AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 83 Tuesday,

No. 10 January 16, 2018

Pages 2029–2328

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.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 83 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 83, No. 10

Tuesday, January 16, 2018

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Affirmation of Addition of Treatments for Aircraft:
Certain Hitchhiking Pests, 2132
Determinations:
Classical Swine Fever Status of Mexico, 2131–2132

Antitrust Division
NOTICES
Proposed Final Judgments and Competitive Impact Statements:
United States v. TransDigm Group Inc., 2200–2214
United States v. Vulcan Materials Co., SPO Partners II, LP, and Aggregates USA, LLC, 2187–2200

Army Department
NOTICES
Government-Owned Inventions; Available for Licensing, 2147
Meetings:
Advisory Committee on Arlington National Cemetery, Honor Subcommittee, 2147–2148

Centers for Disease Control and Prevention
NOTICES
Meetings:
Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health, 2159
Board of Scientific Counselors, Office of Public Health Preparedness and Response, 2158–2159
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 2160–2161
Requests for Nominations:
Interagency Committee on Smoking and Health, 2160

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2161–2162

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Job Search Assistance Strategies Evaluation, 2162–2163

Civil Rights Commission
NOTICES
Meetings:
Alabama Advisory Committee, 2132–2133

Coast Guard
RULES
Drawbridge Operations:
Isthmus Slough, Coos Bay, OR, 2060–2062

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Copyright Office, Library of Congress
RULES
Secure Tests, 2070–2071

Corporation for National and Community Service
RULES
Annual Civil Monetary Penalties Inflation Adjustment, 2073–2075

Defense Department
See Army Department
NOTICES
Meetings:
Defense Innovation Board, 2148–2149

Drug Enforcement Administration
NOTICES
Importers of Controlled Substances; Applications:
Catalent Pharma Solutions, LLC, 2215
Janssen Pharmaceuticals, Inc., 2214–2215
Manufacturers of Controlled Substances; Applications:
Johnson Matthey Inc., 2215–2216

Education Department
RULES
Adjustment of Civil Monetary Penalties for Inflation, 2062–2065
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Evaluation of the Investing in Innovation Program, 2149–2150

Employment and Training Administration
NOTICES
Meetings:
Task Force on Apprenticeship Expansion; Virtual Meeting, 2216

Environmental Protection Agency
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Connecticut; Revision of the Low Emission Vehicles Program, 2097–2100
Approval of Coal Combustion Residuals State Permit Program:
Oklahoma, 2100–2104
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency, 2150
Implementation of the 2008 Ozone National Ambient Air Quality Standards for Ozone; State Implementation Plan Requirements, 2150–2151

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2151–2153

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Airplanes, 2042–2045
Airbus Helicopters, 2039–2042
Special Conditions:
Airbus Model A330–841 and A330–941 New Engine Option (A330neo) Airplanes; Use of High-Incidence Protection and Alpha-Floor Systems, 2035–2038
Dassault Aviation Model Falcon 5X Airplanes; Non-Rechargeable Lithium Battery Installations, 2032–2035
Gulfstream Aerospace Corporation, Gulfstream GVI Airplane; Non-Rechargeable Lithium Battery Installations, 2038–2039
PROPOSED RULES
Airworthiness Directives:
Bombardier, Inc., 2090–2092
DG Flugzeugbau GmbH Gliders, 2088–2090

Federal Communications Commission
RULES
Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, 2075–2085
PROPOSED RULES
Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, 2104–2119
Electronic Delivery of MVPD Communications:
Modernization of Media Regulation Initiative, 2119–2130

Federal Housing Finance Agency
NOTICES
Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions, 2153–2154

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications:
Diabetes, 2295–2297
Diabetes Mellitus, 2283–2289, 2300–2306, 2317–2321
Epilepsy and Seizure Disorders, 2297–2300
Hearing, 2314–2317
Implantable Cardioverter Defibrillator, 2291–2292
Vision, 2289–2295, 2306–2314

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 2154

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2154–2158

Federal Transit Administration
NOTICES
Removing Barriers to Transit Bus Automation, 2323–2324
Research Programs:
Automated Transit Buses, 2321–2323

Fish and Wildlife Service
RULES
Endangered and Threatened Species:
Taxonomical Update for Orangutan, 2085–2087

Food and Drug Administration
RULES
Guidance:
Unique Device Identification—Policy Regarding Compliance Dates for Class I and Unclassified Devices, 2057–2059
PROPOSED RULES
Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding ''Intended Uses'', 2092–2097
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Medical Devices; Device Tracking, 2163–2165
Meetings:
Accreditation Scheme for Conformity Assessment of Medical Devices to Food and Drug Administration-Recognized Standards; Public Workshop, 2165–2167

Government Accountability Office
NOTICES
Requests for Nominations:
Medicaid and CHIP Payment and Access Commission, 2158

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
NOTICES
Meetings:
Advisory Council on Alzheimer's Research, Care, and Services, 2167

Homeland Security Department
See Coast Guard
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Mortgagor's Certificate of Actual Cost, 2172
Budget-Based Rent Increases, 2169–2170
Dispute Resolution Program, 2170–2171
FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure With Service Members Act, 2169
Land Survey Report for Insured Multifamily Projects, 2173–2174
Local Appeals to Single-Family Mortgage Limits, 2174
Public Housing Assessment System Appeals; Unaudited Financial Statement Submission Extensions; Assisted and Insured Housing Property Inspection Technical Reviews and Database Adjustments, 2171–2172
Relocation and Real Property Acquisition Recordkeeping Requirements Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as Amended, 2172–2173

Indian Affairs Bureau
NOTICES
Liquor Control Ordinances:
Chickasaw Nation, 2175–2178

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Uncoated Groundwood Paper From Canada, 2133–2135
Multilayered Wood Flooring From the People's Republic of China, 2137–2141
Determinations of Sales at Less Than Fair Value:
Carbon and Alloy Steel Wire Rod From the Republic of South Africa, 2141–2143
Carbon and Alloy Steel Wire Rod From Ukraine, 2135–2137

International Trade Commission
NOTICES
Complaints:
Certain Healthcare Barcode Readers and Components Thereof, 2186–2187

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Labor Statistics Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cognitive and Psychological Research, 2216–2217

Labor Statistics Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2217–2218

Land Management Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cave Management; Cave Nominations and Requests for Confidential Information, 2180–2181
Conveyance of Federally Owned Mineral Interests, 2183–2184
Onshore Oil and Gas Operations and Production, 2184–2185
Environmental Impact Statements; Availability, etc.:
Grand Staircase-Escalante National Monument—Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands Previously Included in the Monument That are Excluded From the Boundaries, Utah, 2179–2180
Monument Management Plans for the Bears Ears National Monument Indian Creek and Shash Jaa Units, Utah, 2181–2183
Plats of Survey:
Eastern States, 2178–2179, 2185–2186

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 2218–2221

Library of Congress
See Copyright Office, Library of Congress

Maritime Administration
NOTICES
Requests for Administrative Waivers of the Coastwise Trade Laws:
Vessel AQUATHERAPY, 2326
Vessel DUNVEGAN, 2325–2326
Vessel FAR SEA II, 2324–2325
Vessel INDIGO, 2326–2327
Vessel TE FITI, 2325

National Aeronautics and Space Administration
RULES
Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2018, 2045–2046

National Archives and Records Administration
NOTICES
Records Schedules, 2221–2223

National Credit Union Administration
RULES
Civil Monetary Penalty Inflation Adjustment, 2029–2032
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2223
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Capital Planning and Stress Testing, 2223–2224

National Endowment for the Arts
RULES
Civil Penalties Adjustment for 2018, 2071–2073

National Foundation on the Arts and the Humanities
See National Endowment for the Arts

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2327–2328

National Indian Gaming Commission
RULES
Annual Adjustment of Civil Monetary Penalty to Reflect Inflation, 2059–2060

National Institute of Standards and Technology
NOTICES
Meetings:
Visiting Committee on Advanced Technology, 2143–2144

National Oceanic and Atmospheric Administration
NOTICES
Endangered and Threatened Species:
Take of Anadromous Fish, 2145–2147
Meetings:
New England Fishery Management Council, 2144–2145

National Park Service
RULES
General Regulations; Areas of the National Park System, Free Distribution of Other Message-Bearing Items, 2065–2069
Rights of Way, 2069–2070

Nuclear Regulatory Commission
NOTICES
Facility Operating and Combined Licenses:
Applications and Amendments Involving No Significant Hazards Considerations; Biweekly Notice, 2224–2234

Securities and Exchange Commission
RULES
Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only By Eligible Contract Participants, 2046–2056
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2237, 2241–2244, 2246–2248, 2251–2252, 2254–2255, 2275–2276, 2282–2283
Self-Regulatory Organizations; Proposed Rule Changes:
Bats BZX Exchange, Inc., 2234–2237
Cboe BYX Exchange, Inc., 2244–2246, 2248–2251
Cboe BZX Exchange, Inc., 2237–2240
Cboe EDGA Exchange, Inc., 2255–2258
Cboe EDGX Exchange, Inc., 2268–2271
Nasdaq GEMX, LLC, 2258–2261
Nasdaq ISE, LLC, 2252–2254, 2265–2268
Nasdaq PHLX LLC, 2240–2241, 2276–2277
Nasdaq Stock Market LLC, 2261–2265, 2278–2282
The Options Clearing Corp., 2271–2275

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration

U.S. Customs and Border Protection
NOTICES
Domestic Interested Party Petitioner's Notice of Desire To Contest the Tariff Classification Determination of Certain Steel Tube Fittings, 2168–2169

Veterans Affairs Department
NOTICES
Meetings:
Geriatrics and Gerontology Advisory Committee, 2328

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR
747 2029

14 CFR
25 (3 documents) ... 2032, 2035, 2038
39 (2 documents) 2039, 2042
1264 2045
1271 2045

Proposed Rules:
39 (2 documents) 2088, 2090

17 CFR
230 2046

21 CFR
16 2057
801 2057
803 2057
806 2057
810 2057
814 2057
820 2057
821 2057
822 2057
830 2057

Proposed Rules:
201 2092
801 2092
1100 2092

25 CFR
575 2059

33 CFR
117 2060

34 CFR
36 2062
668 2062

36 CFR
2 2065
14 2069

37 CFR
201 2070
202 2070

40 CFR

Proposed Rules:
52 2097
257 2100

45 CFR
1149 2071
1158 2071
1230 2073
2554 2073

47 CFR
54 2075

Proposed Rules:
54 2104
76 2119

50 CFR
17 2085

Rules and Regulations

Federal Register

Vol. 83, No. 10

Tuesday, January 16, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

RIN 3133–AE83

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective January 15, 2018.

FOR FURTHER INFORMATION CONTACT: Ian Marenna, Senior Trial Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Legal Background
II. Calculation of Adjustments
III. Regulatory Procedures

I. Legal Background

A. Statutory Requirements and OMB Guidance

The Debt Collection Improvement Act of 1996 [1] (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 [2] (FCPIA Act) to require every federal agency to enact regulations that adjust each CMP provided by law under its jurisdiction by the rate of inflation at least once every four years.

In November 2015, Congress further amended the CMP inflation requirements in the Bipartisan Budget Act of 2015,[3] which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).[4] This legislation provided for an initial ''catch-up'' adjustment of CMPs in 2016, followed by annual adjustments. The catch-up adjustment re-set CMP maximum amounts by setting aside the inflation adjustments that agencies made in prior years and instead calculated inflation with reference to the year when each CMP was enacted or last modified by Congress. Agencies were required to publish their catch-up adjustments in an interim final rule by July 1, 2016 and make them effective by August 1, 2016.[5] The NCUA complied with these requirements in a June 2016 interim final rule, followed by an October 2016 final rule to confirm the adjustments as final.[6]

The 2015 amendments also specified how agencies must conduct annual inflation adjustments after the 2016 catch-up adjustment. Following the catch-up adjustment, agencies must make the required adjustments and publish them in the **Federal Register** by January 15 each year.[7] The NCUA issued an interim final rule on January 6, 2017,[8] followed by a final rule issued on June 23, 2017.[9] This final rule will satisfy the agency's requirement for the 2018 annual adjustments.

The statute provides that the adjustments shall be made notwithstanding the section of the Administrative Procedure Act (APA) that requires prior notice and public comment for agency rulemaking.[10] The 2015 amendments also specify that each CMP maximum must be increased by the percentage by which the consumer price index for urban consumers (CPI–U) [11] for October of the year immediately preceding the year the adjustment is made exceeds the CPI–U for October of the prior year.[12] For example, for the adjustment made in 2018, agencies must compare the October 2016 and 2017 CPI–U figures.

The 2015 amendments also provide that agencies may forgo the required annual adjustments in certain circumstances. Specifically, in a subsection titled ''Other Adjustments Made,'' the statute provides that an agency is not required to make an annual adjustment to a CMP if it has been increased by a greater amount than the contemplated annual adjustment in the preceding 12 months.[13] When these criteria are met, the agency has discretion not to make the adjustments otherwise required by the statute.

In addition, the 2015 amendments directed the Office of Management and Budget (OMB) to issue guidance to agencies on implementing the inflation adjustments.[14] OMB is required to issue its guidance each December and did so on December 15, 2017.[15] This OMB guidance for the 2018 adjustments includes an inflationary multiplier (1.02041) to apply to each current CMP maximum amount to determine the adjusted maximum. The guidance also addresses rulemaking procedures and agency reporting and oversight requirements for CMPs.[16]

The next section sets forth the Board's calculation of the adjustments for 2018, in accordance with the foregoing requirements.

B. Application to the 2018 Adjustments

This section applies the statutory requirements and OMB's guidance to the NCUA's CMPs.

As explained above, the 2015 amendments require the NCUA to adjust

[1] Public Law 104–134, 31001(s), 110 Stat. 1321–373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.

[2] Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990), codified at 28 U.S.C. 2461 note.

[3] Public Law 114–74, 129 Stat. 584 (Nov. 2, 2015).

[4] 129 Stat. 599.

[5] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[6] 81 FR 40152 (June 21, 2016); 81 FR 78028 (Nov. 7, 2016).

[7] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[8] 82 FR 7640 (Jan. 23, 2017).

[9] 82 FR 29710 (June 30, 2017).

[10] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[11] This index is published by the Department of Labor, Bureau of Labor Statistics, and is available at its website: *http://www.bls.gov/cpi/.*

[12] Public Law 114–74, Sec. 701(b)(1)(2)(B), 129 Stat. 584, 600 (Nov. 2, 2015).

[13] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 600 (Nov. 2, 2015).

[14] Public Law 114–74, Sec. 701(b)(4), 129 Stat. 584, 601 (Nov. 2, 2015).

[15] Id.; OMB, Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–18–03 (Dec. 15, 2017), *available at https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf* (noting that the applicable 2017 CMP-adjustment multiplier is 1.02041).

[16] Id.

the maximum amounts of its CMPs by the percentage by which the October 2017 CPI–U (246.663) exceeds the October 2016 CPI–U (241.729). The percentage change is 2.041. This percentage increase can be expressed as an inflation multiplier (the quotient of the October 2017 figure divided by the October 2016 figure). Accordingly, each CMP maximum amount should be multiplied by 1.02041 to determine the adjusted maximum amount. OMB's guidance identifies the same multiplier.

