the assessable payments under sections 4980H(a) and 4980H(b) of the Code. We believe that the proposed 2019 premium adjustment percentage is well within the parameters used in the modeling of the PPACA, and we do not expect that these proposed provisions will alter CBO's March 2016 baseline estimates of the budget impact.

18. Minimum Essential Coverage (§ 156.602, § 156.604)

We propose to designate CHIP buy-in programs that provide identical coverage to the CHIP program under title XXI of the Act in the applicable State as minimum essential coverage. Currently very few States offer CHIP buy-in plans and such plans in two states have applied for and been recognized as minimum essential coverage. This proposed provision would reduce burden on sponsors of such programs that might otherwise have had to electronically submit to HHS information regarding their plans and certify that their plans meet substantially all of the requirements of Title I of the PPACA, as applicable to non-grandfathered, individual coverage (including reviewing and updating documents), make changes to their program to obtain recognition as minimum essential coverage, and provide a notice to enrollees informing them that the plan has been recognized as minimum essential coverage for the purposes of the individual shared responsibility provision. If CHIP buy-in programs that provide greater coverage and government-sponsored buy-in programs, such as Medicaid buy-in programs are categorically recognized as minimum essential coverage, sponsors of such programs would also experience a similar reduction in burden. The sponsor of any type of coverage recognized as minimum essential coverage would continue to be required to provide the annual information reporting to the IRS specified in section 6055 of the Code and furnish statements to individuals enrolled in such coverage to assist them in establishing that they are not subject to the individual shared responsibility provision of section 5000A of the Code.

[80] Brook, Robert H., John E. Ware, William H. Rogers, Emmett B. Keeler, Allyson Ross Davies, Cathy D. Sherbourne, George A. Goldberg, Kathleen N. Lohr, Patricia Camp and Joseph P. Newhouse. *The Effect of Coinsurance on the Health of Adults: Results from the RAND Health Insurance Experiment.* Santa Monica, CA: RAND Corporation, 1984. Available at *http://www.rand.org/pubs/reports/R3055.*

19. Medical Loss Ratio (Part 158)

We propose to amend § 158.221(b) to allow issuers the option to report a single quality improvement activity expense amount equal to 0.8 percent of earned premium in the relevant State and market, in lieu of reporting the actual QIA amounts in five separate categories described in § 158.150(b)(2)(i)–(v). Based on MLR data for the 2015 MLR reporting year, HHS estimates that the proposed amendment would decrease rebate payments from issuers to consumers by approximately $23 million.

We also propose to amend several sections of 45 CFR part 158, subpart C (§§ 158.301, 158.321–158.322, 158.330, 158.341, 158.350) to modify the process and criteria for the Secretary to determine whether to adjust the 80 percent MLR standard in the individual market in a State. While it is uncertain what specific adjustments States may request, most adjustments previously granted by the Secretary have ranged from 70 to 75 percent. Based on MLR data for the 2015 MLR reporting year, and assuming that 22 States would request an adjustment (including 17 States that previously requested adjustments), HHS estimates that the proposed amendments would decrease rebate payments from issuers to consumers or increase premiums paid by consumers to issuers by approximately $52 million (assuming a reduction of the 80 percent MLR standard to 75 percent for all 22 States) to $64 million (assuming a reduction of the MLR standard to 70 percent for all 22 States) annually, for up to 3 years at a time. This represents an estimated 74 percent to 91 percent reduction, respectively, in rebates payable in those 22 States, which together accounted for $70 million out of the nationwide total $107 million in rebates that issuers owed to individual market consumers for 2015. The actual reduction in rebates may be lower or higher depending on which States apply for an adjustment, and whether and how much the Secretary may adjust the individual market MLR standard in each State.

20. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule.

We are required to promulgate a substantial portion of this rule each year under our regulations and we estimate that approximately half of the remaining provisions would cause additional regulatory review burden that stakeholders do not already anticipate. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule, excluding the portion of the rule that we are required to promulgate each year.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $105.16 per hour, including overhead and fringe benefits.[81] Assuming an average reading speed, we estimate that it would take approximately 1 hour for the staff to review the relevant portions of this proposed rule that causes unanticipated burden. For each entity that reviews the rule, the estimated cost is $105.16. Therefore, we estimate that the total cost of reviewing this regulation is approximately $70,247 ($105.16 x 668 reviewers).

D. Regulatory Alternatives Considered

In developing the policies contained in this proposed rule, we considered numerous alternatives to the presented proposals. Below we discuss the key regulatory alternatives that we considered.

For the 2019 benefit year, we considered using only the 2016 benefit year enrollee-level EDGE data to recalibrate the risk adjustment model coefficients. However, this could lead to uncertainty in issuers' expectation of risk adjustment transfers due to the sole use of a new dataset for recalibrating the model coefficients. We believe that blending multiple years of data will promote stability for the risk adjustment coefficients year-to-year, particularly for rare conditions with small sample sizes. Therefore, we are proposing to blend coefficients calculated from the 2016 benefit year enrollee-level EDGE data with 2014 and 2015 MarketScan® data. Additionally, given the timing of the proposed rule, we are unable to analyze the enrollee-level EDGE data in time to publish the coefficients calibrated using the EDGE data in the proposed rule. Similar to the 2018 benefit year final risk adjustment coefficients, we considered publishing the 2019 benefit year final risk adjustment coefficients in guidance after the publication of the final rule with more recent MarketScan® data that will become available at the end of this year. However, we expect the 2016 benefit year enrollee-level risk adjustment data will be available in time for the final rule. Additionally, we are not proposing to use the 2016 MarketScan® data that will become available at the end of this year for the 2019 benefit year risk adjustment model recalibration. As such, we are proposing to finalize the 2019 benefit year model coefficients blended with 2016 EDGE data, and 2014 and 2015 MarketScan® data in the final rule.

With respect to the risk adjustment data validation program, HHS considered an alternate policy under which HHS would not adjust payment transfers for an issuer that exited a market within a State during or after the benefit year being audited, unless the error rate for the exited issuer was egregiously high relative to the error rates of other issuers in the State and market. We would define the error rate threshold for triggering a payment adjustment as 2 or 3 standard deviations from a benchmark negative error rate. For exited issuers that have error rates above the established threshold, we would make a retroactive adjustment to their final benefit year payment transfer in the same manner as outlined above. While this alternative approach may provide returning issuers in the State and market with more certainty about their risk adjustment transfers for a given benefit year, it does not offer as much protection against gaming as the proposed policy, and could result in exited issuers that do not have egregiously high error rates being overpaid relative to the risk of their enrollee populations.

We considered maintaining the current applicability of rate review, and continuing to review student health insurance coverage rate increases. However, the proposed rule would provide States with greater flexibility to meet the needs of their markets and reduce the burden associated with review of plans that are not part of the

[81] *https://www.bls.gov/oes/current/oes_nat.htm.*

single risk pool. As a practical matter, student health insurance coverage has generally been given the same plan design flexibility as plans in the large group market. Just like purchasers of large group plans, purchasers in the student market are viewed as more sophisticated, with greater leverage and ability to avoid the imposition of unreasonable rate increases. Single risk pool pricing, the primary focus of the rate review program, does not apply to student health insurance coverage.

We considered maintaining the current 30-day notice requirement for States to notify HHS prior to posting proposed and final rate increases. However, such advanced notice may be impractical in some States so we have decreased the notice requirement to 5 business days.

In adding standards for § 155.221, HHS considered making no changes to the existing rule and retaining the existing standard for agents and brokers to contract with a third-party entity approved by HHS for conducting audits under the section. We believe, however, that changes to this section are necessary to include issuers and to provide the necessary flexibility in oversight that both protects consumers and encourages enrollment pathway innovation for agents, brokers, and issuers using direct enrollment.

For the proposed amendments to § 155.320, we considered developing a comprehensive database using information from employers on the plans they offer to their employees and their family members that could satisfy verification requirements under paragraph (d)(2) for all Exchanges. This approach would be resource-intensive for Exchanges, and would produce a database with limited utility due to data limitations. Developing a database; recruiting and educating employers to participate in voluntarily submitting the data; and providing technical assistance to employers for the first year of implementation on how to input the data is estimated to cost at least $38 million. Building such a database would also rely on the voluntary participation of substantially all employers. This participation would be onerous for employers. Employers would need to provide individual employee level data regarding plans the employer will offer, information that may not be available in time to populate a comprehensive database prior to the Exchange's plan year. In addition, since the PPACA does not require employers to provide to the Exchange the relevant information on what coverage they offer, Exchanges and HHS would not receive data from all employers. After weighing our options, we decided that this approach would be overly costly and burdensome, and of limited value due to gaps in the data Exchanges and HHS would be able to collect. We also considered removing the requirement to connect to an HHS-approved data source, and the requirement to use an alternative method if the Exchange does not connect to the required data sources, but were concerned about the potential impact on program integrity.

In developing the proposal related to the SHOP enrollment process, we considered maintaining the status quo, but believe that the increase in flexibility, cost savings and reduction in burden resulting from the proposed enrollment approach, would have a positive impact on small businesses across the country and provide States with needed flexibility.

In developing the proposal for the new EHB-benchmark plan selection options described at § 156.111, we considered a variety of alternatives, including maintaining the current EHB-benchmark policy without modification. Although maintaining the current policy would promote stability by preserving the current EHB-benchmarks across all States, we do not believe it would offer the additional flexibility that States have requested in selecting an EHB-benchmark plan to best meet the needs of their consumer population. We also considered whether it was feasible to offer States increased flexibility by allowing them to set a range of acceptable EHB within their State, such that issuers could offer plans within that range with more limited EHB coverage or more robust EHB coverage. However, we determined that this option did not meet statutory requirements. To balance stability, flexibility, and statutory requirements, we instead propose to offer States the expanded EHB-benchmark plan selection options at § 156.111 as well as the option to default to the State's current EHB-benchmark plan. We believe this approach would provide States with the opportunity to take advantage of greater flexibility in selecting an EHB-benchmark plan while also providing those States that value stability with the option to retain their current benchmark plan. We solicit comments on proposed options at § 156.111.

With respect to the provision regarding removing the AV requirement for SADPs, we considered making no change or proposing an expansion to the de minimis range to mirror the expanded de minimis range for QHPs (−4/+2 percentage points) or of +/−3 percentage points. We determined that these alternatives were less desirable because they do not provide issuers with as much flexibility to offer a range of SADPs as the proposed removal of the AV standards for SADPs.