The Board has considered the exception in the 2015 amendments for adjustments made in the preceding 12 months, discussed above, and has determined that it does not apply. All of the adjustments calculated below are equal to or greater than the adjustments made in January 2017 for each CMP. Accordingly, the exception for greater adjustments in the preceding 12 months does not apply. Thus, the Board lacks discretion to decline to make the adjustments calculated below.

The table below presents the adjustment calculations. The current maximums are found at 12 CFR 747.1001, as adjusted in January 2017. This amount is multiplied by the inflation multiplier to calculate the new maximum in the far right column. Only these adjusted maximum amounts, and not the calculations, will be codified at 12 CFR 747.1001 under this final rule. The adjusted amounts will be effective January 15, 2018, and can be applied to violations that occurred on or after November 2, 2015, the date the 2015 amendments were enacted. The table to be published in the CFR adds a separate row for tier 3 penalties against insured credit unions under 12 U.S.C. 1786(k). This is a format change to conform the table in the CFR with the table below, which lists the tier 3 penalties against credit unions and natural persons separately, following the structure of the statute.

TABLE—CALCULATION OF MAXIMUM CMP ADJUSTMENTS

Citation	Description/tier [17]	Current maximum ($)	Multiplier	Adjusted maximum ($) (current maximum × multiplier, rounded to nearest dollar)
12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	3,849	1.02041	3,928.
12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	38,492	1.02041	39,278.
12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	Lesser of 1,924,589 or 1% of total CU assets.	1.02041	Lesser of 1,963,870 or 1% of total CU assets.
12 U.S.C. 1782(d)(2)(A)	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to NCUSIF, or inadvertent submission of false or misleading statement.	3,519	1.02041	3,591.
12 U.S.C. 1782(d)(2)(B)	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement.	35,186	1.02041	35,904.
12 U.S.C. 1782(d)(2)(C)	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard.	Lesser of 1,759,309 or 1% of total CU assets.	1.02041	Lesser of 1,795,216 or 1% of total CU assets.
12 U.S.C. 1785(a)(3)	Non-compliance with insurance logo requirements.	120	1.02041	122.
12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security requirements.	279	1.02041	285.
12 U.S.C. 1786(k)(2)(A)	Tier 1 CMP for violations of law, regulation, and other orders or agreements.	9,623	1.02041	9,819.
12 U.S.C. 1786(k)(2)(B)	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty.	48,114	1.02041	49,096.
12 U.S.C. 1786(k)(2)(C)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person).	1,924,589	1.02041	1,963,870.
12 U.S.C. 1786(k)(2)(C)	Tier 3 (same) (CU)	Lesser of 1,924,589 or 1% of total CU assets.	1.02041	Lesser of 1,963,870 or 1% of total CU assets.
12 U.S.C. 1786(w)(5)(A)(ii).	Non-compliance with senior examiner post-employment restrictions.	316,566	1.02041	323,027.
15 U.S.C. 1639e(k)	Non-compliance with appraisal independence standards (first violation).	11,053	1.02041	11,279.
15 U.S.C. 1639e(k)	Subsequent violations of the same	22,105	1.02041	22,556.
42 U.S.C. 4012a(f)(5)	Non-compliance with flood insurance requirements.	2,090	1.02041	2,133.

[17] The table uses condensed descriptions of CMP tiers. Refer to the U.S. Code citations for complete descriptions.

III. Regulatory Procedures

A. Final Rule Under the APA

In the 2015 amendments to the FCPIA Act, Congress provided that agencies shall make the required inflation adjustments in 2017 and subsequent years notwithstanding 5 U.S.C. 553,[18] which requires agencies to follow notice-and-comment procedures in rulemaking and to make rules effective no sooner than 30 days after publication in the **Federal Register**. The 2015 amendments provide a clear exception to these requirements.[19] In addition, the Board finds that notice-and-comment procedures would be impracticable and unnecessary under the APA because of the largely ministerial and technical nature of the rule, which affords agencies limited discretion in promulgating the rule, and the statutory deadline for making the adjustments.[20] In these circumstances, the Board finds good cause to issue a final rule without issuing a notice of proposed rulemaking or soliciting public comments. The Board also finds good cause to make the final rule effective upon publication because of the statutory deadline. Accordingly, this final rule is issued without prior notice and comment and will become effective immediately upon publication.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Board to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[21] For purposes of this analysis, the Board considers small credit unions to be those having under $100 million in assets.[22] This final rule will not have a significant economic impact on a substantial number of small credit unions because it only affects the maximum amounts of CMPs that may be assessed in individual cases, which are not numerous and generally do not involve assessments at the maximum level. In addition, several of the CMPs are limited to a percentage of a credit union's assets. Finally, in assessing CMPs, the Board generally must consider a party's financial resources.[23] Because this final rule will affect few, if any, small credit unions, the Board certifies that the final rule will not have a significant economic impact on small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.[24] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule adjusts the maximum amounts of certain CMPs that the Board may assess against individuals, entities, or credit unions but does not require any reporting or recordkeeping. Therefore, this final rule will not create new paperwork burdens or modify any existing paperwork burdens.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles,

The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule adjusts the maximum amounts of certain CMPs that the Board may assess against individuals, entities, and federally insured credit unions, including state-chartered credit unions. However, the final rule does not create any new authority or alter the underlying statutory authorities that enable the Board to assess CMPs. Accordingly, this final rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

E. Assessment of Federal Regulations and Policies on Families

The Board has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[25]

F. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 [26] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the Board issues a final rule as defined by Section 551 of the APA.[27] The Board has submitted this final rule to OMB for it to determine whether it is a ''major rule'' within the meaning of the relevant sections of SBREFA.

List of Subjects in 12 CFR Part 747

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on January 9, 2018.

Gerard S. Poliquin,

Secretary of the Board.

For the reasons stated above, the NCUA Board amends 12 CFR part 747 as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 1. The authority for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; Pub. L. 114–74.

Subpart K—Inflation Adjustment of Civil Monetary Penalties

■ 2. Revise § 747.1001 to read as follows:

§ 747.1001 Adjustment of civil monetary penalties by the rate of inflation.

(a) The NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)), to adjust the maximum amount of each civil monetary penalty within its jurisdiction by the rate of inflation. The following chart displays those adjusted amounts, as calculated pursuant to the statute:

[18] Public Law 114–74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

[19] See 5 U.S.C. 559; Asiana Airlines v. Fed. Aviation Admin., 134 F.3d 393, 396–99 (D.C. Cir. 1998).

[20] 5 U.S.C. 553(b)(3)(B); see Mid-Tex Elec. Co-op., Inc. v. Fed. Energy Regulatory Comm'n, 822 F.2d 1123, 1133–34 (D.C. Cir. 1987).

[21] 5 U.S.C. 603(a).

[22] Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

[23] 12 U.S.C. 1786(k)(2)(G)(i).

[24] 44 U.S.C. 3507(d); 5 CFR part 1320.

[25] Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[26] Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996).

[27] 5 U.S.C. 551.

U.S. Code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	$3,928.
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	$39,278.
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	$1,963,870 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to NCUSIF, or inadvertent submission of false or misleading statement.	$3,591.
(5) 12 U.S.C. 1782(d)(2)(B)	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement.	$35,904.
(6) 12 U.S.C. 1782(d)(2)(C)	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard.	$1,795,216 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(a)(3)	Non-compliance with insurance logo requirements.	$122.
(8) 12 U.S.C. 1785(e) (3)	Non-compliance with NCUA security requirements.	$285.
(9) 12 U.S.C. 1786(k)(2)(A)	Tier 1 CMP for violations of law, regulation, and other orders or agreements.	$9,819.
(10) 12 U.S.C. 1786(k)(2)(A)	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty.	$49,096.
(11) 12 U.S.C. 1786(k)(2)(A)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person).	$1,963,870.
(12) 12 U.S.C. 1786(k)(2)(A)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (insured credit union).	$1,963,870 or 1 percent of the total assets of the credit union, whichever is less.
(13) 12 U.S.C. 1786(w)(5)(ii)	Non-compliance with senior examiner post-employment restrictions.	$323,027.
(14) 15 U.S.C. 1639e(k)	Non-compliance with appraisal independence requirements.	First violation: $11,279. Subsequent violations: $22,556.
(15) 42 U.S.C. 4012a(f)(5)	Non-compliance with flood insurance requirements.	$2,133.

(b) The adjusted amounts displayed in paragraph (a) of this section apply to civil monetary penalties that are assessed after the date the increase takes effect, including those whose associated violation or violations pre-dated the increase and occurred after November 2, 2015.

[FR Doc. 2018–00488 Filed 1–12–18; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–1141; Special Conditions No. 25–710–SC]

Special Conditions: Dassault Aviation Model Falcon 5X Airplanes; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comment.

SUMMARY: These special conditions are issued for non-rechargeable lithium battery installations on the Dassault Aviation (Dassault) Model Falcon 5X airplane. Non-rechargeable lithium batteries are a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault Aviation on January 16, 2018. Send your comments by March 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–1141 using any of the following methods:

- *Federal eRegulations 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: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA

docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

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 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: Nazih Khaouly, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in most makes and models of transport category airplanes. We intend to require special conditions for certification projects involving non-rechargeable lithium battery installations to address certain safety issues until we can revise the airworthiness requirements. Applying special conditions to these installations across the range of transport category airplanes will ensure regulatory consistency.

Typically, the FAA issues special conditions after receiving an application for type certificate approval of a novel or unusual design feature. However, the FAA has found that the presence of non-rechargeable lithium batteries in certification projects is not always immediately identifiable, since the battery itself may not be the focus of the project. Meanwhile, the inclusion of these batteries has become virtually ubiquitous on in-production transport category airplanes, which shows that there will be a need for these special conditions. Also, delaying the issuance of special conditions until after each design application is received could lead to costly certification delays. Therefore, the FAA finds it necessary to issue special conditions applicable to these battery installations on particular makes and models of aircraft.

On April 22, 2016, the FAA published special conditions no. 25–612–SC in the **Federal Register** (81 FR 23573) applicable to Gulfstream Aerospace Corporation for the GVI airplane. Those were the first special conditions the FAA issued for non-rechargeable lithium battery installations. We explained in that document our decision to make those special conditions effective one year after publication in the **Federal Register**, which is April 22, 2017. In those special conditions, the FAA stated its intention to apply non-rechargeable lithium battery special conditions to design changes on other makes and models applied for after this same date.

Section 1205 of the FAA Reauthorization Act of 1996 requires the FAA to consider the extent to which Alaska is not served by transportation modes other than aviation and to establish appropriate regulatory distinctions when modifying airworthiness regulations that affect intrastate aviation in Alaska. In consideration of this requirement and the overall impact on safety, the FAA does not intend to require non-rechargeable lithium battery special conditions for design changes that only replace a 121.5 megahertz (MHz) emergency locator transmitter (ELT) with a 406 MHz ELT that meets Technical Standard Order C126b, or later revision, on transport airplanes operating only in Alaska. This will support our efforts of encouraging operators in Alaska to upgrade to a 406 MHz ELT. These ELTs provide significantly improved accuracy for lifesaving services to locate an accident site in Alaskan terrain. The FAA considers that the safety benefits from upgrading to a 406 MHz ELT for Alaskan operations will outweigh the battery fire risk.

Comments Invited

The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above. We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On July 1, 2012, Dassault applied for a type certificate for a new Model Falcon 5X airplane. The Model Falcon 5X airplane is a twin engine, transport category airplane with a passenger seating capacity of 19 and a projected maximum takeoff weight of 66,635 pounds.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the Dassault Model Falcon 5X airplane. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault must show that the Model Falcon 5X airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–139.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 5X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 5X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17.

Novel or Unusual Design Feature

The novel or unusual design feature is the installation of non-rechargeable lithium batteries.

For the purpose of these special conditions, we refer to a battery and battery system as a battery. A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging.

Discussion

The FAA derived the current regulations governing installation of batteries in transport category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February 1965. This recodification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery in an emergency locator transmitter installation demonstrated unanticipated failure modes. The United Kingdom's Air Accidents Investigation Branch Bulletin S5/2013 describes this event.

Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication management units, and remote-monitor electronic line-replaceable units;
- Cabin safety, entertainment, and communications equipment, including emergency locator transmitters, life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

- *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.
- *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.
- *Flammability:* Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

Special conditions nos. 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special conditions 3, 7, and 8 are self-explanatory.

Special condition no. 4 makes it clear that the flammable fluid fire protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium battery installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123. Sections 25.1353(b)(1) through (4) at Amendment 25–123 remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

These special conditions are applicable to the Dassault Model Falcon 5X airplane. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after the effective date.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic or to relocate the installation to improve the safety of

the airplane and occupants. Previously certified non-rechargeable lithium battery installations, as used in this paragraph, are those installations approved for certification projects applied for on or before the effective date of these special conditions. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation. These special conditions are also not applicable to unchanged, previously certified non-rechargeable lithium battery installations that are affected by a change in a manner that improves the safety of its installation. The FAA determined that these exclusions are in the public interest because the need to meet all of the special conditions might otherwise deter these design changes that improve safety.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Model Falcon 5X airplane.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123, each non-rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.

4. Meet the requirements of § 25.863.

5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.

7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.

8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a ''battery'' and ''battery system'' are referred to as a battery.

Issued in Renton, Washington, on January 9, 2018.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–00548 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0482; Special Conditions No. 25–709–SC]

Special Conditions: Airbus Model A330–841 and A330–941 New Engine Option (A330neo) Airplanes; Use of High-Incidence Protection and Alpha-Floor Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A330–841 and A330–941 New Engine Option (A330neo) airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a high-incidence protection system that limits the angle of attack (AOA) at which the airplane can be flown during normal low-speed operations, and that the flightcrew cannot override. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on January 16, 2018. Send your comments by March 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–0482 using any of the following methods:

- *Federal eRegulations 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: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

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 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: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98057–3356; telephone 425–227–2011; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: These special conditions are derived from special conditions of the same topic for the Airbus Model A380 airplane (Special Conditions No. 25–316–SC). The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances. The FAA therefore finds it unnecessary to delay the effective date, and finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On January 20, 2015, Airbus applied for an amendment to Type Certificate no. A46NM to include the new Model A330–841 and A330–941 New Engine Option airplanes, collectively marketed as Model A330neo airplanes. These airplanes, which are derivatives of the Model A330–200 and A330–300 airplanes currently approved under Type Certificate No. A46NM, are wide-body, jet-engine airplanes with a maximum takeoff weight of 533,519 pounds, and a passenger capacity of 257 (A330–841); or a maximum takeoff weight of 535,503 pounds, and a passenger capacity of 287 (A330–941).

Type Certification Basis

Under the provisions of § 21.101, Airbus must show that the Model A330neo airplanes meet the applicable provisions of the regulations listed in Type Certificate No. A46NM, or the applicable regulations in effect on the date of application for the change except for earlier amendments as agreed upon by the FAA.

For the high-incidence protection system, Airbus will not meet the latest standards, as outlined in the Airbus Model A350 airplane special conditions (Special Conditions No. 25–517–SC). However, in accordance with § 21.101, Airbus has agreed to meet improved standards relative to the original Airbus Model A330 airplane certification basis corresponding to Airbus Model A380 airplane standards.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* title 14, Code of Federal Regulations (14 CFR) part 25) do not contain adequate or appropriate safety standards for Model A330neo airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model A330neo airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A330neo airplanes will incorporate the following novel or unusual design features:

A high-incidence protection system that limits the angle of attack at which the airplane can be flown during normal low-speed operations, and that the flightcrew cannot override.