For the QHP certification standard regarding meaningful difference, we considered maintaining the requirement on issuers, but we believe that removing this provision would promote the offering of a variety of affordable QHPs that will meet consumers' needs, would provide issuers with more flexibility, and would remove an unnecessary regulatory requirement.

We considered maintaining the current policy requiring all CHIP buy-in programs that wish to be recognized as minimum essential coverage, to comply with the requirements for recognition as MEC outlined in § 156.604. However, this proposed rule would help reduce burden on plan sponsors of such programs, while ensuring the enrollees have a basic standard of coverage that satisfies the individual shared responsibility provision. In the preamble to § 156.602, we solicit comments on whether CHIP buy-in programs that are not identical to the State's CHIP program but provide similar or greater coverage for enrollees should also be designated as MEC or whether such programs must submit an application so that HHS can evaluate any differences with the title XXI program to ensure that the program substantially resembles the title XXI program.

For the proposed amendments to § 158.221(b), we considered retaining the current quality improvement activity reporting requirements, since giving issuers the option to report a standardized rate for QIA expenditures may inhibit HHS from being able to analyze trends in issuers' investment in improving the quality of healthcare in the future, and reduce rebates to consumers by allowing issuers to effectively increase their MLRs by 0.8 percent even if those issuers engaged in and spent only trivial amounts on QIA. However, this change would also potentially level the playing field among issuers to a certain extent and lead to more accurate rebate payments, since many issuers likely do engage in QIA but forego reporting that spending because the burden of analyzing, documenting, tracking, allocating, and reporting QIA expenses exceeds the benefits for MLR purposes. Because the proposed approach of giving issuers the option to report a minimal, standardized rate would reduce unwarranted regulatory and economic burdens for issuers that do not want to track and report the exact QIA amounts for their MLR calculation, we believe that the

proposed approach would be more effective and objective than the current requirements.

For the proposed amendments to part 158, subpart C, we considered retaining the current requirements for States to request an adjustment to the 80 percent MLR standard in the individual market in a State. However, HHS recognizes that many of the current State application requirements are burdensome and less relevant in the post-2014 reformed environment, and may preclude or discourage States from proposing innovative solutions to help stabilize their individual markets. Therefore, we believe this proposal would reduce regulatory burdens on States, and provide States with an additional tool to promote stability in their markets.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, (5 U.S.C. 601, *et seq.*), requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities. In this proposed rule, we propose standards for the risk adjustment and risk adjustment data validation programs, which are intended to stabilize premiums as insurance market reforms are implemented and Exchanges facilitate increased enrollment. Because we believe that insurance firms offering comprehensive health insurance policies generally exceed the size thresholds for ''small entities'' established by the SBA, we do not believe that an initial regulatory flexibility analysis is required for such firms.

For purposes of the RFA, we expect the following types of entities to be affected by this proposed rule:

- Health insurance issuers.
- Group health plans.

We believe that health insurance issuers and group health plans would be classified under the North American Industry Classification System code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $38.5 million or less would be considered small entities for these North American Industry Classification System codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $32.5 million or less.[82] We believe that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds.

In this proposed rule, we proposed to allow enrollment through a SHOP-registered agent or broker, or through a participating QHP issuer. The SHOPs are generally limited by statute to employers with at least one but not more than 50 employees, unless a State opts to provide that employers with from 1 to 100 employees are ''small employers.'' For this reason, we expect that many employers who would be affected by the proposals would meet the SBA standard for small entities. We do not believe that the proposals impose requirements on employers offering health insurance through a SHOP that are more restrictive than the current requirements on small businesses offering employer sponsored insurance. We believe the processes that we have established constitute the minimum amount of requirements necessary to implement the SHOP program and accomplish our policy goals, and that no appropriate regulatory alternatives could be developed to further lessen the compliance burden.

Based on data from MLR annual report submissions for the 2015 MLR reporting year, approximately 92 out of over 530 issuers of health insurance coverage nationwide had total premium revenue of $38.5 million or less. This estimate may overstate the actual number of small health insurance companies that may be affected, since almost 50 percent of these small companies belong to larger holding groups, and many if not all of these small companies are likely to have non-health lines of business that would result in their revenues exceeding $38.5 million. We estimate that 57 of these 92 potentially small entities would experience a decrease in the rebate amount owed to consumers under the proposed amendments to the quality improvement activity reporting provisions in part 158, and 27 of these 57 entities are part of larger holding groups. In addition, we estimate that no small entities would be impacted by the proposed amendments to 45 CFR part 158, subpart C. Therefore, we believe that the provisions of this proposed rule regarding MLR would not affect a substantial number of small entities, and further, the impact of the proposed QIA provisions on small entities would be positive.

[82] ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'', effective February 26, 2016, U.S. Small Business Administration, available at *https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-smallbusiness-size-standards.*

F. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule that includes any Federal mandate that may result in expenditures in any 1 year by a State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $148 million. Although we have not been able to quantify all costs, we expect the combined impact on State, local, or Tribal governments and the private sector to be below the threshold.

G. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, HHS has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

While developing this rule, HHS attempted to balance the States' interests in regulating health insurance issuers with the need to ensure market stability. By doing so, it is HHS's view that we have complied with the requirements of Executive Order 13132.

Because States have flexibility in designing their Exchange and Exchange-related programs, State decisions will ultimately influence both administrative

expenses and overall premiums. States are not required to establish an Exchange or risk adjustment program. For States that elected previously to operate an Exchange, or risk adjustment program, much of the initial cost of creating these programs was funded by Exchange Planning and Establishment Grants. After establishment, Exchanges must be financially self-sustaining, with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers.

In HHS's view, while this proposed rule would not impose substantial direct requirement costs on State and local governments, this regulation has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance that is offered in the individual and small group markets. For example, we propose to provide States with substantially more flexibility in selecting an EHB-benchmark plan, to explore ways to make it easier for States to establish and maintain a State Exchange, to expand the role of States in QHP certification in FFEs, to provide States with substantially more flexibility in how they operate a SHOP, to provide States with the option to request an adjustment in the risk adjustment program for their small group market; and to make it easier for States to apply for and be granted an adjustment to the MLR standard in their State. This rule also proposes to return flexibility to States in their review of rate increases. We propose to give States the choice to review rate increases for student health insurance coverage. We propose to eliminate the requirement that proposed and final rate increases must be posted uniformly, instead allowing States with an Effective Rate Review program to publish proposed and final rate increases on a rolling basis if they so choose. We also propose to reduce the advance notification that States must give HHS about the posting of rate increases from 30 days to 5 business days. Finally, we propose that States would no longer be required to seek approval if the State-specific threshold for reasonableness review is lower than the Federal default rate review threshold.

H. Congressional Review Act

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller for review.

I. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment, or otherwise promulgates, a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This proposed rule, if finalized as proposed, is expected to be an EO 13771 deregulatory action.

List of Subjects

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 153

Administrative practice and procedure, Health care, Health insurance, Health records, Intergovernmental relations, Organization and functions (government agencies), Reporting and recordkeeping requirements.

45 CFR Part 154

Administrative practice and procedure, Claims, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interests, Consumer protection, Grants administration, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—health, Medicaid, Organization and functions (government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Conflict of interests, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Medicaid, Organization and functions (government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

45 CFR Part 157

Employee benefit plans, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Medicaid, Organization and functions (government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

45 CFR Part 158

Administrative practice and procedure, Claims, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 147, 153, 154, 155, 156, 157 and 158 as set forth below.

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Section 147.102 is amended by revising paragraph (c)(3)(iii)((D) to read as follows:

§ 147.102 Fair health insurance premiums.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(D) To the extent permitted by applicable state law and, in the case of coverage offered through a SHOP, as permitted by the SHOP, apply this paragraph (c)(3)(iii) uniformly among group health plans enrolling in that product, giving those group health plans

the option to pay premiums based on average enrollee premium amounts.

* * * * *

■ 3. Section 147.104 is amended by—

■ a. Revising paragraphs (b)(1)(i)(B), (b)(1)(i)(C) and (b)(1)(ii);

■ b. Removing paragraph (b)(1)(iii); and

■ c. Revising paragraphs (b)(2)(i) introductory text and (ii).

The revisions read as follows:

§ 147.104 Guaranteed availability of coverage

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) In the case of a group health plan in the small group market that cannot comply with employer contribution or group participation rules for the offering of health insurance coverage, as allowed under applicable State law, and in the case of a QHP offered in the SHOP, as permitted by § 156.285(e) or § 156.286(e) of this subchapter, a health insurance issuer may restrict the availability of coverage to an annual enrollment period that begins November 15 and extends through December 15 of each calendar year.

(C) With respect to coverage in the small group market, and in the large group market if such coverage is offered through a SHOP in a State, for a plan selection received on the first through the fifteenth day of any month, the coverage effective date must be the first day of the following month. For a plan selection received on the 16th through last day of any month, the coverage effective date must be the first day of the second following month. In either such case, a small employer may instead opt for a later effective date within a quarter for which small group market rates are available.

(ii) *Individual market.* A health insurance issuer in the individual market must allow an individual to purchase health insurance coverage during the initial and annual open enrollment periods described in § 155.410(b) and (e) of this subchapter. Coverage must become effective consistent with the dates described in § 155.410(c) and (f) of this subchapter.

(2) * * *

(i) A health insurance issuer in the individual market must provide a limited open enrollment period for the triggering events described in § 155.420(d) of this subchapter, excluding, with respect to coverage offered outside of an Exchange, the following:

* * * * *

(ii) In applying this paragraph (b)(2), a reference in § 155.420 (other than in § 155.420(a)(5)) of this subchapter to a ''QHP'' is deemed to refer to a plan, a reference to ''the Exchange'' is deemed to refer to the applicable State authority, and a reference to a ''qualified individual'' is deemed to refer to an individual in the individual market.

* * * * *

PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT UNDER THE AFFORDABLE CARE ACT

■ 4. The authority citation for part 153 continues to read as follows:

Authority: Secs. 1311, 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

■ 5. Section 153.630 is amended by revising paragraphs (b)(6), (8), and (9) to read as follows:

§ 153.630 Data validation requirements when HHS operates risk adjustment.