Discussion

The application of this high-incidence protection system, which limits the airplane's AOA, impacts the longitudinal airplane handling characteristics. In addition, the Alpha-floor function automatically advances the throttles on the operating engines under flight circumstances of low speed if the airplane reaches a predetermined high AOA. This function is intended to provide increased climb capability.

The high-incidence protection system prevents the airplane from stalling and, therefore, the stall-warning system is not needed during normal flight conditions. If there is a failure of this system that is not shown to be extremely improbable, the flight characteristics at the AOA for lift coefficient CL_{max} (an airspeed calculated from a variety of factors; see item 1.f. in these special conditions) must be suitable in the traditional sense, and stall warning must be provided in a conventional manner.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A330–841 and A330–941 (A330neo) airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A330–841 and A330–941 (A330neo) airplanes.

1. Definitions: The following definitions apply for terminology that does not appear in 14 CFR part 25:

a. High-Incidence Protection System: A system that operates directly and automatically on the airplane's flying controls to limit the maximum incidence that can be attained to a value below that at which an aerodynamic stall would occur.

b. Alpha-Floor System: A system that automatically increases thrust on the operating engines when incidence increases through a particular value.

c. Alpha limit: The maximum steady incidence at which the airplane stabilizes with the high-incidence protection system operating and the longitudinal control held on its aft stop.

d. V_{min}: The minimum steady flight speed, for the airplane configuration under consideration and with the high-incidence protection system operating, is the final, stabilized, calibrated

airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal pilot controller is on its stop.

e. $V_{min}1g$: V_{min} corrected to 1g conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an AOA not greater than that determined for V_{min}.

f. V_{CLmax}: An airspeed calculated from a variety of factors including load factor normal to the flight path at V_{CLmax}, airplane gross weight, aerodynamic reference wing area, and dynamic pressure.

2. Capability and Reliability of the High-Incidence Protection System: These special conditions are in lieu of 14 CFR 25.103, 25.145, 25.201, 25.203, 25.207, and 25.1323, provided that acceptable capability and reliability of the high-incidence protection system can be established by flight test, simulation, and analysis as appropriate. The capability and reliability required are as follows:

a. It must not be possible during pilot-induced maneuvers to encounter a stall, and handling characteristics must be acceptable, as required by condition 5 of these special conditions.

b. The airplane must be protected against stalling due to the effects of wind shears and gusts at low speeds, as required by condition 6 of these special conditions.

c. The ability of the high-incidence protection system to accommodate any reduction in stalling incidence resulting from residual ice must be verified.

d. The reliability of the system and the effects of failures must be acceptable in accordance with § 25.1309 and the associated policy.

3. Minimum Steady Flight Speed and Reference Stall Speed: In lieu of § 25.103, the following requirements apply:

a. V_{min}: The minimum steady flight speed, for the airplane configuration under consideration and with the high-incidence protection system operating, is the final, stabilized, calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal control is on its stop.

b. The minimum steady flight speed, V_{min}, must be determined with:

i. The high-incidence protection system operating normally.

ii. Idle thrust.

iii. Alpha-Floor System inhibited.

iv. All combinations of flap settings and landing gear positions.

v. The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

vi. The most unfavorable center of gravity (CG) allowable, and

vii. The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

c. $V_{min}1g$: V_{min} corrected to 1g conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to the weight of the airplane when at an AOA not greater than that determined for V_{min}. $V_{min}1g$ is defined as follows:

$$V\,\min 1g = \frac{V\,\min}{\sqrt{n_{zw}}}$$

Where

n_{zw} = load factor normal to the flight path at V_{min}

d. The Reference Stall Speed, V_{SR}, is a calibrated airspeed defined by the applicant. V_{SR} may not be less than a 1g stall speed. V_{SR} is expressed as:

$$V_{SR} \geq \frac{V_{CL\,MAX}}{\sqrt{n_{zw}}}$$

Where

V_{CLmax} = Calibrated airspeed obtained when the load-factor-corrected lift coefficient

$$\left(\frac{n_{zw}W}{qS}\right)$$

is first a maximum during the maneuver prescribed in condition (3)(e)(viii) of these special conditions.

n_{zw} = Load factor normal to the flight path at V_{CLmax}

W = Airplane gross weight;

S = Aerodynamic reference wing area; and

q = Dynamic pressure.

Note: Unless AOA protection-system (stall warning and stall identification) production tolerances are acceptably small, so as to produce insignificant changes in performance determinations, the flight-test settings for stall warning and stall identification should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations.

e. V_{CLmax} must be determined with the following conditions:

i. Engines idling, or, if that resultant thrust causes an appreciable decrease in stall speed, not more than zero thrust at the stall speed.

ii. The airplane in other respects (such as flaps and landing gear) in the condition existing in the test or performance standard in which V_{SR} is being used.

iii. The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

iv. The CG position that results in the highest value of reference stall speed.

v. The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}.

vi. The Alpha-Floor System inhibited.

vii. The high-incidence protection system adjusted to a high enough incidence to allow full development of the 1g stall.

viii. Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

f. The flight characteristics at the AOA for CL_{max} must be suitable in the traditional sense at forward (FWD) and aft (AFT) CG in straight and turning flight at IDLE power. Although for a normal production Electronic Flight Control System (EFCS) and steady full aft stick, this AOA for CL_{max} cannot be achieved. The AOA can be obtained momentarily under dynamic circumstances, and deliberately in a steady-state sense, with some EFCS failure conditions.

4. Stall Warning:

In lieu of § 25.207, the following requirements apply:

a. *Normal Operation:* If the items in condition 2, above, are satisfied, equivalent safety to the intent of § 25.207, Stall Warning, must be considered to have been met without provision of an additional, unique warning device.

b. *Failure Cases:* Following failures of the high-incidence protection system not shown to be extremely improbable, if the system no longer satisfies items in conditions 2. a., b., and c., stall warning must be provided in accordance with § 25.207. The stall warning should prevent inadvertent stall in the following conditions:

i. Power off straight stall approaches to a speed 5 percent below the warning onset.

ii. Turning-flight stall approaches at entry rates up to 3 knots per second when recovery is initiated not less than 1 second after the warning onset.

5. Handling Characteristics at High Incidence:

a. High-Incidence Handling Demonstrations: In lieu of § 25.201, the following requirements apply:

i. Maneuvers to the limit of the longitudinal control, in the nose-up direction, must be demonstrated in

straight flight and in 30-degree banked turns with:

1. The high-incidence protection system operating normally.

2. Initial power condition of:

a. Power off

b. The power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the reference stall speed with the flaps in the approach position, the landing gear retracted, and the maximum landing weight. The flap position to be used in determining this power setting is that position in which the stall speed, V_{SR1}, does not exceed 110 percent of the stall speed, V_{SR0}, with the flaps in the most extended landing position.

3. Alpha-Floor System operating normally, unless more severe conditions are achieved with Alpha floor inhibited.

4. Flaps, landing gear, and deceleration devices in any likely combination of positions.

5. Representative weights within the range for which certification is requested, and

6. The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

b. The following procedures must be used to show compliance with these special conditions:

i. Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed 1 knot per second until the control reaches the stop.

ii. The longitudinal control must be maintained at its stop until the airplane has reached a stabilized flight condition, and must then be recovered by normal recovery techniques.

iii. The requirements for turning-flight maneuver demonstrations must also be met with accelerated rates of entry to the incidence limit, up to the maximum rate achievable.

c. Characteristics in High Incidence Maneuvers: In lieu of § 25.203, the following requirements apply:

i. Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30-degree banked turns, the airplane's characteristics must be as follows:

1. There must not be any abnormal airplane nose-up pitching.

2. There must not be any uncommanded nose-down pitching, which would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at Alpha limit, as the longitudinal control reaches its stop, would be acceptable. Any reduction of pitch attitude associated with stabilizing the incidence at the Alpha limit should be achieved smoothly and at a low pitch rate, such that it is not likely to be mistaken for natural-stall identification.

3. There must not be any uncommanded lateral or directional motion, and the pilot must retain good lateral and directional control by conventional use of the cockpit controllers throughout the maneuver.

4. The airplane must not exhibit buffeting of a magnitude and severity that would act as a deterrent to completing the maneuver specified in § 25.201(a), as amended by this special condition.

ii. In maneuvers with increased rates of deceleration, some degradation of characteristics, associated with a transient excursion beyond the stabilized Alpha limit, is acceptable. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal controller on its stop for a period of time appropriate to the maneuvers.

iii. It must always be possible to reduce incidence by conventional use of the controller.

iv. The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds such as V_2 and V_{REF} up to Alpha limit, must not be unduly damped or significantly slower than can be achieved on conventionally controlled transport airplanes.

6. Atmospheric Disturbances: Operation of the high-incidence protection system must not adversely affect airplane control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of wind shear. This must be demonstrated in non-icing and icing conditions.

7. Alpha Floor: The Alpha-floor setting must be such that the airplane can be flown at normal landing operational speed, and maneuvered up to bank angles consistent with the flight phase (including the maneuver capabilities specified in § 25.143(g)), without triggering Alpha floor. In addition, there must be no Alpha-floor triggering unless appropriate when the airplane is flown in usual operational maneuvers and in turbulence.

8. Proof of Compliance: Change § 25.21 as follows:

Section 25.21(b)—The flying qualities must be evaluated at the most unfavorable CG position.

9. For §§ 25.145(a), 25.145(a), and 25.145(b)(6), the following requirements apply:

a. Section 25.145(a)—It must be possible, at any point between the trim speed prescribed in § 25.103(b)(7) as amended by this special condition and V_{min}, to pitch the nose downward so that the acceleration to this selected trim speed is prompt with—

b. Section 25.145(a)(1)—The airplane trimmed at the trim speed prescribed in § 25.103(b)(7) as amended by this special condition.

c. Section 25.145(b)(6)—With power off, flaps extended and the airplane trimmed at 1.3 V_{SR1}, obtain and maintain airspeeds between V_{min} and either $1.6V_{SR1}$ or V_{FE}, whichever is lower.

10. In lieu of § 25.1323(d), the following requirement applies:

(d) From 1.23 VSR to V_{min}, the IAS must change perceptibly with CAS and in the same sense, and at speeds below V_{min} speed the IAS must not change in an incorrect sense.

Issued in Renton, Washington, on January 9, 2018.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–00546 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–4279; Special Conditions No. 25–612–SC]

Special Conditions: Gulfstream Aerospace Corporation, Gulfstream GVI Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; correction.

SUMMARY: This document corrects errors that appeared in Docket No. FAA–2015–4279, Special Conditions No. 25–612–SC, which was published in the **Federal Register** on April 22, 2016. The errors are incorrect title 14, Code of Federal Regulations section citations in two locations in the final special conditions document.

DATES: The effective date of this correction is January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington 98057–3356;

telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2016, the **Federal Register** published a document designated as Docket No. FAA–2015–4279, Final Special Conditions No. 25–612–SC (81 FR 23573). The document issued special conditions pertaining to the installation of non-rechargeable lithium batteries in Gulfstream GVI airplanes. As published, the document contained an error in a title 14, Code of Federal Regulations (14 CFR) section citation in two locations in the final special conditions document. These citations inadvertently referred to the wrong amendment level for the certification basis of the various Gulfstream GVI airplanes. Therefore, we have corrected these special conditions to include the correct citations and amendment levels that apply to certification bases applicable to airplanes with non-rechargeable lithium-ion battery installations.

Correction

In the final special conditions document (FR Doc. 2016–09311 Filed 4–21–16; 8:45 a.m.), published on April 22, 2016 (81 FR 23573), make the following corrections.

1. On page 23574, second column, change the following paragraph:

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–113. Sections 25.1353(b)(1) through (b)(4) at Amendment 25–113 remain in effect for other battery installations.

To read:

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123 or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

2. On page 23577, third column, change the following paragraph:

In lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–113, each non-rechargeable lithium battery installation must:

To read:

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each non-rechargeable lithium battery installation must:

Issued in Renton, Washington, on January 9, 2018.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–00547 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0826; Product Identifier 2016–SW–084–AD; Amendment 39–19153; AD 2018–01–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2015–22–53 for Airbus Helicopters Model AS350B3 helicopters. AD 2015–22–53 required revising the rotorcraft flight manual (RFM) to perform the yaw load compensator check after rotor shut-down and to state that the yaw servo hydraulic switch must be in the ''ON'' position before taking off. Since we issued AD 2015–22–53, Airbus Helicopters developed a modification of the ACCU TST switch. This new AD retains the requirements of AD 2015–22–53 and requires modifying the yaw servo hydraulic switch (collective switch) and replacing the ACCU TST button. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective February 20, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 20, 2018.

ADDRESSES: For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0826.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* in Docket No. FAA–2017–0826; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference information, the economic evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2015–22–53, Amendment 39–18331 (80 FR 74982, December 1, 2015) and add a new AD. AD 2015–22–53 applied to Airbus Helicopters Model AS350B3 helicopters with a dual hydraulic system installed. AD 2015–22–53 required revising the pre-flight and post-flight procedures in the RFM to perform the yaw load compensator check (ACCU TST switch) after rotor shut-down instead of during preflight procedures and to state that the yaw servo hydraulic switch (collective switch) must be in the ''ON'' (forward) position before taking off.

The NPRM published in the **Federal Register** on September 8, 2017 (82 FR 42487). The NPRM was prompted by AD No. 2016–0220, dated November 4, 2016, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model AS 350 B3 helicopters. EASA advises that further analysis resulted in the recognition that a pilot could forget to activate a switch despite the RFM changes and that altering the bistable push button (push-on, push-off) ACCU TST switch is necessary.

Accordingly, the NPRM proposed to retain the requirements of AD 2015–22–53 and also proposed to require, within

350 hours time-in-service, installing a timer relay for the yaw servo hydraulic switch, installing an additional light on the caution and warning panel, and replacing the bistable ACCU TST button with a monostable button. The proposed requirements were intended to prevent takeoff without hydraulic pressure in the tail rotor (T/R) hydraulic system, loss of T/R flight control, and subsequent loss of control of the helicopter.

Comments

After our NPRM was published, we received comments from two commenters.

Requests

The National Transportation Safety Board (NTSB) requested that the AD address the need for an alert when there is insufficient pressure in the T/R hydraulic system, which results in increased pedal loads. In support of this request, the NTSB stated that, for at least four events it investigated in which the yaw servo hydraulic switch was likely not returned to its correct position before takeoff, a salient alert could have cued the pilots of insufficient T/R hydraulic pressure.

We partially agree. We agree that an aural and visual alert to the pilot to indicate loss of T/R hydraulic pressure would address this unsafe condition. However, Airbus Helicopters has not developed an alteration that provides such an alert. The FAA has determined the requirements proposed by the NPRM are appropriate to address this unsafe condition at this time. Should an aural and visual alert to the pilot to indicate loss of T/R hydraulic pressure be developed and approved, we might consider additional rulemaking at that time. We did not change the AD based on this comment.

The NTSB also requested that we eliminate the requirement to move the yaw load compensator check (ACCU TST switch) to post-flight procedures instead of preflight procedures. In support of this request, the NTSB stated that performing this check post-flight does not ensure the yaw load compensator will remain functional for the next flight.

We disagree. We determined that requiring this check post-flight with the RFM procedure to have the yaw servo hydraulic switch in the ''ON'' position before takeoff, along with the alterations to the yaw servo hydraulic switch and replacement of the ACCU TST button, reduces the risk of takeoff with the switch in the incorrect position to an acceptable level. We did not change the AD based on this comment.

Eagle Copters requested we change the AD to address helicopters that have replaced the factory console with a Geneva Aviation P122 or P132 electrical console under Eagle Copters USA, Inc. Supplemental Type Certificate No. SH4747NM. In support of this request, Eagle Copters noted that operators of these helicopters will need to request an Alternative Method of Compliance to comply with the AD, because the Airbus Helicopters service information required for replacing the bistable ACCU TST button does not apply to these helicopters. Eagle Copters proposed adding a requirement to the AD to replace the HYD TEST/ACCU TEST ESN–11 switch on the console from the locking bistable toggle switch to a locking momentary (monostable) toggle switch part number (P/N) MS24658–16F.

We agree. We revised the AD to require helicopters with a P122 or P132 electrical console installed to replace the bistable ACCU TEST switch (which may be marked ''HYD TEST'') with monostable toggle switch P/N MS24658–16F.

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of the same type design and that air safety and the public interest require adopting the AD requirements as proposed with the change previously described. This change is consistent with the intent of the proposals in the NPRM and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Service Bulletin (SB) No. AS350–67.00.64, Revision 0, dated February 25, 2015. This service information specifies procedures to install a timer relay and an additional indicator light on the caution and warning panel. This modification provides an ''OFF'' status indication of the yaw servo hydraulic switch by flashing a newly installed ''HYD2'' indicator light on the caution and warning panel. Airbus Helicopters identifies performance of this SB as modification 074622. This modification was available when AD 2015–22–53 was issued; however, it was determined unnecessary to address the unsafe condition at that time.

We also reviewed Airbus Helicopters SB No. AS350–67.00.65, Revision 0, dated August 25, 2016. This service information specifies procedures to replace the bistable push button ACCU TST switch with a monostable push button switch. Airbus Helicopters identifies performance of this SB as modification 074719.

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

Other Related Service Information

We reviewed Airbus Helicopters SB No. AS350–67.00.66, Revision 1, dated October 22, 2015. This service information specifies inserting specific pages of the SB into the rotorcraft flight manual. These pages revise the preflight and post-flight hydraulic checks by moving the T/R yaw load compensator check from preflight to post-flight. These pages also revise terminology within the flight manuals for the different engine configurations.

Costs of Compliance

We estimate that this AD affects 86 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour.

Revising an RFM would take about 0.5 work-hour for a cost of $43 per helicopter and $3,698 for the U.S. fleet. Installing a timer relay for the yaw servo hydraulic switch and an indicator light would take about 9 work-hours and parts would cost about $2,224. Replacing the ACCU TST button would take about 1 work-hour and parts would cost about $2,244.

Based on these figures, we estimate a total cost of $5,361 per helicopter and $461,046 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 have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that a regulatory, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–22–53, Amendment 39–18331 (80 FR 74982, December 1, 2015), and adding the following new AD:

2018–01–12 Airbus Helicopters: Amendment 39–19153; Docket No. FAA–2017–0826; Product Identifier 2016–SW–084–AD.

(a) Applicability

This AD applies to Model AS350B3 helicopters with a dual hydraulic system installed, certificated in any category.

Note 1 to paragraph (a) of this AD: The dual hydraulic system for Model AS350B3 helicopters is referred to as Airbus modification OP 3082 or OP 3346.

(b) Unsafe Condition

This AD defines the unsafe condition as lack of hydraulic pressure in a tail rotor (T/R) hydraulic system. This condition could result in loss of T/R flight control and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2015–22–53, Amendment 39–18331 (80 FR 74982, December 1, 2015).

(d) Effective Date

This AD becomes effective February 20, 2018.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Before further flight, insert a copy of this AD into the rotorcraft flight manual, Section 4 Normal Operating Procedures, or make pen and ink changes to the preflight and post-flight procedures as follows:

(i) Stop performing the yaw load compensator check (ACCU TST switch) during preflight procedures, and instead perform the yaw load compensator check during post-flight procedures after rotor shut-down.

(ii) The yaw servo hydraulic switch (collective switch) must be in the ''ON'' (forward) position before takeoff.

Note 2 to paragraph (f)(1)(ii) of this AD: The yaw servo hydraulic switch is also called the hydraulic pressure switch or hydraulic cut off switch in various Airbus Helicopters rotorcraft flight manuals.

(2) Within 350 hours time-in-service:

(i) Install a timer relay for the yaw servo hydraulic switch (collective switch) by following the Accomplishment Instructions, paragraph 3.B.2.b.1, 3.B.2.b.2, 3.B.2.b.3, 3.B.2.b.4, 3.B.2.b.5, or 3.B.2.b.6, as applicable to the configuration of your helicopter, of Airbus Helicopters Service Bulletin (SB) No. AS350–67.00.64, Revision 0, dated February 25, 2015 (AS350–67.00.64). If your helicopter has an automatic pilot system, also comply with paragraph 3.B.2.b.7 of AS350–67.00.64.

(ii) Install an indicator light on the caution and warning panel by following the Accomplishment Instructions, paragraph 3.B.2.c.1 or 3.B.2.c.2, as applicable to the configuration of your helicopter, of AS350–67.00.64.

(iii) For helicopters with a Geneva Aviation P122 or P132 electrical console installed, replace the ESN–11 HYD TEST (ACCU TST) switch with a monostable toggle switch part number MS24658–16F.

(iv) For helicopters without a Geneva Aviation P122 or P132 electrical console installed, replace the bistable ACCU TST button on the control panel with a monostable button as depicted in Figure 1 or Figure 3, as applicable to the configuration of your helicopter, of Airbus Helicopters SB No. AS350–67.00.65, Revision 0, dated August 25, 2016.

(3) After the effective date of this AD, do not install a bistable ACCU TST button on any helicopter.

(g) Special Flight Permits

A special flight permit may be issued for paragraph (f)(2) of this AD only.

(h) 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: George Schwab, Aviation Safety Engineer, Safety Management 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.

(i) Additional Information

(1) Airbus Helicopters SB No. AS350–67.00.66, Revision 1, dated October 22, 2015, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may view a copy of the 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. 2016–0220, dated November 4, 2016. You may view the EASA AD on the internet at *http://www.regulations.gov* in Docket No. FAA–2017–0826.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 2910, Main Hydraulic System.

(k) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Service Bulletin No. AS350–67.00.64, Revision 0, dated February 25, 2015.

(ii) Airbus Helicopters Service Bulletin No. AS350–67.00.65, Revision 0, dated August 25, 2016.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on January 8, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–00478 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0514; Product Identifier 2016–NM–206–AD; Amendment 39–19148; AD 2018–01–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes) airplanes. This AD was prompted by a revision of certain airworthiness limitation item (ALI) documents, which require more restrictive maintenance requirements and airworthiness limitations. This AD requires revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 20, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 20, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0514.

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–2017–0514; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The NPRM published in the **Federal Register** on June 2, 2017 (82 FR 25552) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0218, dated November 2, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The MCAI states:

The airworthiness limitations for Airbus A300–600 aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A300–600 Airworthiness Limitations Section (ALS) document(s). These instructions have been identified as mandatory actions for continued airworthiness.

Failure to accomplish these instructions could result in an unsafe condition.

EASA previously issued [EASA] AD 2014–0124 (later revised) [which includes actions for Airbus A300–600 airplanes; those actions are included in FAA AD 2013–13–13, Amendment 39–17501 (79 FR 48957, August 19, 2014) (''AD 2013–13–13'')], requiring the actions described in Airbus A300–600 Airworthiness Limitation Item (ALI) Document at issue 13 and Temporary Revision (TR) 13.1.

Since EASA AD 2014–0124R1 was issued, Airbus replaced A300–600 ALI Document issue 13, with A300–600 ALS Part 2 Revision 01 and then published the A300–600 ALS Part 2 Variation 1.1 and Variation 1.2, to introduce more restrictive maintenance requirements and/or airworthiness limitations.

A300–600 ALS Part 2 Variation 1.1 also includes ALI 571067 and ALI 571068, superseding Service Bulletin A300–53–6154, which is referenced in EASA AD 2006–0257 [which corresponds to FAA AD 2007–22–05, Amendment 39–15241 (72 FR 60236, October 24, 2007) (''AD 2007–22–05'')].

For the reasons described above, this [EASA] AD retains part of the requirements of EASA AD 2014–0124R1, which will be superseded, and requires accomplishment of the actions specified in Airbus A300–600 ALS Part 2 Revision 01, and ALS Part 2 Variation 1.1 and ALS Part 2 Variation 1.2 (hereafter collectively referred to as 'the ALS' in this [EASA] AD), and supersedes EASA AD 2006–0257. The remaining requirements of EASA AD 2014–0124R1 are retained in AD 2016–0217, applicable to A310 aeroplanes, published at the same time as this [EASA] AD.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0514.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response. FedEx generally supported the NPRM.

Request To Provide an Additional Compliance Time Grace Period

United Parcel Service (UPS) requested that the compliance time specified in paragraph (g) of the NPRM be revised to add an additional grace period. UPS pointed out that there are several new or revised tasks with relatively low compliance time thresholds that would lead to short lead times on accomplishing those tasks after the effective date of the AD. UPS referenced the compliance time required in AD

2013–13–13 as an example of the type of grace period it envisions, which specifies that a compliance time, in flight cycles (FC), that is after the publication date of the applicable service information should be considered as after the effective date of that AD. UPS suggested that where the compliance time in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Revision 01, dated August 7, 2015, specifies ''within 2000 FC from Jun 11/15,'' the proposed AD should specify that phrase as ''within 2000 FC from the effective date of this AD.'' UPS anticipated submitting a request for an alternative method of compliance (AMOC) if the additional grace period is not added.

We do not agree with the commenter's request to add an additional grace period. We have reviewed the compliance times specified in the service information and have determined that the compliance times specified and grace periods provided in both the service information and in paragraph (g) of this AD are sufficient to allow compliance. However, under the provisions of paragraph (j)(1) of this AD, we will also consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Allow AMOCs Previously Approved for AD 2013–13–13

FedEx requested that AMOCs for AD 2013–13–13 be applicable to this AD. No further justification was provided.

We agree to allow AMOCs that were previously approved for AD 2013–13–13 as AMOCs for this AD. We have revised paragraph (j)(1) of this AD and added paragraphs (j)(1)(i) and (j)(1)(ii) to this AD to add that provision.

Request To Revise Cost Estimate

FedEx requested that the cost information be revised to include the costs of additional actions such as AD tracking and planning, changing work cards and the maintenance program, getting local FAA approvals, and aircraft down time. FedEx proposed that the cost for U.S. operators would exceed $500,000.

We agree to revise the cost information. Based on the information provided by FedEx, we have revised the estimated work-hours from 1 work-hour to 90 work-hours. We recognize that revising the maintenance or inspection program to incorporate changes in multiple tasks or a new revision level of a section of an ALS document would take more time than a change in a single task. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time necessary for planning or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Revision 01, dated August 7, 2015.
- Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Variation 1.1, dated January 25, 2016.
- Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Variation 1.2, dated July 22, 2016.

The service information describes airworthiness limitations applicable to the DT ALIs. These documents are distinct because they contain unique tasks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 128 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance program revision	90 work-hours × $85 per hour = $7,650	None	$7,650	$979,200

Authority for This Rulemaking

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

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–01–07 Airbus: Amendment 39–19148; Docket No. FAA–2017–0514; Product Identifier 2016–NM–206–AD.

(a) Effective Date

This AD is effective February 20, 2018.

(b) Affected ADs

This AD affects AD 2007–22–05, Amendment 39–15241 (72 FR 60236, October 24, 2007) (''AD 2007–22–05'') and AD 2013–13–13, Amendment 39–17501 (79 FR 48957, August 19, 2014) (''AD 2013–13–13'').

(c) Applicability

This AD applies to all Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a revision of certain airworthiness limitation item (ALI) documents, which require more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 3 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in the service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. The initial compliance times for doing the tasks are at the time specified in the service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, or within 3 months after the effective date of this AD, whichever occurs later.

(1) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Revision 01, dated August 7, 2015.

(2) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Variation 1.1, dated January 25, 2016.

(3) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Variation 1.2, dated July 22, 2016.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), or intervals, may be used unless the actions, or intervals, are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Actions

Accomplishing the actions required by this AD terminates all of the requirements of AD 2007–22–05 and AD 2013–13–13 for that airplane only.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2013–13–13 are approved as AMOCs for the corresponding provisions of this AD.

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0218, dated November 2, 2016, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0514.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

(l) Material Incorporated by Reference

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

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

(i) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Revision 01, dated August 7, 2015.

(ii) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Variation 1.1, dated January 25, 2016.

(iii) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT—ALI),'' Variation 1.2, dated July 22, 2016.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on December 27, 2017.

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–00110 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1264 and 1271

[Document Number NASA–17–094: Docket Number–NASA–2017–0004]

RIN 2700–AE30

Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2018

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) has adopted a final rule making inflation adjustments to civil monetary penalties within its jurisdiction. This final rule represents the annual 2018 inflation adjustments of monetary penalties. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective:* This final rule is effective January 15, 2018.

FOR FURTHER INFORMATION CONTACT: Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, telephone (202) 358–0216.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, required Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016. Subsequent to the 2016 adjustment, Federal agencies were required to make an annual inflation adjustment by January 15 every year thereafter.[1] Agencies were required to make the initial 2016 adjustments through an interim final rulemaking published in the **Federal Register**.[2] Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.[3] The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

On June 26, 2017, NASA published its interim final rule providing for the initial adjustment called for under the Act.[4] The public comment period interim final rule closed on August 24, 2016, and the rule became effective on August 25, 2017. On October 20, 2017, NASA adopted this interim rule as final.[5] In its final rule, NASA also amended the interim rule to incorporate the required annual adjustments for 2017.

Pursuant to the Act, adjustments to the civil penalties are required to be made by January 15 of each year. The annual adjustments are based on the percent change between the U.S. Department of Labor's Consumer Price Index for All Urban Consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2018 is 1.02041 percent. Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.

II. The Final Rule

This final rule makes the required adjustments to civil penalties for 2018. Applying the 2018 multiplier above, the adjustments for each penalty are summarized below.

Law	Penalty description	2017 penalty	Penalty adjusted for 2018
Program Fraud Civil Remedies Act of 1986	Maximum Penalties for False Claims	$10,957	$11,181
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Minimum Penalty for use of appropriated funds to lobby or influence certain contracts.	19,246	19,639
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Maximum Penalty for use of appropriated funds to lobby or influence certain contracts.	192,459	196,387
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Minimum penalty for failure to report certain lobbying transactions.	19,246	19,639
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Maximum penalty for failure to report certain lobbying transactions.	192,459	196,387

This rule codifies these civil penalty amounts by amending parts 1264 and 1271 of title 14 of the CFR.

III. Legal Authority and Effective Date

NASA issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,[6] as amended by the Debt Collection Improvement Act of 1996,[7] and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[8] which requires NASA to adjust the civil penalties within its jurisdiction

[1] *See* 28 U.S.C. 2461 note.

[2] The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 UUSC 2461 note. NASA has chosen not to make use of this exception.

[3] Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

[4] 82 FR 28760.

[5] 82 FR 48760.

[6] Public Law 101–410, 104 Stat. 890 (1990).