* * * * *

(b) * * *

(6) An issuer must provide the initial validation auditor and the second validation auditor with all relevant source enrollment documentation, all claims and encounter data, and medical record documentation from providers of services to each enrollee in the applicable sample without unreasonable delay and in a manner that reasonably assures confidentiality and security in transmission. Notwithstanding any other provision of this section, a qualified provider that is licensed to diagnose mental illness by the State and that is prohibited from furnishing a complete medical record by applicable Federal or State privacy laws concerning any enrollee's treatment for one or more mental or behavioral health conditions may furnish a signed mental or behavioral health assessment that, to the extent permissible under such laws, should contain: the enrollee's name; gender; date of birth; current status of all mental or behavioral health diagnoses; and dates of service. The mental or behavioral health assessment should be signed by the provider and submitted with an attestation that the provider is prohibited from furnishing a complete medical record by applicable State or Federal privacy laws.

* * * * *

(8) The initial validation auditor must measure and report to the issuer and HHS, in a manner and timeframe specified by HHS, its inter-rater reliability rates among its reviewers. The initial validation auditor must achieve a consistency measure of at least 95 percent for his or her review outcomes, except that for validation of risk adjustment data for the 2015 and 2016 benefit years, the initial validation auditor may meet an inter-rater reliability standard of 85 percent for review outcomes.

(9) HHS may impose civil money penalties in accordance with the procedures set forth in § 156.805(b) through (e) of this subchapter if an issuer of a risk adjustment covered plan—

(i) Fails to engage an initial validation auditor;

(ii) Fails to submit the results of an initial validation audit to HHS;

(iii) Engages in misconduct or substantial non-compliance with the risk adjustment data validation standards and requirements applicable to issuers of risk adjustment covered plans; or

(iv) Intentionally or recklessly misrepresents or falsifies information that it furnishes to HHS.

* * * * *

PART 154—HEALTH INSURANCE ISSUER RATE INCREASES: DISCLOSURE AND REVIEW REQUIREMENTS

■ 6. The authority citation for part 154 continues to read as follows:

Authority: Section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94).

■ 7. Section 154.103 is amended by revising paragraph (b) to read as follows:

§ 154.103 Applicability.

* * * * *

(b) *Exceptions.* The requirements of this part do not apply to—

(1) Grandfathered health plan coverage as defined in § 147.140 of this subchapter;

(2) Excepted benefits as described in section 2791(c) of the PHS Act; and

(3) For plan years beginning on or after January 1, 2019, student health insurance coverage as defined in § 147.145 of this subchapter.

■ 8. Revise § 154.200 to read as follows:

§ 154.200 Rate increases subject to review.

(a) A rate increase filed in a State, or effective in a State that does not require a rate increase to be filed, is subject to review if:

(1) The rate increase is 15 percent or more applicable to a 12-month period that begins on January 1, as calculated under paragraph (b) of this section; or

(2) The rate increase meets or exceeds a State-specific threshold applicable to a 12-month period that begins on January 1, as calculated under paragraph (b) of this section, determined by the Secretary. A State-specific threshold shall be based on factors

impacting rate increases in a State to the extent that the data relating to such State-specific factors are available by August 1 of the preceding year. States interested in proposing a State-specific threshold greater than the Federal default stated in paragraph (a)(1) of this section are required to submit a proposal for approval of such threshold to the Secretary by August 1 of the preceding year.

(b) A rate increase meets or exceeds the applicable threshold set forth in paragraph (a) of this section if the average increase, including premium rating factors described in § 147.102 of this subchapter, for all enrollees weighted by premium volume for any plan within the product meets or exceeds the applicable threshold.

(c) If a rate increase that does not otherwise meet or exceed the threshold under paragraph (b) of this section meets or exceeds the threshold when combined with a previous increase or increases during the 12-month period preceding the date on which the rate increase would become effective, then the rate increase must be considered to meet or exceed the threshold and is subject to review under § 154.210, and such review shall include a review of the aggregate rate increases during the applicable 12-month period.

■ 9. Section 154.215 is amended by revising paragraph (h)(2) to read as follows:

§ 154.215 Submission of rate filing justification.

* * * * *

(h) * * *

(2) CMS will make available to the public on its Web site the information contained in Parts I and III of each Rate Filing Justification that is not a trade secret or confidential commercial or financial information as defined in HHS's Freedom of Information Act regulations, 45 CFR 5.31(d).

* * * * *

■ 10. Section 154.301 is amended by revising paragraph (b)(2), and removing paragraph (b)(3) to read as follows:

§ 154.301 CMS's determinations of Effective Rate Review Programs.

* * * * *

(b) * * *

(2) If a State intends to make the information in paragraph (b)(1)(i) of this section available to the public prior to the date specified by the Secretary, or if it intends to make the information in paragraph (b)(1)(ii) of this section available to the public prior to the first day of the annual open enrollment period in the individual market for the applicable calendar year, the State must notify CMS in writing, no later than five (5) business days prior to the date it intends to make the information public, of its intent to do so and the date it intends to make the information public.

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 11. The authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 12. Section 155.106 is amended by revising paragraph (c) introductory text to read as follows:

§ 155.106 Election to operate an Exchange after 2014.

* * * * *

(c) *Process for State Exchanges that seek to utilize the Federal platform for select functions.* States may seek approval to operate a State Exchange utilizing the Federal platform for only the individual market. A State seeking approval to operate a State Exchange utilizing the Federal platform for the individual market to support select functions through a Federal platform agreement under § 155.200(f) must:

* * * * *

■ 13. Section 155.200 is amended by removing and reserving paragraphs (f)(2)(ii) through (iv); and revising paragraph (f)(4) introductory text to read as follows;

§ 155.200 Functions of an Exchange.

* * * * *

(f) * * *

(2) * * *

(ii) [Reserved]

(iii) [Reserved]

(iv) [Reserved]

* * * * *

(4) A State Exchange on the Federal platform that utilizes the Federal platform for SHOP functions, for plan years beginning on or after January 1, 2018, must require its QHP issuers to make any changes to rates in accordance with the timeline applicable in a Federally-facilitated SHOP under § 155.706(b)(6)(i)(A). A State Exchange on the Federal platform that utilizes the Federal platform for SHOP functions, as set forth in paragraphs (f)(4)(i) through (vii) of this section, for plan years beginning prior to January 1, 2018, must—

* * * * *

■ 14. Section 155.210 is amended by revising paragraphs (c)(2) introductory text and (e)(7) to read as follows:

§ 155.210 Navigator program standards.

* * * * *

(c) * * *

(2) The Exchange must include an entity from at least one of the following categories for receipt of a Navigator grant:

* * * * *

(e) * * *

(7) In a Federally-facilitated Exchange, no individual or entity shall be ineligible to operate as a Navigator solely because its principal place of business is outside of the Exchange service area;

* * * * *

■ 15. Section 155.215 is amended by revising paragraph (h) to read as follows:

§ 155.215 Standards applicable to Navigators and Non-Navigator Assistance Personnel carrying out consumer assistance functions under §§ 155.205(d) and (e) and 155.210 in a Federally-facilitated Exchange and to Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant.

* * * * *

(h) In a Federally-facilitated Exchange, no individual or entity shall be ineligible to operate as a non-Navigator entity or as non-Navigator assistance personnel solely because its principal place of business is outside of the Exchange service area.

* * * * *

■ 16. Section 155.221 is revised to read as follows:

§ 155.221 Standards for third-parties to perform audits of agents, brokers, and issuers participating in direct enrollment.

(a) An agent, broker, or issuer participating in direct enrollment must engage a third-party entity to conduct an annual review to demonstrate operational readiness in accordance with § 155.220(c)(3)(i)(K) and with § 156.1230(b)(2) of this subchapter. The third-party entity will be a downstream or delegated entity of the agent, broker or issuer that participates or wishes to participate in direct enrollment.

(b) An agent, broker, or issuer participating in direct enrollment must satisfy the requirement to demonstrate operational readiness under paragraph (a) of this section by engaging a third-party entity that meets each of the following standards:

(1) Has experience conducting audits or similar services, including experience

with relevant privacy and security standards;

(2) Adheres to HHS specifications for content, format, privacy, and security in the conduct of an operational readiness review, which includes ensuring that agents, brokers, and issuers are in compliance with the applicable privacy and security standards and other applicable requirements;

(3) Collects, stores, and shares with HHS all data related to the third-party entity's audit of agents, brokers, and issuers in a manner, format, and frequency specified by HHS until 10 years from the date of creation, and complies with the privacy and security standards HHS adopts for agents, brokers, and issuers as required in accordance with § 155.260;

(4) Discloses to HHS any financial relationships between the entity and individuals who own or are employed by an agent, broker, or issuer for which it is conducting an operational readiness review.

(5) Complies with all applicable Federal and State requirements;

(6) Ensures, on an annual basis, that appropriate staff successfully complete operational readiness review training as established by HHS prior to conducting audits under paragraph (a) of this section;

(7) Permits access by the Secretary and the Office of the Inspector General (OIG) or their designees in connection with their right to evaluate through audit, inspection, or other means, to the third-party entity's books, contracts, computers, or other electronic systems, relating to the third-party entity's audits of agent's, broker's, or issuer's obligations in accordance with Federal standards under paragraph (a) of this section until 10 years from the date of creation; and

(8) Complies with other minimum business criteria as specified in guidance by HHS.

(c) An agent, broker or issuer may engage multiple third-party entities to conduct the audit under paragraph (a) of this section and each third-party entity must satisfy the standards outlined under paragraph (b) of this section.

■ 17. Section 155.305 is amended by revising paragraph (f)(4) to read as follows:

§ 155.305 Eligibility standards.

* * * * *

(f) * * *

(4) *Compliance with filing requirement.* The Exchange may not determine a tax filer eligible for APTC if HHS notifies the Exchange as part of the process described in § 155.320(c)(3) that APTC were made on behalf of the tax filer or either spouse if the tax filer is a married couple for a year for which tax data would be utilized for verification of household income and family size in accordance with § 155.320(c)(1)(i), and the tax filer or his or her spouse did not comply with the requirement to file an income tax return for that year as required by 26 U.S.C. 6011, 6012, and implementing regulations and reconcile the advance payments of the premium tax credit for that period.

* * * * *

■ 18. Section 155.320 is amended by—

■ a. Revising paragraphs (c)(3)(iii) introductory text, and paragraph (c)(3)(iii)(A);

■ b. Adding paragraphs (c)(3)(iii)(D) through (F);

■ c. Revising paragraph (c)(3)(vi)(C), (D), (F) and (G); and

■ d. Revising paragraph (d)(4) introductory text.