[7] Public Law 104–134, section 31001(s)(1), 110 Stat. 1321, 1321–373 (1996).

[8] Public Law 114–74, section 701, 129 Stat. 584, 599 (2015).

for inflation according to a statutorily prescribed formula.

Section 553 of title 5 of the United States Code generally requires an agency to publish a rule at least 30 days before its effective date to allow for advance notice and opportunity for public comments.[9] After the initial adjustment for 2016, however, the Civil Penalties Inflation Adjustment Act requires agencies to make subsequent annual adjustments for inflation ''notwithstanding section 553 of title 5, United States Code.'' Moreover, the 2018 adjustments are made according to a statutory formula that does not provide for agency discretion. Accordingly, a delay in effectiveness of the 2018 adjustments is not required.

IV. Regulatory Requirements

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[10]

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[11] NASA reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 14 CFR Parts 1264 and 1271

Claims, Lobbying, Penalties.

For the reasons stated in the preamble, the National Aeronautics and Space Administration is amending 14 CFR parts 1264 and 1271 as follows:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

■ 1. The authority citation for part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 51 U.S.C. 20113(a).

§ 1264.102 [Amended]

■ 2. In § 1264.102, remove the number ''$10,957'' everywhere it appears and add in its place the number ''$11,181''.

PART 1271—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1271 continues to read as follows:

Authority: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 97–258 (31 U.S.C. 6301 *et seq.*)

§ 1271.400 [Amended]

■ 4. In § 1271.400:
■ a. In paragraphs (a) and (b), remove the words ''not less than $19,246 and not more than $192,459'' and add in their place the words ''not less than $19,639 and not more than $196,387''.
■ b. In paragraph (e), remove the two occurrences of ''$19,246'' and add in their place ''$19,639'' and remove ''$192,459'' and add in its place ''$196,387''.

Appendix A to Part 1271 [Amended]

■ 5. In appendix A to part 1271:
■ a. Remove the number ''$19,246'' everywhere it appears and add in its place the number ''$19,639''.
■ b. Remove the number ''$192,459'' everywhere it appears and add in its place the number ''$196,387''.

Nanette J. Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2018–00587 Filed 1–12–18; 8:45 am]

BILLING CODE 7510–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–10450; File No. S7–09–14]

RIN 3235–AL41

Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only by Eligible Contract Participants

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a rule under the Securities Act of 1933 (''Securities Act'') to provide that certain communications involving security-based swaps will not be deemed to constitute ''offers'' of such security-based swaps for purposes of Section 5 of the Securities Act. The final rule covers the publication or distribution of price quotes that relate to security-based swaps that may be purchased only by persons who are eligible contract participants (''covered SBS'') and are traded or processed on or through certain trading platforms. The final rule also covers a broker, dealer, or security-based swap dealer's publication or distribution of written communications that discuss covered SBS and that meet the definition of ''research report'' in Rule 139(d) under the Securities Act and certain other conditions.

DATES: Effective January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting Rule 135d under the Securities Act.[1]

I. Background and Summary

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')[2] into law. Title VII of the Dodd-Frank Act (''Title VII'') provides the Securities and Exchange Commission (''SEC'' or the ''Commission'') and the Commodity Futures Trading Commission (''CFTC'') with the authority to regulate over-the-counter derivatives. Under Title VII, the CFTC regulates ''swaps,'' the SEC regulates ''security-based swaps,'' and the CFTC and SEC jointly regulate ''mixed swaps.''[3]

Title VII amended the Securities Act and the Securities Exchange Act of 1934 (''Exchange Act'')[4] to include ''security-based swaps'' in the definition of ''security.''[5] As a result, ''security-based swaps'' are subject to the Securities Act and the Exchange Act and the rules and regulations thereunder. Section 5 of the Securities Act requires that any offer or sale of a security must either be registered under the Securities Act or be made pursuant to an exemption from registration.[6] As a result, counterparties

[9] *See* 5 U.S.C. 533(d).

[10] 5 U.S.C. 603(a), 604(a).

[11] 44 U.S.C. 3506.

[1] 15 U.S.C. 77a *et seq.*

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] The SEC and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, jointly further defined the product and intermediary terms used in Title VII, including ''swap,'' ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement.'' *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Release No. 34–66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) (''Intermediary Definitions Adopting Release''), and *Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Release No. 33–9338 (Jul. 18, 2012), 77 FR 48208 (Aug. 13, 2012) (''Product Definitions Adopting Release'').

[4] 15 U.S.C. 78a *et seq.*

[5] *See* Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

[6] *See* 15 U.S.C. 77e.

entering into security-based swap transactions need either to rely on an available exemption from the registration requirements of the Securities Act or register such transactions. Title VII also amended the Securities Act to prohibit offers and sales of security-based swaps to persons who are not ''eligible contract participants'' (''ECPs'')[7] unless a registration statement is in effect as to the security-based swaps.[8]

Because security-based swaps are included in the definition of ''security,'' the publication or distribution of certain communications involving security-based swaps on an unrestricted basis could be viewed as offers of those security-based swaps within the meaning of Section 2(a)(3) of the Securities Act.[9] Further, such communications also may be considered offers to non-ECPs, even though such persons are not permitted to purchase the security-based swaps unless, as noted above, a registration statement under the Securities Act is in effect as to such security-based swaps.[10] If there are no Securities Act exemptions available with respect to a security-based swap transaction, the required registration of such transactions could negatively affect the security-based swaps market.

On September 8, 2014, the Commission proposed a rule to address the treatment of certain communications involving covered SBS, in particular price quotes relating to covered SBS that are traded or processed on or through a facility either registered as a national securities exchange or as a security-based swap execution facility (''security-based SEF''), or exempt from registration as a security-based SEF pursuant to a rule, regulation, or order of the Commission (''SBS price quotes'').[11] Under the proposed rule, the publication or distribution of SBS price quotes would not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase the security-based swaps that are the subject of such communications or any guarantees of such security-based swaps for purposes of Section 5 of the Securities Act.[12] The purpose of the proposed rule was to further the goal of Title VII to bring the trading of security-based swaps onto regulated trading platforms while avoiding unintended consequences arising from the application of the Securities Act to the dissemination of price quotes on such platforms.

The Proposing Release requested comment on all aspects of the proposed rule, including whether the proposed rule should cover other types of communications, such as communications characterized as research that discuss security-based swaps.[13] We have reviewed and considered all of the comments that we received relating to the proposed rule. As described in detail below, we are adopting the rule substantially as proposed, with one substantive addition addressing written communications that discuss covered SBS and meet the definition of ''research report'' in Rule 139(d) under the Securities Act[14] and certain other conditions (''SBS-related research reports''). The final rule provides that a broker, dealer, or security-based swap dealer's publication or distribution of SBS-related research reports will not be deemed to be an offer of the security-based swaps that are the subject of such communication or any guarantees of such security-based swaps for purposes of Section 5 of the Securities Act.

The final rule does not affect the treatment of research reports under existing Securities Act Rules 137, 138 and 139 (the ''Research Rules'').[15] As a result, communications relating to offerings of securities underlying security-based swaps, including by operation of Section 2(a)(3) of the Securities Act,[16] must be analyzed separately under the Research Rules. In that case, any discussion of a security-based swap in a research report would be analyzed under the final rule, while any discussion of securities underlying such security-based swap (which could be in the same research reports discussing the security-based swap) would be analyzed under the Research Rules.

While the provisions of Title VII relating to security-based SEFs have not yet been fully implemented,[17] given that market participants currently are publishing and distributing SBS-related research reports, we believe that it is appropriate at this time to adopt the final rule. As one commenter noted,[18] if

[7] The term ''eligible contract participant'' is defined in Section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)]. The definition of the term ''eligible contract participant'' in the Securities Act refers to the definition of ''eligible contract participant'' in the Commodity Exchange Act. *See* Section 5(e) of the Securities Act [15 U.S.C. 77e(e)]. The SEC and the CFTC have adopted final rules further defining the term ''eligible contract participant.'' *See* Intermediary Definitions Adopting Release.

[8] *See* Section 768(b) of the Dodd-Frank Act (adding new Section 5(d) of the Securities Act [15 U.S.C. 77e(d)]). Section 105(c)(1) of the Jumpstart Our Business Startups Act subsequently re-designated Section 5(d) of the Securities Act as Section 5(e). *See* Public Law 112–106, 126 Stat. 306 (2012).

[9] *See* 15 U.S.C. 77b(a)(3).

[10] *See* footnote 8 above and accompanying text.

[11] *See Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only By Eligible Contract Participants,* Release No. 33–9643 (Sep. 8, 2014), 79 FR 54224 (Sep. 11, 2014) (''Proposing Release'').

[12] *See* Proposing Release. Security-based swaps may be guaranteed to provide protection against a counterparty's default. A guarantee of a security is itself a security for purposes of the Securities Act. *See* Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)]. As a result, the publication or distribution of SBS price quotes also may be viewed as offers of any guarantees of the security-based swaps that are the subject of the SBS price quotes. Because we believe that a guarantee of a security-based swap is part of the security-based swap transaction, the proposed rule also would deem the publication or distribution of SBS price quotes to not constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase any guarantees of the security-based swaps that are the subject of the SBS price quotes.

[13] *See* Proposing Release (79 FR at 54233 through 34). The Proposing Release discussed the types of communications covered and not covered by the proposed rule and included an extensive request for comment about communications characterized as research that discuss security-based swaps. *See* Proposing Release (79 FR at 54232 through 34).

[14] Rule 139(d) defines a research report as ''a written communication, as defined in Rule 405, that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.'' *See* 17 CFR 230.139(d).

[15] The Research Rules are safe harbors that describe the circumstances in which a broker or dealer may publish or distribute securities research around the time of a securities offering without violating Section 5 of the Securities Act. *See* 17 CFR 230.137, 17 CFR 230.138 and 17 CFR 230.139. The Commission has not previously addressed the applicability of the Research Rules in the context of research discussing security-based swaps because most security-based swaps were not securities prior to the effective date of Title VII.

[16] *See* 15 U.S.C. 77b(a)(3). Section 2(a)(3) provides, among other things, that ''[a]ny offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.''

[17] There are many types of platforms currently in operation on or through which security-based swap transactions are effected. *See* Proposing Release (79 FR at 54225) and pages 18 through 20 (79 FR at 54228 through 29). While certain of these platforms may be required to register as security-based SEFs upon the full implementation of Title VII, they currently are not required to do so pursuant to exemptive relief adopted by the Commission. *See Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Securities-Based Swaps,* Exchange Act Release No. 64678 (Jun. 15, 2011), 76 FR 36287 (Jun. 22, 2011). The final rule covers the dissemination of price quotes relating to security-based swaps that are traded or processed on or through exempt security-based SEFs. As such, platforms currently operating pursuant to the Commission's exemptive relief could rely upon the final rule in the event that there is uncertainty about dissemination of price quotes affecting the availability of exemptions from the registration requirements of the Securities Act.

[18] *See* footnote 23 below and accompanying text.

SBS-related research reports are published or distributed on an unrestricted basis, such communications may be viewed as an offer. As a result, they may affect the availability of Securities Act exemptions for transactions in the security-based swaps that may be discussed in the research reports.[19] Such communications also may constitute an illegal offer to non-ECPs if there is no effective registration statement under the Securities Act because no Securities Act exemptions are available for offers and sales of security-based swaps to non-ECPs. In addition, potential uncertainty about the availability of Securities Act exemptions for transactions between ECPs may lead some market participants to not engage in security-based swap transactions or withhold or limit the publication or distribution of SBS-related research reports. This in turn could reduce the information available to investors and other market participants in the security-based swaps market, credit markets, and securities markets generally. We believe that the final rule is needed at this time to reduce this uncertainty.

We are not extending the expiration date of the interim final exemptions or adopting one commenter's request for an exemption from the registration and other provisions of the Securities Act for security-based swap transactions between ECPs.[20] We do not believe that either course would address the identified concern about the availability of existing Securities Act exemptions for transactions between ECPs. For example, neither course would address the concern that certain communications involving security-based swaps could be considered offers to non-ECPs. As noted above, such offers must be registered under the Securities Act because no exemptions from the registration requirements of the Securities Act are available for offers and sales of security-based swaps to non-ECPs.[21] As such, neither course would remove uncertainty about whether certain communications involving security-based swaps would be deemed to be offers to non-ECPs and thereby require registration of the relevant security-based swaps under the Securities Act.

[19] For example, the commenter noted that if such communications were deemed to be an offer, the exemption in Section 4(a)(2) may not be available. *Id.*

[20] *See* footnotes 41 and 44 below and accompanying text.

[21] *See* footnote 8 above and accompanying text.

II. Discussion of the Final Rule

A. Comments

We received four comment letters, each of which supported the proposed rule.[22] We discuss and respond to the comments received below.

1. Comments on the Applicability of the Proposed Rule to Research Reports

One commenter argued that the proposed rule should be expanded to cover written communications involving ''research'' discussing security-based swaps.[23] This commenter argued that such written communications are not meaningfully different from other types of securities research produced and distributed by broker-dealers and their affiliates in the ordinary course of business. The commenter noted that such written communications are produced and distributed by broker-dealers' or their affiliates' research departments and are subject to the same policies and procedures as other securities research.[24] The commenter also noted that such written communications often are included within other published securities research, such as general credit research, and in such materials credit analysts frequently discuss security-based swaps in the context of more general analyses of credit markets, credit strategies, or credit worthiness of an issuer.[25] Further, the commenter noted that such written communications included in other credit research or research reports may be published or distributed by broker-dealers or their affiliates through a variety of channels, which, depending on the particular firm, may include proprietary platforms as well as third-party research aggregators.[26] Such written communications included in other credit research or research reports may be made accessible to existing clients, including clients that are not ECPs, and in some cases may be made accessible to the general public.[27]

Because of the manner in which such written communications are disseminated, the commenter was concerned that the publication or distribution of such communications may be deemed to be an offer of the relevant security-based swaps, including to non-ECPs.[28] According to the commenter, there could be no exemption available for such offer because of the possible dissemination to or accessibility by non-ECPs.[29] Further, the commenter noted that determining whether an exemption is available for each particular security-based swap transaction as a result of such written communications would be a time-consuming and fact-intensive judgment call.[30] The commenter noted that if no Securities Act exemptions are available for a security-based swap transaction because such written communications are viewed as an offer, market participants may withhold or limit the publication or distribution of such written communications.[31]

The commenter described the possible effects of a limitation on the publication or distribution of such written communications on the security-based swaps market and securities markets generally. According to the commenter, such written communications inform market participants' investment decisions.[32] For example, such written communications assist ECPs in determining the pricing of security-based swaps, such as credit default swaps, including with respect to the relative value of a given security-based swap in relation to other securities.[33] In addition, the commenter indicated that such written communications also have informational value to securities markets generally, including to non-ECPs.[34] Market participants, whether transacting in security-based swaps or not, may find such written communications useful in analyzing underlying issuers or securities because such communications provide views on

[22] *See* letter from Chris Barnard, dated October 27, 2014; letter from Daniel E. Glatter, Deputy General Counsel, GFI Group Inc., dated November 10, 2014 (''GFI Letter''); letter from Bryan Levin, Greenspring Funding, dated October 16, 2014; and letter from Kyle Brandon, Managing Director, Securities Industry and Financial Markets Association, dated December 8, 2014 (''SIFMA Letter'').