The revisions and additions read as follows:

§ 155.320 Verification process related to eligibility for insurance affordability programs.

* * * * *

(c) * * *

(3) * * *

(iii) *Verification process for changes in household income.* (A) Except as specified in paragraph (c)(3)(iii)(B), (C), and (D) of this section, if an applicant's attestation, in accordance with paragraph (c)(3)(ii)(B) of this section, indicates that a tax filer's annual household income has increased or is reasonably expected to increase from the data described in paragraph (c)(3)(ii)(A) of this section for the benefit year for which the applicant(s) in the tax filer's family are requesting coverage and the Exchange has not verified the applicant's MAGI-based income through the process specified in paragraph (c)(2)(ii) of this section to be within the applicable Medicaid or CHIP MAGI-based income standard, the Exchange must accept the applicant's attestation regarding a tax filer's annual household income without further verification.

* * * * *

(D) If an applicant's attestation to projected annual household income, as described in paragraph (c)(3)(ii)(B) of this section, is greater than or equal to 100 percent but not more than 400 percent of the FPL for the benefit year for which coverage is requested and is more than a reasonable threshold above the annual household income computed in accordance with paragraph (c)(3)(ii)(A) of this section, the data described in paragraph (c)(3)(ii)(A) of this section indicates that projected annual household income is under 100 percent FPL, and the Exchange has not verified the applicant's MAGI-based income through the process specified in paragraph (c)(2)(ii) of this section to be within the applicable Medicaid or CHIP MAGI-based income standard, the Exchange must proceed in accordance with § 155.315(f)(1) through (4). For the purposes of this paragraph, a reasonable threshold is established by the Exchange in guidance and approved by HHS, but must not be less than 10 percent, and can also include a threshold dollar amount. Applicants that would otherwise be eligible for APTC based on § 155.305(f)(2) are not subject to the verification described in this paragraph.

(E) If, at the conclusion of the period specified in § 155.315(f)(2)(ii), the Exchange remains unable to verify the applicant's attestation, the Exchange must determine the applicant's eligibility based on the information described in paragraph (c)(3)(ii)(A) of this section, notify the applicant of such determination in accordance with the notice requirements specified in § 155.310(g), and implement such determination in accordance with the effective dates specified in § 155.330(f).

(F) If, at the conclusion of the period specified in § 155.315(f)(2)(ii), the Exchange remains unable to verify the applicant's attestation and the information described in paragraph (c)(3)(ii)(A) of this section is unavailable, the Exchange must determine the tax filer ineligible for advance payments of the premium tax credit and cost-sharing reductions, notify the applicant of such determination in accordance with the notice requirements specified in § 155.310(g), and discontinue any advance payments of the premium tax credit and cost-sharing reductions in accordance with the effective dates specified in § 155.330(f).

* * * * *

(vi) * * *

(C) *Increases in annual household income.* If an applicant's attestation, in accordance with paragraph (c)(3)(ii)(B) of this section, indicates that a tax filer's annual household income has increased or is reasonably expected to increase from the data described in paragraph (c)(3)(vi)(A) of this section to the benefit year for which the applicant(s) in the tax filer's family are requesting coverage and the Exchange has not verified the applicant's MAGI-based income through the process specified in paragraph (c)(2)(ii) of this section to be within the applicable Medicaid or CHIP MAGI-based income standard, the Exchange must accept the applicant's attestation

for the tax filer's family without further verification, unless:

(*1*) The Exchange finds that an applicant's attestation of a tax filer's annual household income is not reasonably compatible with other information provided by the application filer, or

(*2*) The data described in paragraph (c)(3)(vi)(A) of this section indicates that projected annual household income is under 100 percent FPL and the applicant's attestation to projected household income, as described in paragraph (c)(3)(ii)(B) of this section, is greater than or equal to 100 percent but not more than 400 percent of the FPL for the benefit year for which coverage is requested and is more than a reasonable threshold above the annual household income as computed using data sources described in paragraph (c)(3)(vi)(A) of this section, in which case the Exchange must follow the procedures specified in § 155.315(f)(1) through (4). The reasonable threshold used under this paragraph must be equal to the reasonable threshold established in accordance with paragraph (c)(3)(iii)(D) of this section.

(D) *Decreases in annual household income and situations in which electronic data is unavailable.* If electronic data are unavailable or an applicant's attestation to projected annual household income, as described in paragraph (c)(3)(ii)(B) of this section, is more than a reasonable threshold below the annual household income as computed using data sources described in paragraphs (c)(3)(vi)(A) of this section, the Exchange must follow the procedures specified in § 155.315(f)(1) through (4). The reasonable threshold used under this paragraph must be equal to the reasonable threshold established in accordance with paragraph (c)(3)(vi) of this section.

* * * * *

(F) If, at the conclusion of the period specified in § 155.315(f)(2)(ii), the Exchange remains unable to verify the applicant's attestation, the Exchange must determine the applicant's eligibility based on the information described in paragraph (c)(3)(ii)(A) of this section, notify the applicant of such determination in accordance with the notice requirements specified in § 155.310(g), and implement such determination in accordance with the effective dates specified in § 155.330(f).

(G) If, at the conclusion of the period specified in § 155.315(f)(2)(ii), the Exchange remains unable to verify the applicant's attestation for the tax filer and the information described in paragraph (c)(3)(ii)(A) of this section is unavailable, the Exchange must determine the tax filer ineligible for advance payments of the premium tax credit and cost-sharing reductions, notify the applicant of such determination in accordance with the notice requirement specified in § 155.310(g), and discontinue any advance payments of the premium tax credit and cost-sharing reductions in accordance with the effective dates specified in § 155.330(f).

* * * * *

(d) * * *

(4) *Alternate procedures.* For any benefit year for which it does not reasonably expect to obtain sufficient verification data as described in paragraphs (d)(2)(i) through (iii) of this section, the Exchange must follow the procedures specified in paragraph (d)(4)(i) of this section or, for benefit years 2016 through 2019, the Exchange may follow the procedures specified in paragraph (d)(4)(ii) of this section. For purposes of this paragraph (d)(4), the Exchange reasonably expects to obtain sufficient verification data for any benefit year when, for the benefit year, the Exchange is able to obtain data about enrollment in and eligibility for qualifying coverage in an eligible employer-sponsored plan from at least one electronic data source that is available to the Exchange and that has been approved by HHS, based on evidence showing that the data source is sufficiently current, accurate, and minimizes administrative burden, as described under paragraph (d)(2)(i) of this section.

* * * * *

■ 19. Section 155.420 is amended by:

■ a. Revising paragraphs (a)(4)(iii), (a)(5) and (b)(2)(i);

■ b. Removing paragraph (b)(2)(v);

■ c. Redesignating paragraph (b)(2)(vi) as paragraph (b)(2)(v);

■ d. Revising paragraph (d)(1)(iii); and

■ e. Revising paragraph (d)(10)(i).

The revisions read as follows:

§ 155.420 Special enrollment periods.

(a) * * *

(4) * * *

(iii) For the other triggering events specified in paragraph (d) of this section, except for paragraphs (d)(2)(i), (d)(4), (d)(6)(i) and (ii) for becoming newly eligible for CSRs, (d)(8), (d)(9), (d)(10) and (d)(12) of this section:

(A) If an enrollee qualifies for a special enrollment period, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b) of this subchapter; or

(B) If a dependent qualifies for a special enrollment period, and an enrollee is adding the dependent to his or her QHP, the Exchange must allow the enrollee to add the dependent to his or her current QHP; or, if the QHP's business rules do not allow the dependent to enroll, the Exchange must allow the enrollee and his or her dependents to change to another QHP within the same level of coverage (or one metal level higher or lower, if no such QHP is available), as outlined in § 156.140(b) of this subchapter, or enroll the new qualified individual in a separate QHP.

(5) *Prior coverage requirement.* Qualified individuals who are required to demonstrate coverage in the 60 days prior to a qualifying event can either demonstrate that they had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for 1 or more days during the 60 days preceding the date of the qualifying event; lived in a foreign country or in a United States territory for 1 or more days during the 60 days preceding the date of the qualifying event; are an Indian as defined by section 4 of the Indian Health Care Improvement Act; or lived in a service area for 1 or more days during the 60 days preceding the date of the qualifying event where no qualified health plan was offered through the Exchange.

(b) * * *

(2) * * *

(i) In the case of birth, adoption, placement for adoption, placement in foster care, or child support or other court order as described in paragraph (d)(2)(i) of this section, the Exchange must ensure that coverage is effective for a qualified individual or enrollee on the date of birth, adoption, placement for adoption, placement in foster care, or effective date of court order; or it may permit the qualified individual or enrollee to elect a coverage effective date of the first of the month following plan selection; or in accordance with paragraph (b)(1) of this section. If the Exchange permits the qualified individual or enrollee to elect a coverage effective date of either the first of the month following the date of plan selection or in accordance with paragraph (b)(1) of this section, the Exchange must ensure coverage is effective on the date duly selected by the qualified individual or enrollee.

* * * * *

(d) * * *

(1) * * *

(iii) Loses pregnancy-related coverage described under section 1902(a)(10)(A)(i)(IV) and

(a)(10)(A)(ii)(IX), of the Act (42 U.S.C. 1396a(a)(10)(A)(i)(IV), (a)(10)(A)(ii)(IX)) or loses access to health care services through coverage provided to a pregnant woman's unborn child, based on the definition of a child in 42 CFR 457.10. The date of the loss of coverage is the last day the qualified individual would have pregnancy-related coverage or access to health care services through the unborn child coverage; or

* * * * *

(10) * * *

(i) Is a victim of domestic abuse or spousal abandonment as defined by 26 CFR 1.36B–2 or a dependent or unmarried victim within a household, is enrolled in minimum essential coverage, and seeks to enroll in coverage separate from the perpetrator of the abuse or abandonment; or

* * * * *

■ 20. Section 155.430 is amended by:
■ a. Revising paragraph (d)(1);
■ b. Removing paragraphs (d)(2)(i) through (iv);
■ c. Adding new paragraph (d)(2)(i); and
■ d. Redesignating paragraph (d)(2)(v) as (d)(2)(ii).

The revisions and additions read as follows:

§ 155.430 Termination of Exchange enrollment or coverage.

(d) * * *

(1) For purposes of this section, changes in eligibility for advance payments of the premium tax credit and cost sharing reductions, including terminations, must adhere to the effective dates specified in § 155.330(f).