[23] *See* SIFMA Letter.

[24] *Id. See, e.g.,* Regulation Analyst Certification [17 CFR 242.500 through 242.505] and FINRA Rules 2241 (Research Analysts and Research Reports) and 2242 (Debt Research Analysts and Debt Research Reports).

[25] *See* SIFMA Letter. Such research generally discusses security-based swaps in the following contexts: (i) Providing an investment recommendation as to a specific security-based swap by offering views on the security or a relative value analysis against another security; (ii) referring to security-based swaps in connection with an analysis of credit markets or proposed credit trading strategies; or (iii) discussing one or more security-based swaps in the context of covering other securities of the related issuer as an indicator of the overall creditworthiness of such issuer. *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] Id.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

markets, sectors, and/or issuers.[35] For example, credit default swaps can be an indicator of an issuer's creditworthiness.[36] Further, the commenter noted that such written communications may be disseminated about swaps based on broad indices of securities or issuers (which are subject to a different regulatory regime).[37] A different treatment of communications discussing security-based swaps (*i.e.,* those swaps based on a single security, an issuer or a narrow-based security index) could result in incomplete information being available to the security-based swaps market and securities markets generally.[38]

2. Comments on Other Matters

As we noted in the Proposing Release,[39] we previously adopted interim final rules to provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act of 1939 (''Trust Indenture Act'') [40] for those security-based swaps that prior to the effective date of Title VII were ''security-based swap agreements'' and are defined as ''securities'' under the Securities Act and the Exchange Act due solely to the provisions of Title VII (collectively, the ''interim final exemptions'').[41] We adopted the interim final exemptions because, among other things, we were concerned about disrupting the operation of the security-based swaps market while we evaluated the implications for security-based swaps under the Securities Act and the Exchange Act as a result of the inclusion of the term ''security-based swap'' in the definition of ''security.'' The interim final exemptions expire on February 11, 2018.[42]

The Proposing Release requested comment as to whether the expiration date of the interim final exemptions should be altered, including possibly shortening or further extending the expiration date.[43] The Commission did not receive any comments addressing whether we should alter the expiration date of the interim final exemptions, but we did receive one comment that addressed issues relating to the interim final exemptions.[44] The commenter requested that we consider adopting an exemption from the registration and other provisions of the Securities Act, other than the anti-fraud provisions of Section 17(a), for security-based swap transactions between ECPs.[45] The commenter argued that an exemption from the registration and other provisions of the Securities Act is needed to provide legal certainty as to whether security-based swap transactions effected on security-based SEFs are exempt from the registration requirements of the Securities Act.[46] In particular, the commenter argued that certain activities engaged in by the operator of a security-based SEF may create uncertainty as to the availability of exemptions from Section 5 of the Securities Act for such transactions.[47]

We do not believe that the exemption suggested by the commenter would provide the legal certainty the commenter seeks. The operator of a security-based SEF will facilitate security-based swap transactions by providing the trading platform on or through which other parties will offer and sell security-based swaps to each other. The examples provided by the commenter primarily relate to activities typically conducted by brokers or dealers. Market participants regularly communicate with each other to facilitate and execute transactions, and the examples appear to be no different from the activities typically conducted by brokers or dealers in connection with other private offerings of securities effected on trading platforms. The commenter did not explain why such activities in the context of security-based swap transactions would affect the ability of market participants to rely upon existing Securities Act exemptions. In contrast, the rule we are adopting today addresses a unique feature of security-based swaps regulation—balancing the prohibition on offers and sales to non-ECPs with the need to disseminate information broadly to market participants, which may incidentally include non-ECPs. The final rule addresses the concern that certain communications involving SBS price quotes and SBS-related research reports could be viewed as offers to non-ECPs in violation of Section 5(e) of the Securities Act. The exemption suggested by the commenter would not address the concern that certain communications could be considered offers to non-ECPs or provide greater certainty in the security-based swaps market because it would not address this concern. As such, we believe that the final rule better addresses this concern.

We are not persuaded that there is a need for an exemption from the registration and other provisions of the Securities Act for security-based swap transactions between ECPs. As we finalize our regulation of security-based SEFs, we will remain mindful as to whether the regulation of particular communications presents barriers to the efficient operation of the security-based swaps market that are not necessary to protect investors. Further, we are taking no action as to the interim final exemptions, and our adoption of the final rule in this release will not affect the interim final exemptions. The interim final exemptions expire on February 11, 2018.[48]

B. Final Rule

We are adopting Rule 135d under the Securities Act substantially as proposed, with one substantive addition concerning SBS-related research reports. We believe that the final rule is necessary and appropriate so that the publication or distribution of SBS price quotes will not cause unintended consequences for the operation of security-based swap trading platforms following the full implementation of Title VII. We also believe that the final rule is necessary and appropriate so that

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] See Proposing Release (79 FR at 54226 and 54234).

[40] 15 U.S.C. 77aaa *et seq.*

[41] *See* Rule 240 under the Securities Act [17 CFR 230.240], Rules 12a–11 and Rule 12h–1(i) under the Exchange Act [17 CFR 240.12a–11 and 17 CFR 240.12h–1], and Rule 4d–12 under the Trust Indenture Act [17 CFR 260.4d–12]. *See also Exemptions for Security-Based Swaps,* Release No. 33–9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011). The category of security-based swaps covered by the interim final exemptions involves those that would have been defined as ''security-based swap agreements'' prior to the enactment of Title VII. *See* Section 2A of the Securities Act [15 U.S.C. 77b(b)–1)] and Section 3A of the Exchange Act [15 U.S.C. 78c–1], each as in effect prior to the Title VII effective date. For example, the vast majority of security-based swap transactions involve single-name credit default swaps, which would have been ''security-based swap agreements'' prior to the Title VII effective date. In contrast, the definition of ''security-based swap agreement'' did not include security-based swaps that are based on or reference only loans and indexes only of loans. The Division of Corporation Finance issued a no-action letter that addressed the availability of the interim final exemptions to offers and sales of security-based swaps that are based on or reference only loans or indexes only of loans. *See Cleary Gottlieb Steen & Hamilton LLP* (Jul. 15, 2011). As noted in the Proposing Release, this no-action letter will remain in effect for so long as the interim final exemptions remain in effect.

[42] *See Exemptions for Security-Based Swaps,* Release No. 33–10305 (Feb. 10, 2017), 82 FR 10703 (Feb. 15, 2017).

[43] *See* Proposing Release (79 FR at 54234).

[44] *See* GFI Letter. The commenter submitted a previous comment letter requesting exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into between ECPs and effected through any trading platform similar to the exemptions we adopted for security-based swap transactions involving an eligible clearing agency. *See* Proposing Release (79 FR at 54231 through 32).

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *See* footnote 42 above and accompanying text.

a broker, dealer, or security-based swap dealer's ability to publish or distribute SBS-related research reports will not be restricted in a manner that would limit the availability of information about security-based swaps to investors and other market participants.

We note that although the final rule provides that the publication or distribution of SBS price quotes and SBS-related research reports will not be deemed to be offers for purposes of Section 5 of the Securities Act, the final rule will not otherwise affect the provisions of any exemptions from the registration requirements of the Securities Act. As a result, market participants will still need to make a determination as to whether an exemption from the registration requirements of the Securities Act is available with respect to a security-based swap transaction, including whether such transaction complies with any applicable conditions of the exemption. We also note that the final rule applies to any communication of SBS price quotes or SBS-related research reports regardless of whether transactions in the relevant security-based swaps are effected bilaterally in the over-the-counter market or on or through security-based swap trading platforms, or are subsequently cleared in transactions involving an eligible clearing agency.[49]

1. SBS Price Quotes

The final rule allows SBS price quotes to be published or distributed without such dissemination being considered an offer of the relevant security-based swaps or any guarantees thereof for purposes of Section 5 of the Securities Act.[50] The scope of dissemination methods covered by the final rule is broad. The final rule applies to the initial publication or distribution of SBS price quotes on security-based swap trading platforms. It also applies to any subsequent republication or redistribution of SBS price quotes on or through mediums other than security-based swap trading platforms, including on-line information services, as it is possible that participants in security-based swap trading platforms that receive the SBS price quotes could further disseminate the SBS price quotes without restriction. We do not believe that the treatment of the SBS price quotes under the final rule should depend on who republishes or redistributes the SBS price quotes or where they are republished or redistributed, so long as only ECPs may purchase the relevant security-based swaps.

The final rule applies to SBS price quotes, which could take a number of forms depending on the type of trading platform model, including indicative quotes, executable quotes, bids and offers, and other pricing information and other types of quote information that may develop in the future. We are not defining the specific type of SBS price quotes with respect to which the final rule will apply because we do not want to limit the types of trading platform models that currently or may in the future exist.[51] This approach is intended to allow flexibility in the final rule as organized markets for the trading of security-based swaps continue to develop.

The final rule addresses price quotes relating to security-based swaps that are traded or processed on or through registered or exempt security-based SEFs and national securities exchanges because the Title VII provisions applicable to these entities, as well as existing requirements applicable to national securities exchanges, require them to make their trading platforms available or price quotes on their platforms available to all participants without limitation.

We believe that the final rule with respect to SBS price quotes is necessary and appropriate in the public interest. One of the goals of Title VII is to bring the trading of security-based swaps onto regulated trading platforms, such as security-based SEFs and national securities exchanges, which should help advance the objective of greater transparency for the trading of security-based swaps. We believe that increased transparency in the security-based swaps market could help lower transaction costs associated with market participant risk mitigating strategies and thereby lower the cost of capital and facilitate the capital formation process. If the publication or distribution of SBS price quotes is unrestricted, no Securities Act exemptions may be available with respect to transactions in the relevant security-based swaps because such communications may be viewed as an offer of those security-based swaps, including to non-ECPs. Accordingly, we believe that the final rule is needed so that the publication or distribution of SBS price quotes will not cause unintended consequences for the operation of security-based swap trading platforms by affecting the ability of market participants to rely on available exemptions from the registration requirements of the Securities Act or requiring that such transactions be registered under the Securities Act because they are viewed as offers to non-ECPs.

We also believe that the final rule with respect to SBS price quotes is consistent with the protection of investors. We believe that the final rule strikes an appropriate balance between providing more certainty to market participants while ensuring that the interests of non-ECPs are adequately protected. Security-based swaps that are not registered under the Securities Act are permitted to be sold only to ECPs, and therefore the final rule is limited to the publication or distribution of SBS price quotes that relate to security-based swaps that may be purchased only by ECPs. Treating the publication or distribution of SBS price quotes as not being offers of the relevant security-based swaps will not harm non-ECPs because they will not be able to purchase such security-based swaps. Further, security-based swap transactions entered into solely between ECPs will be subject to the comprehensive regulatory regime of Title VII once it has been fully implemented, including transaction reporting, trade acknowledgment and verification, and business conduct standards.[52] In addition, the final rule

[49] For security-based swap transactions involving an eligible clearing agency, the exemptions we adopted under the Securities Act, the Exchange Act, and the Trust Indenture Act will continue to be available. *See* Rule 239 under the Securities Act [17 CFR 230.239], Rules 12a–10 and 12h–1(h) under the Exchange Act [17 CFR 240.12a–10 and 240.12h–1(h)], and Rule 4d–11 under the Trust Indenture Act [17 CFR 260.4d–11]. *See also Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012). These exemptions do not apply to security-based swap transactions not involving an eligible clearing agency, even if the security-based swaps subsequently are cleared in transactions involving an eligible clearing agency. *Id.*

[50] The term ''security-based swap'' includes mixed swaps. The term ''mixed swap'' is defined in Section 3(a)(68)(D) of the Exchange Act [15 U.S.C. 78c(a)(68)(D)]. *See* Section IV of the Product Definitions Adopting Release.

[51] The Proposing Release discussed five examples of trading platforms that represent broadly the types of models for the trading of security-based swaps, including single-dealer request for quote platforms, aggregator-type platforms, multi-dealer request for quote platforms, limit order book systems, and electronic brokering platforms. *See* Proposing Release (79 FR at 545228 through 29). These examples may not represent every single trading method in existence today and the discussion was intended to give an overview of the models without providing the nuances of each particular model. Certain of these trading platforms may become security-based SEFs following the full implementation of Title VII.

[52] *See, e.g., Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Release No. 34–74244 (Feb. 11, 2015), 80 FR 14564 (Mar. 19, 2015), and Release No. 34–78321 (Jul. 14, 2016), 81 FR 53545 (Aug. 12, 2016); *Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Release No. 34–78011 (Jun. 8, 2016), 81 FR 39807 (Jun. 17, 2016); and

relates to the treatment of communications involving SBS price quotes as offers for purposes of Section 5 of the Securities Act and will preserve the other protections of the federal securities laws, including the Commission's ability to pursue an antifraud action in the offer and sale of the securities under Section 17(a) of the Securities Act.[53]

The final rule also will enable security-based swap dealers to publish or distribute SBS price quotes on an unrestricted basis without concern that such publication or distribution could jeopardize the availability of exemptions from the registration requirements of the Securities Act for transactions involving the relevant security-based swaps. Unrestricted access to SBS price quotes will improve market transparency by providing all investors with the same information on the pricing of security-based swap transactions.

Therefore, we believe that the final rule with respect to SBS price quotes is necessary or appropriate in the public interest, and consistent with the protection of investors.

2. SBS-Related Research Reports

We believe that written communications discussing security-based swaps that fall within the definition of ''research report'' in Rule 139(d) under the Securities Act should be treated similarly to other research involving securities offered pursuant to exemptions from the registration requirements of the Securities Act and should not be considered to be an offer.[54] We previously have noted the value of securities research in providing information to investors and the securities markets generally.[55] We believe that failing to exclude such written communications from the definition of ''offer'' under the Securities Act could have an adverse effect on the information available to investors and other market participants in the security-based swaps market, credit markets and securities markets generally. Further, we believe that written communications discussing security-based swaps and security-based swap agreements should have consistent regulatory treatment.

The Research Rules generally apply in the context of registered offerings. They also apply in the context of two types of unregistered offerings: Rule 144A and Regulation S offerings.[56] Under the Research Rules, research reports meeting certain conditions are not considered offers or general solicitation or general advertising in connection with offerings relying on Rule 144A and are not deemed to be directed selling efforts or to be inconsistent with the offshore transaction requirements of Regulation S. The Commission addressed these types of unregistered offerings in the Research Rules because it was concerned that the restrictions in Rule 144A and in Regulation S had resulted in brokers and dealers unnecessarily withholding regularly published securities research.[57] Security-based swaps offerings typically are not transacted in registered offerings or in reliance on Rule 144A or Regulation S and, as a result, the Research Rules currently do not cover written communications discussing security-based swaps.

The final rule imposes several conditions on the publication or distribution of such written communications. First, the written communications must discuss covered SBS.[58] Second, the broker, dealer, or security-based swap dealer must publish or distribute research reports on the issuer underlying the security-based swap or its securities in the regular course of its business and the publication or distribution of the research report must not represent the initiation of publication of research reports about such issuer or its securities or the reinitiation of such publication following discontinuation of publication of such research reports. Third, the written communications must be a ''research report'' as defined in Rule 139(d) under the Securities Act.[59] The final rule clarifies that the term ''issuer'' as used in the definition of ''research report'' is (i) the issuer of a security or loan referenced in the security-based swap, (ii) each issuer or issuer of a security in a narrow-based security index referenced in the security-based swap, or (iii) each issuer referenced in the security-based swap (each, a ''Referenced Issuer''). This provision makes clear that the ''issuer'' referenced in the definition of ''research report'' for purposes of the final rule is the Referenced Issuer and not the counterparties to the security-based swap.[60]

The conditions to the final rule are similar to the conditions that apply to research reports covered by Rules 138 and 139 in the context of unregistered offerings transacted in reliance on Rule 144A or Regulation S.[61] Rules 138 and 139 include other conditions that apply to communications used in unregistered offerings transacted in reliance on Rule 144A and Regulation S that limit the types of issuers whose securities may be the subject of the securities research that is covered by the Research Rules. However, in the context of security-based swaps, a Referenced Issuer typically is not involved in the offering of the security-based swap.[62] As such, we do not believe that it is necessary to limit the types of issuers that may be the subject of SBS-related research reports.

We believe that the final rule with respect to SBS-related research reports is necessary and appropriate in the public interest. As noted above, absent the provisions of the final rule, unrestricted publication or distribution of SBS-related research reports may affect the availability of Securities Act exemptions from registration and may constitute making ''offers'' to non-ECPs. Accordingly, we believe that the final rule is necessary so that the publication or distribution of SBS-related research reports will not impede the continuous

Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34–77617 (Apr. 14, 2016), 81 FR 29959 (May 13, 2016) (''Business Conduct Standards Adopting Release''). The business conduct standards generally require, among other things, disclosure by security-based swap dealers and major security-based swap participants to counterparties of (i) the material risks and characteristics of the security-based swap, and certain clearing rights, (ii) the material incentives or conflicts of interest that a security-based swap dealer or major security-based swap participant may have in connection with the security-based swap, and (iii) the daily mark of the security-based swap (collectively, the ''Business Conduct Standards''). *See* Business Conduct Standards Adopting Release. The Business Conduct Standards also require that security-based swap dealers and major security-based swap participants verify that a counterparty meets the eligibility requirements of an ECP. *See* Business Conduct Standards Adopting Release.

[53] *See* 15 U.S.C. 77q(a).

[54] This approach is consistent with a commenter's views. *See* SIFMA Letter.

[55] *See Securities Offering Reform,* Release No. 33–8591 (Jul. 19, 2005), 70 FR 44722 (Aug. 3, 2005) (''Securities Offering Reform Adopting Release'').

[56] *See* paragraphs (b) and (c), respectively, of Rules 138 and 139 under the Securities Act [17 CFR 230.138(b), 17 CFR 230.138(c), 17 CFR 230.139(b) and 17 CFR 230.139(c)].

[57] *See* Securities Offering Reform Adopting Release.

[58] *See* footnote 50 above.

[59] *See* footnote 14 above. The definition of ''research report'' in Rule 138 under the Securities Act is the same as the definition of that term in Rule 139 under the Securities Act. *See* 17 CFR 230.138.

[60] The security-based swaps market generally involves bilateral contracts privately negotiated between security-based swap dealers and sophisticated counterparties who must qualify as ECPs, with no secondary resale market. As a result of the bilateral nature of the security-based swap, each party could be viewed as the issuer of a security-based swap to the other party.

[61] *See* footnote 56 above.

[62] Footnotes 15 and 16 above and accompanying text address transactions where the issuer may be involved in the offering of the security-based swaps.

flow of essential information into the security-based swaps market and security markets generally, affect the ability of market participants to rely on available exemptions from the registration requirements of the Securities Act, or require registration of the transactions under the Securities Act because they are viewed as offers to non-ECPs.

We also believe that the final rule is consistent with the protection of investors. The availability of the final rule is conditioned on the satisfaction of certain requirements similar to the Research Rules. These requirements were included in the Research Rules to permit the dissemination of securities research around the time of an offering while avoiding offering abuses.[63] We believe that these requirements, which were designed to ensure that appropriate investor protections are maintained, will be similarly effective in avoiding offering abuses in the security-based swaps context. Further, the final rule applies with respect to covered SBS. Excluding the publication or distribution of SBS-related research reports from the definition of ''offer'' will not harm non-ECPs because they will not be able to purchase the relevant security-based swaps, as discussed above. Finally, the final rule has no effect on other provisions of the federal securities laws, including the application of the registration requirements of the Securities Act to transactions involving securities referenced in security-based swaps as well as the continued application of the antifraud provisions of the federal securities laws to transactions in security-based swaps or the securities referenced in such security-based swaps.

Therefore, we believe that the final rule with respect to SBS-related research reports is necessary or appropriate in the public interest, and consistent with the protection of investors.

III. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Section 553(d) of the Administrative Procedure Act generally requires an agency to publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[64] This requirement does not apply, however, if the adopted rule is a ''substantive rule which grants or recognizes an exemption or relieves a restriction.'' [65] We find that the final rule is a substantive rule which relieves a restriction. As explained above, under current law, there is uncertainty as to whether the publication or distribution of SBS price quotes or SBS-related research reports could be viewed as an ''offer'' of the relevant security-based swaps within the meaning of the Securities Act. If such communications are deemed to be an offer, the relevant security-based swaps consequently would not be able to be offered or sold absent an effective registration statement under the Securities Act. The final rule relieves this restriction and dispels market uncertainty by providing that the publication or distribution of SBS price quotes and SBS-related research reports will not be deemed offers of the relevant security-based swaps for purposes of Section 5 of the Securities Act.

IV. Economic Analysis

We are sensitive to the economic consequences and effects, including costs and benefits, of our rules. The discussion below addresses the potential economic consequences and effects of the final rule and alternatives, including the costs and benefits, as well as the potential effects on efficiency, competition, and capital formation.[66]

The final rule does not itself establish the scope or nature of the substantive requirements for security-based swaps following the full implementation of Title VII or their related costs and benefits. The rules implementing the substantive requirements under Title VII will be subject to their own economic analysis. The costs and benefits described below therefore are those that may arise in connection with the final rule.

A. Baseline

To assess the economic impact of the final rule, we are using as our baseline the regulation of security-based swaps as it exists at the time of this release, taking into account applicable rules adopted by the Commission, including the interim final exemptions affecting security-based swaps under the Securities Act and the Exchange Act.

As part of the economic analysis in the Business Conduct Standards Adopting Release, we provided an extensive description of the security-based swaps market, including a detailed analysis of the participants in the security-based swaps market and the levels of security-based swaps trading activity.[67] The present release addresses a narrower aspect of the security-based swaps market, and we refer market participants to the more comprehensive discussion set forth in the Business Conduct Standards Adopting Release for additional context. In particular, we noted in the Business Conduct Standards Adopting Release that the single-name credit default swaps market—a significant part of the security-based swaps market generally—involves thousands of distinct counterparties but with a heavy concentration of transactions among a relatively small number of dealer entities.[68] The notional size of the single-name credit default swaps market is in the trillions of dollars annually, corresponding to hundreds of thousands of individual transactions, and with approximately 80% of transactions between dealers.[69] Among the non-dealer market participants, private funds are the largest constituent group, followed by Dodd-Frank Act-defined special entities and investment companies registered under the Investment Company Act of 1940.[70] More broadly, the analysis shows that although the dollar volume of transactions in the security-based swaps market is large, there are fewer market participants than for other securities markets.[71]

As noted above,[72] we adopted the interim final exemptions to exempt offers and sales of security-based swap agreements that became security-based swaps on the effective date of Title VII from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided that the transactions are entered into solely between ECPs. Currently, certain market participants may rely on the interim final exemptions to continue to enter into security-based swap transactions as they

[63] *See* Securities Offering Reform Adopting Release.

[64] *See* 5 U.S.C. 553(d).

[65] *See* 5 U.S.C. 553(d)(1).

[66] Section 2(b) of the Securities Act requires that the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 77b(b). We have integrated our consideration of these issues into this economic analysis.

[67] *See* footnote 52 above.

[68] *See* Business Conduct Standards Adopting Release.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *See* footnote 41 above and accompanying text.

did prior to the effective date of Title VII without concern they would have to comply with the provisions of the Securities Act.

The interim final exemptions are available, however, only for certain types of transactions involving security-based swaps. The security-based swaps covered by the interim final exemptions are only those that would have been ''security-based swap agreements'' prior to the effective date of Title VII, which is a narrower category of security-based swaps than under Title VII.[73] In addition, the persons who may enter into security-based swaps covered by the interim final exemptions may be different from those entering into ''security-based swap agreements'' prior to the effective date of Title VII because the definition of ''eligible contract participant'' under Title VII is narrower than the pre-Title VII definition.[74] Any security-based swap transaction that cannot rely on the interim final exemptions would have to rely on another available exemption from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2),[75] or would have to be registered under the Securities Act. However, no Securities Act exemptions are available with respect to security-based swap transactions involving non-ECPs because Title VII amended the Securities Act to require that all offers and sales of security-based swaps to non-ECPs must be registered under the Securities Act.[76]

The interim final exemptions are self-executing and as such are available without any action by the Commission or its staff. As a result, market participants must make their own determinations as to whether such exemptions are available with respect to a particular security-based swap transaction. Given that such exemptions are self-executing, we do not have any data or other quantifiable information regarding the use of such exemptions, including which market participants are effecting transactions in reliance on such exemptions or the number of transactions effected in reliance on such exemptions.

If we do not take other action, the interim final exemptions will expire on February 11, 2018. Although the analysis below considers the economic consequences and effects of the final rule under the current baseline, which includes the interim final exemptions, we also consider the potential impact of the final rule without the interim final exemptions in our discussion of alternatives.

B. Analysis of the Final Rule

Under the final rule, certain communications involving security-based swaps are not considered ''offers'' for purposes of Section 5 of the Securities Act. However, unlike the interim final exemptions, the final rule is not itself an exemption from the registration requirements of the Securities Act. As a result, while the types of communications covered by the final rule are not considered offers, market participants engaging in any security-based swap transaction will have to either satisfy the conditions of existing exemptions under the Securities Act or register such transactions under the Securities Act.

Security-based swaps are transacted through hundreds of thousands of individual transactions annually, but because the available registration exemptions are self-executing, we do not know what fraction of market participants that engage in these transactions currently rely on the interim final exemptions as opposed to other exemptions from registration under the Securities Act.[77] For transactions involving security-based swaps that do not satisfy the conditions of the interim final exemptions, the final rule will assist market participants in evaluating how they should analyze certain communications that may affect their transactions. In particular, market participants will be able to assess the availability of exemptions from the registration requirements of the Securities Act without concern that certain communications will affect the availability of such exemptions.

The final rule is self-executing in that the publication or distribution of SBS price quotes or SBS-related research reports is excluded from the definition of ''offer'' and thereby will not be deemed to be an offer to buy or purchase the security-based swaps that are the subject of the SBS price quotes or SBS-related research reports or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the Securities Act without any action by the Commission or its staff. Because the final rule is self-executing, the only cost of being able to rely on the final rule is to determine its applicability. In addition, the final rule does not create any new filing, reporting, recordkeeping, or disclosure reporting requirements for any market participants.

Excluding the types of communications covered by the final rule from the definition of ''offer'' will have minimal economic consequences or effects on the ability of market participants to enter into security-based swap transactions compared with the baseline.[78] For example, as compared to the baseline, the final rule does not affect the ability of market participants to enter into security-based swap transactions in reliance on available exemptions under the Securities Act, such as the exemption in Section 4(a)(2). While the interim final exemptions have limited conditions,[79] which differ from the conditions of the exemption under Section 4(a)(2) (including with respect to the communications that are the subject of the final rule), some security-based swap transactions engaged in after the effective date of Title VII may have been effected in reliance on Section 4(a)(2) rather than in reliance on the interim final exemptions. Further, the protections that currently exist under the interim final exemptions and under Section 4(a)(2) still apply. For example, the interim final exemptions do not limit or otherwise affect the antifraud

[73] *See* Section 3(a)(68) of the Exchange Act for the definition of ''security-based swap.'' 15 U.S.C. 78c(a)(68). *See* footnote 41 above regarding the definition of ''security-based swap agreement.''

[74] The amendments to the definition of ''eligible contract participant'' increased the dollar threshold for certain persons and, with respect to natural persons, replaced a ''total assets'' test with an ''amounts invested on a discretionary basis'' test. *See* Section 1a(12) of the Commodity Exchange Act [7 U.S.C. 1a(12)], as in effect prior to the effective date of Title VII, and Section 1(a)(18) of the Commodity Exchange Act, as re-designated and amended by Section 721 of the Dodd-Frank Act. The definition of the term ''eligible contract participant'' in the Securities Act and in the Exchange Act refers to the definition of ''eligible contract participant'' in the Commodity Exchange Act. *See* footnote 7 above.

[75] *See* 15 U.S.C. 77d(a)(2).

[76] *See* footnote 8 above and accompanying text.

[77] Given that these exemptions, including the exemption in Section 4(a)(2) of the Securities Act, are self-executing, we do not have any data or other quantifiable information regarding the number of market participants that may be effecting security-based swap transactions in reliance on these exemptions. However, we believe that a significant portion of market participants engaging in these transactions are eligible to rely on the interim final exemptions because the vast majority of security-based swap transactions involve single-name credit default swaps, which would have been ''security-based swap agreements'' prior to the effective date of Title VII. *See* footnote 73 above and accompanying text.

[78] The baseline used in this analysis takes into account the interim final exemptions and the fact that Title VII has not been fully implemented. As noted above, unless further action is taken, the interim final exemptions will expire on February 11, 2018. In the discussion of alternatives below, we consider the economic consequences and effects of the final rule without the interim final exemptions.

[79] *See* footnote 41 above and accompanying text. In that regard we note, for example, that security-based swaps based on single loans would not be within the definition of ''security-based swap agreement'' in effect prior to the effective date of Title VII.

provisions of the federal securities laws, including Section 17(a) of the Securities Act.

The final rule does not impose new requirements on market participants. Further, because the final rule is available with respect to any security-based swap transaction involving an ECP, we do not believe that the final rule impairs competition between the different types of trading venues and methods that differ in the extent to which they make SBS price quotes available to the public and differ in their level of public SBS price quotes. Moreover, we believe that the final rule furthers the goal of Title VII to bring the trading of security-based swaps onto regulated trading platforms, which should help advance the objective of greater transparency and a more competitive environment for the trading of security-based swaps. As a result, we believe that increased transparency and competitiveness in the security-based swaps market could help lower transaction costs associated with market participant hedging (risk mitigating) strategies and thereby lower the cost of capital and facilitate the capital formation process. We also note that investors and other users of SBS-related research reports may benefit from the additional information provided by security-based swaps research included in research on other securities.

We believe that the costs associated with the final rule are minimal. The final rule does not impose additional costs on market participants to determine ECP status.[80] In addition, non-ECPs are not permitted to purchase any security-based swaps that are the subject of the SBS price quotes or SBS-related research reports within the scope of the final rule, and the Securities Act registration requirements continue to apply to security-based swap transactions involving such non-ECPs. As a result of these limitations, the exclusion of the SBS price quotes and SBS-related research reports from being deemed offers should not increase the potential for unlawful sales of security-based swaps to non-ECPs.