(2) * * *

(i) On the date on which the termination is requested by the enrollee or on another prospective date selected by the enrollee; or

* * * * *

■ 21. Section 155.500 is amended by revising the definitions of ''Appeal request'' and ''Appeals entity'' to read as follows:

§ 155.500 Definitions.

* * * * *

Appeal request means a clear expression, either orally or in writing, by an applicant, enrollee, employer, or small business employer or employee to have any eligibility determination or redetermination contained in a notice issued in accordance with § 155.310(g), § 155.330(e)(1)(ii), § 155.335(h)(1)(ii), § 155.610(i), § 155.715(e) or (f), or § 155.716(e) reviewed by an appeals entity.

Appeals entity means a body designated to hear appeals of eligibility determinations or redeterminations contained in notices issued in accordance with § 155.310(g), § 155.330(e)(1)(ii), § 155.335(h)(1)(ii), § 155.610(i), § 155.715(e) and (f), or § 155.716(e).

* * * * *

■ 22. Section 155.605 is amended by revising paragraph (d)(2)(iv) to read as follows:

§ 155.605 Eligibility standards for exemptions.

* * * * *

(d) * * *

(2) * * *

(iv) For an individual who is ineligible to purchase coverage under an eligible employer-sponsored plan, the Exchange determines the required contribution for coverage in accordance with section 5000A(e)(1)(B)(ii) of the Code, inclusive of all members of the family, as defined in 26 CFR 1.36B–1(d), who have not otherwise been granted an exemption through the Exchange and who are not treated as eligible to purchase coverage under an eligible employer-sponsored plan, in accordance with paragraph (d)(4)(ii) of this section. If there is not a bronze level plan offered through the Exchange in the individual's rating area, the Exchange must use the annual premium for the lowest cost Exchange metal level plan available in the individual market through the Exchange in the State in the rating area in which the individual resides to determine whether coverage exceeds the affordability threshold specified in section 5000A(e)(1) of the Code; and

* * * * *

■ 23. Section 155.610 is amended by revising paragraph (h)(2) to read as follows:

§ 155.610 Eligibility process for exemptions.

* * * * *

(h) * * *

(2) The Exchange will only accept an application for an exemption described in § 155.605(d)(1) during one of the 3 calendar years after the month or months during which the applicant attests that the hardship occurred.

■ 24. Section 155.700 is amended by revising paragraph (a) to read as follows:

§ 155.700 Standards for the establishment of a SHOP.

(a) *General requirement.* (1) For plan years beginning before January 1, 2018, an Exchange must provide for the establishment of a SHOP that meets the requirements of this subpart and is designed to assist qualified employers and facilitate the enrollment of qualified employees into qualified health plans.

(2) For plan years beginning on or after January 1, 2018, an Exchange must provide for the establishment of a SHOP that meets the requirements of this subpart and is designed to assist qualified employers in facilitating the enrollment of their employees in qualified health plans.

* * * * *

■ 25. Section 155.705 is amended by revising the section heading and adding paragraph (e) to read as follows:

§ 155.705 Functions of a SHOP for plan years beginning prior to January 1, 2018.

* * * * *

(e) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. Section 155.706 is applicable for plan years beginning on or after January 1, 2018.

■ 26. Section 155.706 is added to read as follows:

§ 155.706 Functions of a SHOP for plan years beginning on or after January 1, 2018.

(a) *Exchange functions that apply to SHOP.* The SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, K, and M of this part, except:

(1) Requirements related to individual eligibility determinations in subpart D of this part;

(2) Requirements related to enrollment of qualified individuals described in subpart E of this part;

(3) The requirement to issue certificates of exemption in accordance with § 155.200(b); and

(4) Requirements related to the payment of premiums by individuals, Indian tribes, tribal organizations and urban Indian organizations under § 155.240.

(b) *Unique functions of a SHOP.* The SHOP must also provide the following unique functions:

(1) *Enrollment and eligibility functions.* The SHOP must adhere to the requirements outlined in subpart H.

(2) *Employer choice requirements.* The SHOP must allow a qualified employer to select a level of coverage as described in section 1302(d)(1) of the Affordable Care Act, in which all QHPs within that level are made available to the qualified employees of the employer.

(3) *SHOP options with respect to employer choice requirements.* (i) For plan years beginning on or after January 1, 2018, SHOP:

(A) Must allow an employer to make available to qualified employees all QHPs at the level of coverage selected by the employer as described in paragraph (b)(2) of this section, and

(B) May allow an employer to make one or more QHPs available to qualified

employees by a method other than the method described in paragraph (b)(2) of this section.

(ii) For plan years beginning on or after January 1, 2018, a Federally-facilitated SHOP will provide a qualified employer a choice of two methods to make QHPs available to qualified employees:

(A) The employer may choose a level of coverage as described in paragraph (b)(2) of this section, or

(B) The employer may choose a single QHP.

(iii) For plan years beginning on or after January 1, 2018, a SHOP may, and a Federally-facilitated SHOP will provide a qualified employer a choice of two methods to make stand-alone dental plans available to qualified employees:

(A) The employer may choose to make available a single stand-alone dental plan.

(B) The employer may choose to make available all stand-alone dental plans offered through the SHOP at a level of coverage as described in § 156.150(b)(2) of this subchapter.

(iv) A SHOP may also provide a qualified employer with a choice of a third method to make QHPs available to qualified employees by offering its qualified employees a choice of all QHPs offered through the SHOP by a single issuer across all available levels of coverage, as described in section 1302(d)(1) of the Affordable Care Act and implemented in § 156.140(b) of this subchapter. A State with a Federally-facilitated SHOP may recommend that the Federally-facilitated SHOP not make this additional option available in that State, by submitting a letter to HHS in advance of the annual QHP certification application deadline, by a date to be established by HHS. The State's letter must describe and justify the State's recommendation, based on the anticipated impact this additional option would have on the small group market and consumers.

(v) A SHOP may also provide a qualified employer with a choice of a third method to make stand-alone dental plans available to qualified employees by offering its qualified employees a choice of all stand-alone dental plans offered through the SHOP by a single issuer across all available levels of coverage, as described in § 156.150(b)(2) of this subchapter, if such levels are available. If levels of coverage are not available, a SHOP may make a choice of all stand-alone dental plans available. A State with a Federally-facilitated SHOP may recommend that the Federally-facilitated SHOP not make this additional option available in that State, by submitting a letter to HHS in advance of the annual QHP certification application deadline, by a date to be established by HHS. The State's letter must describe and justify the State's recommendation, based on the anticipated impact this additional option would have on the small group market and consumers.

(vi) States operating a State-based Exchange utilizing the Federal platform for SHOP enrollment functions will have the same employer choice models available as States with a Federally-facilitated SHOP, except that a State with a State-based Exchange utilizing the Federal platform for SHOP enrollment functions may decide against offering the employer choice models specified in paragraphs (b)(3)(iv) and (b)(3)(v) of this section in that State, provided that the State notifies HHS of that decision in advance of the annual QHP certification application deadline, by a date to be established by HHS.

(4) The SHOP may, upon an election by a qualified employer, enter into an agreement with a qualified employer to facilitate the administration of continuation coverage by collecting premiums for continuation coverage enrolled in through the SHOP directly from a person enrolled in continuation coverage through the SHOP consistent with applicable law and the terms of the group health plan, and remitting premium payments for this coverage to QHP issuers.

(5) *QHP Certification.* With respect to certification of QHPs in the small group market, the SHOP must ensure each QHP meets the requirements specified in § 156.285 of this subchapter.

(6) *Rates and rate changes.* The SHOP must—

(i) Require all QHP issuers to make any change to rates at a uniform time that is no more frequently than quarterly.

(A) In a Federally-facilitated SHOP, rates may be updated quarterly with effective dates of January 1, April 1, July 1, or October 1 of each calendar year. The updated rates must be submitted to HHS at least 60 days in advance of the effective date of the rates.

(B) [Reserved]

(ii) Prohibit all QHP issuers from varying rates for a qualified employer during the employer's plan year.

(7) *QHP availability in merged markets.* If a State merges the individual market and the small group market risk pools in accordance with section 1312(c)(3) of the Affordable Care Act, the SHOP may permit employer groups to enroll in any QHP meeting level of coverage requirements described in section 1302(d) of the Affordable Care Act.

(8) *QHP availability in unmerged markets.* If a State does not merge the individual and small group market risk pools, the SHOP must permit employer groups to enroll only in QHPs in the small group market.

(9) *SHOP expansion to large group market.* If a State elects to expand the SHOP to the large group market, a SHOP must allow issuers of health insurance coverage in the large group market in the State to offer QHPs in such market through a SHOP beginning in 2017 provided that a large employer meets the qualified employer requirements other than that it be a small employer.

(10) *Participation rules.* Subject to § 147.104 of this subchapter, the SHOP may authorize a uniform group participation rate for the offering of health insurance coverage in the SHOP, which must be a single, uniform rate that applies to all groups and issuers in the SHOP. If the SHOP authorizes a minimum participation rate, such rate must be based on the rate of employee participation in the SHOP, not on the rate of employee participation in any particular QHP or QHPs of any particular issuer.

(i) Subject to § 147.104 of this subchapter, a Federally-facilitated SHOP must use a minimum participation rate of 70 percent, calculated as the number of full-time employees accepting coverage offered by a qualified employer plus the number of full-time employees who, at the time the employer submits the SHOP group enrollment, are enrolled in coverage through another group health plan, governmental coverage (such as Medicare, Medicaid, or TRICARE), coverage sold through the individual market, or in other minimum essential coverage, divided by the number of full-time employees offered coverage.

(ii) Notwithstanding paragraphs (b)(10)(i) of this section, a Federally-facilitated SHOP may utilize a different minimum participation rate in a State if there is evidence that a State law sets a minimum participation rate or that a higher or lower minimum participation rate is customarily used by the majority of QHP issuers in that State for products in the State's small group market outside the SHOP.

(11) *Premium calculator.* In the SHOP, the premium calculator described in § 155.205(b)(6) must facilitate the comparison of available QHPs.

(c) *Coordination with individual market Exchange for eligibility determinations.* A SHOP that collects employee eligibility or enrollment data

must provide data related to eligibility and enrollment of a qualified employee to the individual market Exchange that corresponds to the service area of the SHOP, unless the SHOP is operated pursuant to § 155.100(a)(2).

(d) *Duties of Navigators in the SHOP.* In States that have elected to operate only a SHOP pursuant to § 155.100(a)(2), at State option and if State law permits the Navigator duties described in § 155.210(e)(3) and (4) may be fulfilled through referrals to agents and brokers.

(e) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

■ 27. Section 155.715 is amended by revising the section heading and adding paragraph (h) to read as follows:

§ 155.715 Eligibility determination process for SHOP for plan years beginning prior to January 1, 2018.

* * * * *

(h) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. § 155.716 is applicable for plan years beginning on or after January 1, 2018.

■ 28. Section 155.716 is added to read as follows:

§ 155.716 Eligibility determination process for SHOP for plan years beginning on or after January 1, 2018.

(a) *General requirement.* The SHOP must determine whether an employer requesting a determination of eligibility to participate in a SHOP is eligible in accordance with the requirements of § 155.710.

(b) *Applications.* The SHOP must accept a SHOP single employer application form from employers, in accordance with the relevant standards of § 155.730.

(c) *Verification of eligibility.* For the purpose of verifying employer eligibility, the SHOP—

(1) May establish, in addition to or in lieu of reliance on the application, additional methods to verify the information provided by the applicant on the applicable application;

(2) Must collect only the minimum information necessary for verification of eligibility in accordance with the eligibility standards described in § 155.710; and

(3) May not perform individual market Exchange eligibility determinations or verifications described in subpart D of this part.

(d) *Eligibility adjustment period.* When the information submitted on the SHOP single employer application is inconsistent with information collected from third-party data sources through the verification process described in paragraph (c)(1) of this section or otherwise received by the SHOP, the SHOP must—

(1) Make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors;

(2) Notify the employer of the inconsistency;

(3) Provide the employer with a period of 30 days from the date on which the notice described in paragraph (d)(2) of this section is sent to the employer to either present satisfactory documentary evidence to support the employer's application, or resolve the inconsistency; and

(4) If, after the 30-day period described in paragraph (d)(2) of this section, the SHOP has not received satisfactory documentary evidence, the SHOP must—

(i) Notify the employer of its denial or termination of eligibility in accordance with paragraph (e) of this section and of the employer's right to appeal such determination; and

(ii) If the employer was enrolled pending the confirmation or verification of eligibility information, discontinue the employer's participation in the SHOP at the end of the month following the month in which the notice is sent.

(e) *Notification of employer eligibility.* The SHOP must provide an employer requesting eligibility to purchase coverage through the SHOP with a notice of approval or denial or termination of eligibility and the employer's right to appeal such eligibility determination.

(f) *Validity of Eligibility Determination.* An employer's determination of eligibility to participate in SHOP remains valid until the employer makes a change that could end its eligibility under § 155.710(b) or withdraws from participation in the SHOP.

(g) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

■ 29. Section 155.720 is amended by revising the section heading and adding paragraph (j) to read as follows:

§ 155.720 Enrollment of employees into QHPs under SHOP for plan years beginning prior to January 1, 2018.

* * * * *

(j) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. Section 155.721 is applicable for plan years beginning on or after January 1, 2018.

■ 30. Section 155.721 is added to read as follows:

§ 155.721 Record retention and IRS Reporting for plan years beginning on or after January 1, 2018.

(a) *Records.* The SHOP must receive and maintain for at least 10 years records of qualified employers participating in the SHOP.

(b) *Reporting requirement for tax administration purposes.* The SHOP must, at the request of the IRS, report information to the IRS about employer eligibility to participate in SHOP coverage.

(c) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

■ 31. Section 155.725 is amended by revising the section heading and adding paragraph (l) to read as follows:

§ 155.725 Enrollment periods under SHOP for plan years beginning prior to January 1, 2018.

* * * * *

(l) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. Section 155.726 is applicable for plan years beginning on or after January 1, 2018.

■ 32. Section 155.726 is added to read as follows:

§ 155.726 Enrollment periods under SHOP for plan years beginning on or after January 1, 2018.

(a) *General requirements.* The SHOP must ensure that issuers offering QHPs through the SHOP adhere to applicable enrollment periods, including special enrollment periods.

(b) *Rolling enrollment in the SHOP.* The SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year. The employer's plan year must consist of the 12-month period beginning with the qualified employer's effective date of coverage, unless the plan is issued in a State that has elected to merge its individual and small group risk pools under section 1312(c)(3) of the Affordable Care Act, in which case the plan year will end on December 31 of the calendar year in which coverage first became effective.

(c)(1) *Special enrollment periods.* The SHOP must ensure that issuers offering QHPs through the SHOP provide special enrollment periods consistent with the section, during which certain qualified employees or dependents of qualified employees may enroll in QHPs and enrollees may change QHPs.

(2) The SHOP must ensure that issuers offering QHPs through a SHOP provide a special enrollment period for a qualified employee or a dependent of a qualified employee who;

(i) Experiences an event described in § 155.420(d)(1) (other than paragraph (d)(1)(ii)), or experiences an event described in § 155.420(d)(2), (4), (5), (7), (8), (9), (10), (11), or (12);

(ii) Loses eligibility for coverage under a Medicaid plan under title XIX of the Social Security Act or a State child health plan under title XXI of the Social Security Act; or

(iii) Becomes eligible for assistance, with respect to coverage under a SHOP, under such Medicaid plan or a State child health plan (including any waiver or demonstration project conducted under or in relation to such a plan).

(3) A qualified employee or dependent of a qualified employee who experiences a qualifying event described in paragraph (j)(2) of this section has:

(i) Thirty (30) days from the date of a triggering event described in paragraph (c)(2)(i) of this section to select a QHP through the SHOP; and

(ii) Sixty (60) days from the date of a triggering event described in paragraph (c)(2)(ii) or (iii) of this section to select a QHP through the SHOP;

(4) A dependent of a qualified employee is not eligible for a special enrollment period if the employer does not extend the offer of coverage to dependents.

(5) The effective dates of coverage for special enrollment periods are determined using the provisions of § 155.420(b).

(6) Loss of minimum essential coverage is determined using the provisions of § 155.420(e).

(d) *Limitation.* Qualified employees will not be able to enroll unless the employer group meets any applicable minimum participation rate implemented under § 155.706(b)(10).

(e) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

■ 33. Section 155.730 is amended by revising the section heading and adding paragraph (h) to read as follows:

§ 155.730 Application standards for SHOP for plan year beginning prior to January 1, 2018.

* * * * *

(h) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. Section 155.731 is applicable for plan years beginning on or after January 1, 2018.

■ 34. Section 155.731 is added to read as follows:

§ 155.731 Application standards for SHOP for plan years beginning on or after January 1, 2018.

(a) *General requirements.* Application forms used by the SHOP must meet the requirements set forth in this section.

(b) *Single employer application.* The SHOP must use a single application to determine employer eligibility. Such application must collect the following—

(1) Employer name and address of employer's locations;

(2) Information sufficient to confirm the employer is a small employer;

(3) Employer Identification Number (EIN); and

(4) Information sufficient to confirm that the employer is offering, at a minimum, all full-time employees coverage in a QHP through a SHOP.

(c) *Model application.* The SHOP may use the model single employer application provided by HHS.

(d) *Alternative employer application.* The SHOP may use an alternative application if such application is approved by HHS and collects the information described in paragraph (b).

(e) *Filing.* The SHOP must:

(1) Accept applications from SHOP application filers; and

(2) Provide the tools to file an employer eligibility application via an Internet Web site.

(f) *Additional safeguards.* (1) The SHOP may not provide to the employer any information collected on an employee application with respect to spouses or dependents other than the name, address, and birth date of the spouse or dependent.

(2) The SHOP is not permitted to collect information on the single employer or on an employee application unless that information is necessary to determine SHOP eligibility or effectuate enrollment through the SHOP.

(g) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

■ 35. Section 155.735 is amended by revising the section heading and adding paragraph (h) to read as follows:

§ 155.735 Termination of SHOP enrollment or coverage for plan years beginning prior to January 1, 2018.

* * * * *

(h) *Applicability date.* The provisions of this section apply for plan years beginning before January 1, 2018.

■ 36. Section 155.740 is amended by revising the section heading and adding paragraph (p) to read as follows:

§ 155.740 SHOP employer and employee eligibility appeals requirements for plan years beginning prior to January 1, 2018.

* * * * *

(p) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. Section 155.741 is applicable for plan years beginning on or after January 1, 2018.

■ 37. Section 155.741 is added to subpart H to read as follows:

§ 155.741 SHOP employer and employee eligibility appeals requirements for plan year beginning on or after January 1, 2018.

(a) *Definitions.* The definitions in §§ 155.20, 155.300, and 155.500 apply to this section.

(b) *General requirements.* (1) A State, establishing an Exchange that provides for the establishment of a SHOP pursuant to § 155.100 must provide an eligibility appeals process for the SHOP. Where a State has not established an Exchange that provides for the establishment of a SHOP pursuant to § 155.100, HHS will provide an eligibility appeals process for the SHOP that meets the requirements of this section and the requirements in paragraph (b)(2) of this section.

(2) The appeals entity must conduct appeals in accordance with the requirements established in this section and §§ 155.505(e) through (h) and 155.510(a)(1) and (2) and (c).

(c) *Employer right to appeal.* An employer may appeal—

(1) A notice of denial or termination of eligibility under § 155.716(e); or

(2) A failure by the SHOP to provide a timely eligibility determination or a timely notice of an eligibility determination in accordance with § 155.716(e).

(d) *Appeals notice requirement.* Notices of the right to appeal a denial of eligibility under § 155.716(e) must be written and include—

(1) The reason for the denial or termination of eligibility, including a citation to the applicable regulations; and

(2) The procedure by which the employer may request an appeal of the denial or termination of eligibility.

(e) *Appeal request.* The SHOP and appeals entity must—

(1) Allow an employer to request an appeal within 90 days from the date of the notice of denial or termination of eligibility to—

(i) The SHOP or the appeals entity; or

(ii) HHS, if no State Exchange that provides for establishment of a SHOP has been established;

(2) Accept appeal requests submitted through any of the methods described in § 155.520(a)(1);

(3) Comply with the requirements of § 155.520(a)(2) and (3); and

(4) Consider an appeal request valid if it is submitted in accordance with paragraph (e)(1) of this section.

(f) *Notice of appeal request.* (1) Upon receipt of a valid appeal request, the appeals entity must—

(i) Send timely acknowledgement to the employer of the receipt of the appeal request, including—

(A) An explanation of the appeals process; and

(B) Instructions for submitting additional evidence for consideration by the appeals entity.

(ii) Promptly notify the SHOP of the appeal, if the appeal request was not initially made to the SHOP.

(2) Upon receipt of an appeal request that is not valid because it fails to meet the requirements of this section, the appeals entity must—

(i) Promptly and without undue delay, send written notice to the employer that is appealing that—

(A) The appeal request has not been accepted,

(B) The nature of the defect in the appeal request; and

(C) An explanation that the employer may cure the defect and resubmit the appeal request if it meets the timeliness requirements of paragraph (e) of this section, or within a reasonable timeframe established by the appeals entity.

(ii) Treat as valid an amended appeal request that meets the requirements of this section.

(g) *Transmittal and receipt of records.* (1) Upon receipt of a valid appeal request under this section, or upon receipt of the notice under paragraph (f)(2) of this section, the SHOP must promptly transmit, via secure electronic interface, to the appeals entity—

(i) The appeal request, if the appeal request was initially made to the SHOP; and

(ii) The eligibility record of the employer that is appealing.

(2) The appeals entity must promptly confirm receipt of records transmitted pursuant to paragraph (g)(1) of this section to the SHOP that transmitted the records.

(h) *Dismissal of appeal.* The appeals entity—

(1) Must dismiss an appeal if the employer that is appealing—

(i) Withdraws the request in accordance with the standards set forth in § 155.530(a)(1); or

(ii) Fails to submit an appeal request meeting the standards specified in paragraph (e) of this section.

(2) Must provide timely notice to the employer that is appealing of the dismissal of the appeal request, including the reason for dismissal, and must notify the SHOP of the dismissal.

(3) May vacate a dismissal if the employer makes a written request within 30 days of the date of the notice of dismissal showing good cause why the dismissal should be vacated.

(i) *Procedural rights of the employer.* The appeals entity must provide the employer the opportunity to submit relevant evidence for review of the eligibility determination.

(j) *Adjudication of SHOP appeals.* SHOP appeals must—

(1) Comply with the standards set forth in § 155.555(i)(1) and (3); and

(2) Consider the information used to determine the employer's eligibility as well as any additional relevant evidence submitted during the course of the appeal by the employer or employee.

(k) *Appeal decisions.* Appeal decisions must—

(1) Be based solely on—

(i) The evidence referenced in paragraph (j)(2) of this section;

(ii) The eligibility requirements for the SHOP under § 155.710(b), as applicable.

(2) Comply with the standards set forth in § 155.545(a)(2) through (5)

(3) Be effective as follows:

(i) If an employer is found eligible under the decision, then at the employer's option, the effective date of coverage or enrollment through the SHOP under the decision can either be made retroactive to the effective date of coverage or enrollment through the SHOP that the employer would have had if the employer had been correctly determined eligible, or prospective to the first day of the month following the date of the notice of the appeal decision.

(ii) If the employer is found ineligible under the decision, then the appeal decision is effective as of the date of the notice of the appeal decision.

(l) *Notice of appeal decision.* The appeals entity must issue written notice of the appeal decision to the employer and to the SHOP within 90 days of the date the appeal request is received.

(m) *Implementation of SHOP appeal decisions.* The SHOP must promptly implement the appeal decision upon receiving the notice under paragraph (l) of this section.

(n) *Appeal record.* Subject to the requirements of § 155.550, the appeal record must be accessible to the employer in a convenient format and at a convenient time.

(o) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 38. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 39. Section 156.100 is amended by revising the section heading and the introductory text and by adding paragraph (d) to read as follows:

§ 156.100 State selection of benchmark plan for plan years beginning prior to January 1, 2019.

For plan years beginning before January 1, 2019, each State may identify a single EHB-benchmark plan according to the selection criteria described below:

* * * * *

(d) *Applicability date:* For plan years beginning on or after January 1, 2019, § 156.111 applies in place of this section.

■ 40. Section 156.111 is added to Subpart B to read as follows:

§ 156.111 State selection of EHB-benchmark plan for plan years beginning on or after January 1, 2019.

(a) Subject to paragraphs (b), (c), (d) and (e) of this section, for plan years beginning on or after January 1, 2019, a State may change its EHB-benchmark plan by:

(1) Selecting the EHB-benchmark plan that another State used for the 2017 plan year under § 156.100 and § 156.110 of this subpart;

(2) Replacing one or more categories of EHBs under § 156.110(a) of this subpart under its EHB-benchmark plan used for the 2017 plan year with the same category or categories of EHB from the EHB-benchmark plan that another State used for the 2017 plan year under § 156.100 and § 156.110 of this subpart; or

(3) Otherwise selecting a set of benefits that would become the State's EHB-benchmark plan, provided that the new EHB-benchmark plan does not exceed the generosity of the most generous among a set of comparison plans, including:

(i) The State's EHB-benchmark plan used for the 2017 plan year, and

(ii) Any of the State's base-benchmark plan options for the 2017 plan year described in § 156.100(a)(1) of this subpart, supplemented as necessary under § 156.110 of this subpart.

(b) A State's EHB-benchmark plan must:

(1) *EHB coverage.* Provide an appropriate balance of coverage for the categories of benefits at § 156.110(a) of this subpart.

(2) *Scope of benefits.* (i) Be equal in scope of benefits to what is provided under a typical employer plan, defined as:

(A) An employer plan within a product (as these terms are defined in § 144.103 of this subchapter) with substantial enrollment in the product of at least 5,000 enrollees sold in the small group or large group market, in one or more States; or

(B) A self-insured group health plan with substantial enrollment of at least 5,000 enrollees in one or more States;

(ii) Not have benefits unduly weighted towards any of the categories of benefits at § 156.110(a) of this subpart; and

(iii) Provide benefits for diverse segments of the population, including women, children, persons with disabilities, and other groups.

(c) The State must provide reasonable public notice and an opportunity for public comment on the State's selection of an EHB-benchmark plan.

(d) A State must notify HHS of the selection of a new EHB-benchmark plan by a date to be determined by HHS for each applicable plan year.

(1) If the State does not make a selection by the annual selection date, the State's EHB-benchmark plan for the applicable plan year would be that State's EHB-benchmark plan applicable for the prior year.

(2) [Reserved]

(e) A State changing its EHB-benchmark plan under this section must submit documents in a format and manner specified by HHS by a date determined by HHS. These must include:

(1) A document confirming that the State's EHB-benchmark plan definition complies with the requirements under paragraphs (a), (b) and (c) of this section, including information on which selection option under paragraph (a) of this section the State is using, and whether the State is using another State's EHB-benchmark plan;

(2) If the State is selecting its EHB-benchmark plan using the options in paragraph (a)(2) or (3) of this section, an actuarial certification and an associated actuarial report from an actuary, who is a member of the American Academy of Actuaries, in accordance with generally accepted actuarial principles and methodologies that affirms:

(i) That the State's EHB-benchmark plan definition is equal in scope to benefits provided under a typical employer plan; and

(ii) If the State is selecting its EHB-benchmark plan using the option in paragraph (a)(3) of this section, that the new EHB-benchmark plan does not exceed the generosity of the most generous among the plans listed in paragraph (a)(3)(i) and (ii) of this section;

(3) The State's EHB-benchmark plan document that reflects the benefits and limitations, including medical management requirements, a schedule of benefits and, if the State is selecting its EHB-benchmark plan using the option in paragraph (a)(3) of this section, a formulary drug list in a format and manner specified by HHS; and

(4) Other documentation specified by HHS, which is necessary to operationalize the State's EHB-benchmark plan.

■ 41. Section 156.115 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 156.115 Provision of EHB.

* * * * *

(b) * * *

(1) * * *

(ii) Is substituted within the same essential health benefit category or between essential health benefit categories, as long as the plan with substitutions still provides benefits that are substantially equal to the EHB-benchmark plan, provides an appropriate balance among the EHB categories such that benefits are not unduly weighted towards any category, and provides benefits for diverse segments of the population; and

* * * * *

■ 42. Section 156.150 is amended by removing and reserving paragraph (b) to read as follows:

§ 156.150 Application to stand-alone dental plans inside the Exchange.

* * * * *

(b) [Reserved]

* * * * *

■ 43. Section 156.200 is amended by revising paragraph (b)(2) to read as follows:

§ 156.200 QHP issuer participation standards.

* * * * *

(b) * * *

(2) Comply with Exchange processes, procedures, and requirements set forth in accordance with subpart K of part 155 and, in the small group market, § 155.705 and § 155.706 of this subchapter;

* * * * *

■ 44. Section 156.285 is amended by revising the section heading and adding paragraph (f) to read as follows:

§ 156.285 Additional standards specific to SHOP for plan years beginning prior to January 1, 2018.

* * * * *

(f) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. Additional standards specific to SHOP for plan years beginning on or after January 1, 2018 are in § 156.286.

■ 45. Section 156.286 is added to read as follows:

§ 156.286 Additional standards specific to SHOP for plan years beginning on or after January 1, 2018.

(a) *SHOP rating and premium payment requirements.* QHP issuers offering a QHP through a SHOP must:

(1) Accept payment from a qualified employer or an enrollee, or a SHOP on behalf of a qualified employer or enrollee

(2) Adhere to the SHOP timeline for rate setting as established in § 155.706(b)(6) of this subchapter;

(3) Charge the same contract rate for a plan year; and

(4) Adhere to the premium rating standards described in § 147.102 of this subchapter regardless of whether the QHP being sold through the SHOP is sold in the small group market or the large group market.

(b) *Enrollment periods and processes for the SHOP.* QHP issuers offering a QHP through the SHOP must adhere to enrollment periods and processes established by the SHOP, consistent with § 155.726 of this subchapter, and establish a uniform enrollment timeline and process for enrolling qualified employers and employer group members.

(c) *Enrollment process for the SHOP.* A QHP issuer offering a QHP through the SHOP must:

(1) Provide new enrollees with the enrollment information package as described in § 156.265(e); and

(2) Enroll all qualified employees consistent with the plan year of the applicable qualified employer.

(d) *Participation rules.* QHP issuers offering a QHP through the SHOP may impose group participation rules for the offering of health insurance coverage in connection with a QHP only if and to the extent authorized by the SHOP in accordance with § 155.706 of this subchapter.

(e) *Employer choice.* QHP issuers offering a QHP through the SHOP must accept enrollments from groups in accordance with the employer choice

policies applicable to the SHOP under § 155.706(b)(3) of this subchapter.

(f) *Identification of SHOP enrollments.* QHP issuers offering a QHP through the SHOP must use a uniform enrollment form, maintain processes sufficient to identify whether a group market enrollment is an enrollment through the SHOP, and maintain records of SHOP enrollments for a period of 10 years following the enrollment.

(g) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

§ 156.298 [Removed]

■ 46. Section 156.298 is removed.

■ 47. Section 156.340 is amended by revising paragraph (a)(2) to read as follows:

§ 156.340 Standards for downstream and delegated entities.

(a) * * *

(2) Exchange processes, procedures, and standards in accordance with subparts H and K of part 155 and, in the small group market, § 155.705 and § 155.706 of this subchapter;

* * * * *

■ 48. Section 156.350 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 156.350 Eligibility and enrollment standards for Qualified Health Plan issuers on State-based Exchanges on the Federal platform.

(a) * * *

(1) Section 156.285(a)(4)(ii) regarding the premiums for plans offered on the SHOP, for plan years beginning prior to January 1, 2018;

(2) Section 156.285(c)(5) and (c)(8)(iii) regarding the enrollment process for SHOP, for plan years beginning prior to January 1, 2018; and

* * * * *

■ 49. Section 156.602 is amended by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 156.602 Other coverage that qualifies as minimum essential coverage.

* * * * *

(e) *CHIP buy-in programs.* Coverage under a Children's Health Insurance Program (CHIP) buy-in program that provides identical coverage to that State's CHIP program under title XXI of the Social Security Act.

* * * * *

■ 50. Section 156.1230 is amended by revising paragraph (b)(2) to read as follows:

§ 156.1230 Direct enrollment with the QHP issuer in a manner considered to be through the Exchange.

* * * * *

(b) * * *

(2) The QHP issuer must engage a third party entity in accordance with § 155.221 of this subchapter to demonstrate operational readiness and compliance with applicable requirements prior to the QHP issuer's Internet Web site being used to complete a QHP selection.

* * * * *

PART 157—EMPLOYER INTERACTIONS WITH EXCHANGES AND SHOP PARTICIPATION

■ 51. The authority citation for part 157 continues to read as follows:

Authority: Title I of the Affordable Care Act, Sections 1311, 1312, 1321, 1411, 1412, Pub. L. 111–148, 124 Stat. 199.

■ 52. Section 157.205 is amended by revising the section heading and adding paragraph (h) to read as follows:

§ 157.205 Qualified employer participation process in a SHOP for plan years beginning prior to January 1, 2018.

* * * * *

(h) *Applicability date.* The provisions of this section apply for plan years beginning prior to January 1, 2018. Section 157.206 is applicable for plan years beginning on or after January 1, 2018.

■ 53. Section 157.206 is added to read as follows:

§ 157.206 Qualified employer participation process in a SHOP for plan years beginning on or after January 1, 2018.

(a) *General requirements.* When joining the SHOP, a qualified employer must comply with the requirements, processes, and timelines set forth by this part and must remain in compliance for the duration of the employer's participation in the SHOP.

(b) *Selecting QHPs.* During an election period, a qualified employer may make coverage in a QHP available through the SHOP in accordance with the processes developed by the SHOP in accordance with § 155.706 of this subchapter.

(c) *Information dissemination to employees.* A qualified employer participating in the SHOP must disseminate information to its qualified employees about the process to enroll in a QHP through the SHOP.

(d) *Employees hired outside of the initial or annual open enrollment period.* Qualified employers must provide employees hired outside of the initial or annual open enrollment period with information about the enrollment process.

(e) *Participation in the SHOP and termination of coverage or enrollment through the SHOP.* (1) Changes affecting participation. Employers must submit a new single employer application to the SHOP or withdraw from participating in the SHOP if the employer makes a change that could end its eligibility under § 155.710 of this subchapter.

(2) If an employer receives a determination of ineligibility to participate in the SHOP or the SHOP terminates its eligibility to participate in the SHOP, the employer must notify the issuer or issuers of QHPs in which their group members are enrolled in coverage of its ineligibility or termination of eligibility within 5 business days of the end of any applicable appeal process under § 155.741, which could include when the time to file an appeal lapses without an appeal being filed, when the appeal is rejected or dismissed, or when the appeal process concludes with an adjudication by the appeals entity, as applicable.

(3) Employers must promptly notify the issuer or issuers of QHPs in which their group members are enrolled in coverage if it wishes to terminate coverage or enrollment through the SHOP.

(f) *Applicability date.* The provisions of this section apply for plan years beginning on or after January 1, 2018.

PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND REBATE REQUIREMENTS

■ 54. The authority citation for part 158 continues to read as follows:

Authority: Section 2718 of the Public Health Service Act (42 U.S.C. 300gg–18), as amended.

■ 55. Section 158.170 is amended by revising paragraph (b) introductory text to read as follows:

§ 158.170 Allocation of expenses.

* * * * *

(b) *Description of the methods used to allocate expenses.* The report required in § 158.110 must include a detailed description of the methods used to allocate expenses, including incurred claims, quality improvement expenses (unless the report utilizes the percentage of premium option described in § 158.221(b)(8), in which case the allocation method description should state so), Federal and State taxes and licensing or regulatory fees, and other non-claims costs, to each health insurance market in each State. A detailed description of each expense element must be provided, including how each specific expense meets the criteria for the type of expense in which

it is categorized, as well as the method by which it was aggregated.

* * * * *

■ 56. Section 158.221 is amended by adding paragraph (b)(8) to read as follows:

§ 158.221 Formula for calculating an issuer's medical loss ratio.

* * * * *

(b) * * *

(8) Beginning with the 2017 MLR reporting year, an issuer has the option of reporting an amount equal to 0.8 percent of earned premium in the relevant State and market in lieu of reporting the issuer's actual expenditures for activities that improve health care quality, as defined in §§ 158.150 and 158.151.

* * * * *

■ 57. Section 158.301 is revised to read as follows:

§ 158.301 Standard for adjustment to the medical loss ratio.

The Secretary may adjust the MLR standard that must be met by issuers offering coverage in the individual market in a State, as defined in section 2791 of the PHS Act, for a given MLR reporting year if, in the Secretary's discretion, the Secretary determines that there is a reasonable likelihood that an adjustment to the 80 percent MLR standard of section 2718(b)(1)(A)(ii) of the Public Health Service Act will help stabilize the individual market in that State.

■ 58. Section 158.321 is revised to read as follows:

§ 158.321 Information regarding the State's individual health insurance market.

(a) Subject to § 158.320, the State must provide, for each issuer who actively offers coverage in the individual market in the State, the following information, in accordance with paragraph (b) of this section, for the preceding calendar year and, at the State's option, for the current year:

(1) Total earned premium and incurred claims;

(2) Total number of enrollees (life-years and covered lives);

(3) Total agents' and brokers' commission expenses;

(4) Net underwriting gain;

(5) Risk-based capital level; and

(6) Whether the issuer has provided notice to the State's insurance commissioner, superintendent, or comparable State authority that the issuer will cease or begin offering individual market coverage on the Exchange, certain geographic areas, or the entire individual market in the State.

(b) The information required in paragraphs (a)(1) through (4) and (6) of this section must be provided separately for the issuer's individual market plans grouped by the following categories, as applicable: On-Exchange, off-Exchange, grandfathered health plans as defined in § 147.140 of this subchapter, coverage that meets the criteria for transitional policies outlined in applicable guidance, and non-grandfathered single risk pool coverage. The information required in paragraph (a)(1) through (5) of this section must be provided at the issuer level.

(c) The State must also provide information regarding whether any issuer other than those described in paragraph (a) of this section has provided notice to the State's insurance commissioner, superintendent, or comparable State authority that the issuer will cease or begin offering individual market coverage on the Exchange, certain geographic areas, or the entire individual market in the State.

■ 59. Section 158.322 is revised to read as follows:

§ 158.322 Proposal for adjusted medical loss ratio.

A State must provide its own proposal as to the adjustment it seeks to the MLR standard. This proposal must include an explanation of how an adjustment to the MLR standard for the State's individual market will help stabilize the State's individual market.

■ 60. Section 158.330 is revised to read as follows:

§ 158.330 Criteria for assessing request for adjustment to the medical loss ratio.

The Secretary may consider the following criteria in assessing whether an adjustment to the 80 percent MLR standard, as calculated in accordance with this subpart, would be reasonably likely to help stabilize the individual market in a State that has requested such adjustment:

(a) The number and financial performance (based on data provided by a State under § 158.321) of issuers actively offering individual health insurance coverage on- and off-Exchange, grandfathered health plans as defined in § 147.140 of this subchapter, coverage that meets the criteria for transitional policies outlined in applicable guidance, and non-grandfathered single risk pool coverage; the number of issuers reasonably likely to cease or begin offering individual market coverage in the State; and the likelihood that an adjustment to the 80 percent MLR standard could help increase competition in the individual market in the State, including in underserved areas.

(b) Whether an adjustment to the 80 percent MLR standard for the individual market may improve consumers' access to agents and brokers.

(c) The capacity of any new issuers or issuers remaining in the individual market to write additional business in the event one or more issuers were to cease offering individual market coverage on the Exchange, in certain geographic areas, or in the entire individual market in the State.

(d) The impact on premiums charged, and on benefits and cost sharing provided, to consumers by issuers remaining in or entering the individual market in the event one or more issuers were to cease or begin offering individual market coverage on the Exchange, in certain geographic areas, or in the entire individual market in the State.

(e) Any other relevant information submitted by the State's insurance commissioner, superintendent, or comparable official in the State's request.

■ 61. Section 158.341 is revised to read as follows:

§ 158.341 Treatment as a public document.

A State's request for an adjustment to the MLR standard, and all information submitted as part of its request, will be treated as a public document. Instructions for how to access documents related to a State's request for an adjustment on the MLR standard will be made available on the Secretary's Web site.

■ 62. Section 158.350 is revised to read as follows:

§ 158.350 Subsequent requests for adjustment to the medical loss ratio.

A State that has made a previous request for an adjustment to the MLR standard must, in addition to the other information required by this subpart, submit information as to what steps the State has taken since its prior requests, if any, to improve the stability of the State's individual market.

Dated: October 12, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: October 23, 2017.

Eric D. Hargan,

Acting Secretary, Department of Health and Human Services.

[FR Doc. 2017–23599 Filed 10–27–17; 4:15 pm]

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