We recognize that a consequence of the final rule is that the vast majority of offers and sales of security-based swap transactions that potentially could be implicated by the final rule are unlikely to be registered under the Securities Act (with the consequent unavailability of certain remedies). As a result, and as is the case under the interim final exemptions, there will not be an effective registration statement under the Securities Act covering the offer and sale of such security-based swaps. A registration statement would provide certain information about the market participants, the security-based swap contract terms, and the identification of the particular reference securities, issuers, or loans underlying the security-based swaps. Further, while an investor will be able to pursue an antifraud action in connection with the purchase and sale of the securities in these security-based swap transactions under Section 10(b) of the Exchange Act, an investor will not be able to pursue civil remedies under Section 11 or 12(a)(2) of the Securities Act because the offer and sale of the securities in these security-based swap transactions will not be registered under the Securities Act. In addition, an investor may be limited in its ability to pursue civil remedies under Section 12(a)(1) of the Securities Act because the publication or distribution of quotes for security-based swaps will not be deemed to be an offer for purposes of Section 5 of the Securities Act. However, the Commission could still pursue an antifraud action in the offer and sale of the securities in these security-based swap transactions under Section 17(a) of the Securities Act.

We note that the Business Conduct Standards require, among other things, that certain disclosures be made to certain ECPs.[81] Such disclosures include (i) the material risks and characteristics of the security-based swap, and certain clearing rights, (ii) the material incentives or conflicts of interest that a security-based swap dealer or major security-based swap participant may have in connection with the security-based swap, and (iii) the daily mark of the security-based swap.[82] While the information to be conveyed in the daily mark is not equivalent to that in a registration statement, we believe it could provide a counterparty with a useful and meaningful reference point against which to assess, among other things, the calculation of variation margin for a security-based swap or portfolio of security-based swaps, and otherwise inform the counterparty's understanding of its financial relationship with the security-based swap dealer or major security-based swap participant.[83] Moreover, because under the Business Conduct Standards security-based swap dealers and major security-based swap participants are required to provide the same valuation to all of their counterparties, and because counterparties could interact with multiple security-based swap dealers and major security-based swap participants, counterparties should have greater confidence of equal treatment as they now have the ability to observe when valuations differ among security-based swap dealers and major security-based swap participants.

As noted above, to the extent that a security-based swap transaction does not meet the conditions of the interim final exemptions, the counterparties to such transaction likely are effecting the transaction in reliance on an available exemption from the registration requirements of the Securities Act. The final rule will benefit these counterparties because they will be able to assess the availability of an exemption from the registration requirements of the Securities Act without concern that the publication or distribution of SBS price quotes or SBS-related research reports for the security-based swap that is the subject of the transaction may compromise the availability of an exemption. The final rule also will benefit these counterparties by clarifying that the publication or distribution of SBS price quotes or SBS-related research reports does not constitute an offer of the security-based swaps that are the subject of such SBS price quotes or SBS-related research reports to non-ECPs. As noted above, no exemptions from the registration requirements of the Securities Act are available with respect to offers of security-based swaps to non-ECPs. As a result, without the final rule, these counterparties would be required to incur the costs associated with registration under the Securities Act.

Unlike an equity or debt security, a security-based swap transaction could entail an ongoing financial commitment (*i.e.,* economic exposure) between the dealer (or its affiliate) and the ECP client, whereby a client loss could result in a dealer gain of equal measure. The

[80] The determination of whether a person is an ECP is part of the Business Conduct Standards, which require that security-based swap dealers and major security-based swap participants verify the ECP eligibility of their security-based swap counterparties. *See* footnote 52 above.

[81] *See* footnote 52 above. The Commission has adopted rules to implement the Business Conduct Standards provisions of the Dodd-Frank Act.

[82] *Id.*

[83] For instance, under the Business Conduct Standards, the required disclosure of the daily mark consists of, for a cleared security-based swap, providing counterparties with the daily end-of-day settlement price received by the security-based swap dealer or major security-based swap participant from the appropriate clearing agency, and, for an uncleared security-based swap, the midpoint between the bid and offer prices for a particular security-based swap, or the calculated equivalent of the midpoint as of the close of business. *Id.*

dealer (or its affiliate) would, at least initially, take the opposite economic exposure as that of the client, who may be entering into the transaction based on information provided by the dealer's research or the research of its affiliate. In such instances, the research may not be considered independent.

While the final rule's treatment of SBS-related research reports could facilitate these types of transactions, which have the potential for a conflict of interest, we note that such communications are permissible today under the interim final exemptions, and that the additional disclosures required by the Business Conduct Standards should make such potential conflicts transparent to ECPs. Further, the Business Conduct Standards require detailed descriptions of any material risks and other characteristics of a security-based swap, which may mitigate any bias introduced in the SBS-related research reports.

It remains possible, however, that some market participants may use the provisions under the final rule to disseminate SBS-related research reports with the intent of making an offer or for solicitation purposes, particularly given the lower cost of disseminating these reports compared to registration statements. The potential for market participants to misuse the final rule in this manner should be mitigated by the fact that the final rule covers only communications made in connection with security-based swaps that may be sold only to ECPs and would not cover other security-based swaps that may be offered or sold to non-ECPs. Further, the final rule incorporates other safeguards similar to those in the Research Rules.[84]

C. Alternatives Considered

One alternative to the final rule that we considered was to take no action at this time to address issues arising under the Securities Act for certain communications involving security-based swaps. This alternative would affect all security-based swap transactions, including those currently relying on the interim final exemptions. At this time, all security-based swap transactions either must be registered under the Securities Act or rely on an available exemption from registration. If we take no action with respect to the treatment of communications involving security-based swaps, the publication or distribution of SBS price quotes or SBS-related research reports could be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase security-based swaps. If considered offers, such communications could affect the availability of exemptions from the registration requirements of the Securities Act. If no Securities Act exemptions are available with respect to a security-based swap transaction, such transactions would require registration.

We believe that taking no action could disrupt and impose unnecessary costs on this segment of the security-based swaps market because it would perpetuate uncertainty as to whether certain communications involving SBS price quotes or SBS-related research reports will be deemed offers for purposes of Section 5 of the Securities Act. Without the final rule, the risk that these communications will be deemed offers might lead some market participants either not to engage in these security-based swap transactions, which could impede the market, or to register the offer and sale of the security-based swap transactions, which would likely increase costs for market participants. This risk also may lead some market participants to withhold or limit the publication or distribution of SBS-related research reports, which could reduce the amount and quality of the information available to investors and other market participants in the security-based swaps market, credit markets and securities markets generally.

We believe that the final rule facilitates capital formation and promotes efficiency by lowering the costs of security-based swap transactions relative to what would be required without the final rule. Without the final rule and following the expiration of the interim final exemptions, we believe that the operation of the registration provisions of the Securities Act could have unintended consequences for the operation of security-based swap trading platforms and the ability of market participants to enter into these security-based swap transactions in reliance on available exemptions from the registration requirements of the Securities Act following the full implementation of Title VII. Following the expiration of the interim final exemptions, we anticipate that the final rule will facilitate a more efficient market place for these security-based swap transactions.

Without the final rule, a market participant may choose not to continue to participate in these types of transactions if compliance with the registration requirements of the Securities Act is required. This would likely curtail the use of trading platforms and venues that make use of broad communications methods for the public dissemination of SBS price quotes. As noted above, one of the goals of Title VII is to bring the trading of security-based swaps onto regulated trading platforms. In the absence of applicable Securities Act exemptions for a security-based swap transaction because the dissemination of price quotes for security-based swaps could be viewed as offers of those security-based swaps, the costs of the required registration of such transactions under the Securities Act could limit the incentive for market participants to engage in security-based swap transactions on regulated trading platforms. In response to the lack of an available exemption from registration, some market participants may also seek to restructure their operations to minimize their transactions in, or contact with, the United States in an effort to avoid having to register these transactions under the Securities Act. If market participants were to determine not to engage in security-based swap transactions due to the lack of an available exemption from registration, or to restructure their operations and thus avoid U.S. exposure because of the lack of such an exemption, such actions could affect the number of price quotes for, and the liquidity of, certain types of security-based swaps, which could have a detrimental effect on the ability of U.S. market participants to obtain credit exposure or hedge risk, and could have a more general adverse impact on the liquidity and price discovery of security-based swap transactions. This effect would be inconsistent with the tenet of increased transparency that is central to the legislative intent of Title VII.

If market participants continue to engage in security-based swap transactions without the final rule and register these transactions under the Securities Act, they would incur increased compliance costs associated with such registration. Additionally, there is unlikely to be a commensurate benefit to registration given that the investors typically in greater need of the investor protections provided by registration are likely not ECPs, and those investors are not eligible to purchase any security-based swaps that are the subject of the communications within the scope of the final rule.

While the use of a shelf registration statement may be available to some participants and would lessen the costs of registration compared to the costs for participants who were not able to use a shelf registration statement, there would be costs whether or not a shelf

[84] *See* footnote 61 above and accompanying text.

registration statement is available.[85] Given the eligibility criteria for using a shelf registration statement, the use of a shelf registration statement is likely to be available to a majority of market participants. However, to the extent that there is a decrease in the dissemination of certain communications related to security-based swaps in the absence of the final rule, such a decline may be concentrated among market participants who cannot lower their costs by using a shelf registration statement.

Another alternative to the final rule would be to deem only SBS price quotes as not constituting offers for purposes of Section 5 of the Securities Act. To the extent SBS-related research reports are deemed to be offers for purposes of Section 5, dealers or their affiliates may not include information about security-based swaps in research reports, which may otherwise be useful to some investors. However, inclusion of this information may create conflicts of interest problems unique to the security-based swaps market, as discussed above.

V. Paperwork Reduction Act

The final rule does not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[86] nor does it create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, we are not submitting the final rule to the Office of Management and Budget for review in accordance with the PRA.[87]

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[88] we certified that proposed Rule 135d under the Securities Act would not have a significant economic impact on a substantial number of small entities. This certification, including our basis for the certification, was included in Part VII of the Proposing Release. We solicited comments on the potential impact of the proposed rule on small entities but received none. We are adopting this rule as proposed with one substantive addition concerning SBS-related research reports. We do not believe that this substantive addition alters the basis upon which the certification in the Proposing Release was made. Accordingly, we certify that Rule 135d under the Securities Act will not have a significant economic impact on a substantial number of small entities.

VII. Statutory Authority

The rule described in this release is being adopted under the authority set forth in Sections 5, 19, and 28 of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we are amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. 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.

* * * * *

■ 2. Section 230.135d is added to read as follows:

§ 230.135d Communications involving security-based swaps.

(a) For the purposes only of Section 5 of the Act (15 U.S.C. 77e), the publication or distribution of quotes relating to security-based swaps that may be purchased only by persons who are eligible contract participants (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) and are traded or processed on or through a trading system or platform that either is registered as a national securities exchange under Section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or as a security-based swap execution facility under Section 3D(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–4(a)), or is exempt from registration as a security-based swap execution facility under Section 3D(a) of the Securities Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission shall not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase any security-based swap or any guarantee of such security-based swap that is a security; and

(b) For the purposes only of Section 5 of the Act (15 U.S.C. 77e), a broker, dealer, or security-based swap dealer's publication or distribution of a research report (as defined in § 230.139(d)) that discusses security-based swaps that may be purchased only by persons who are eligible contract participants (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) shall not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to buy or purchase any security-based swap or any guarantee of such security-based swap that is a security, provided that the broker, dealer, or security-based swap dealer publishes or distributes research reports on the issuer underlying the security-based swap or its securities in the regular course of its business and the publication or distribution of the research report does not represent the initiation of publication of research reports about such issuer or its securities or the reinitiation of such publication following discontinuation of publication of such research reports. For purposes of this section, the term *issuer* as used in the definition of ''research report'' means the issuer of any security or loan referenced in the security-based swap, each issuer of a security in a narrow-based security index referenced in the security-based swap, or each issuer referenced in the security-based swap.

By the Commission.

Dated: January 5, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–00347 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[85] Certain market participants could reduce the registration burden by using the Form S–3 registration statement for their securities offerings. We previously have estimated that 50 or fewer entities ultimately may have to register with us as security-based swap dealers. *See* Business Conduct Standards Adopting Release. These entities (or their affiliates) are likely to be seasoned or well-known seasoned issuers that are eligible to use the Form S–3 registration statement for their securities offerings. In particular, these entities (or their affiliates) are likely to have a Form S–3 shelf registration statement that is effective under the Securities Act. A shelf registration statement covers the offer and sale of securities that are not necessarily to be sold in a single offering immediately upon effectiveness; instead, the securities are typically sold in a number of ''takedowns'' over a period of time or on a continuous basis. A shelf registration statement allows issuers to conduct multiple types and amounts of securities offerings using the same registration statement. If these entities (or their affiliates) are required to register the offer and sale of the securities in security-based swap transactions, they would likely use their shelf registration statements for the offerings. For takedowns off their shelf registration statements, an entity (or its affiliate) would file a prospectus supplement under the Securities Act that contains the specific terms of the offering. As a result of the shelf registration procedure, these entities (including their affiliates) would incur lower costs relating to the takedown for each security-based swap transaction than they would otherwise incur if they had to use a non-shelf registration statement for the security-based swap transactions. While the use of a shelf registration statement would reduce the registration burden for qualifying market participants, it may not be available to all market participants.

[86] 44 U.S.C. 3501 *et seq.*

[87] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[88] 5 U.S.C. 605(b).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16, 801, 803, 806, 810, 814, 820, 821, 822, and 830

[Docket No. FDA–2017–D–6841]

Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance for industry and FDA Staff entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' This guidance describes FDA's intention with respect to the enforcement of unique device identification requirements for certain class I and unclassified devices. FDA does not intend to enforce standard date formatting, labeling, and Global Unique Device Identification Database (GUDID) data submission requirements under Agency regulations for these devices before September 24, 2020. In addition, FDA does not intend to enforce direct mark requirements under an Agency regulation for these devices before September 24, 2022. The policy described in this guidance does not apply to implantable, life-supporting, or life-sustaining devices. The guidance document is immediately in effect, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on January 16, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2017–D–6841 for ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: *For Center for Devices and Radiological Health-regulated devices:* Loretta Chi, Unique Device Identifier Regulatory Policy Support, 301–796–5995, email: *GUDIDSupport@fda.hhs.gov. For Center*

for Biologics Evaluation and Research-regulated devices: Stephen Ripley, Office of Communication, Outreach, and Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, or call 1–800–835–4709 or 240–402–8010.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' In the September 24, 2013, **Federal Register** (78 FR 58786), FDA published a final rule establishing a unique device identification system designed to adequately identify medical devices during their distribution and use (the UDI Rule). Under § 801.20 (21 CFR 801.20) a device is required to bear a unique device identifier (UDI) on its label and packages unless an exception or alternative applies. Special labeling requirements apply to stand-alone software regulated as a device (§ 801.50 (21 CFR 801.50)). Under § 830.300 (21 CFR 830.300) data pertaining to the key characteristics of each device required to bear a UDI must be submitted to the GUDID. Devices that must bear UDIs on their labels and that are intended to be used more than once and reprocessed between uses must be directly marked with a UDI (§ 801.45 (21 CFR 801.45)). In addition, § 801.18 (21 CFR 801.18) requires certain dates on device labels to be in a standard format.

UDI requirements are being phased in over 7 years according to a schedule of compliance dates established in the UDI Rule ranging from September 24, 2014, to September 24, 2020. The compliance dates established for class I and unclassified devices—other than implantable, life-supporting, or life-sustaining (I/LS/LS) devices—are September 24, 2018, for labeling, GUDID submission, and standard date format requirements, and September 24, 2020, for direct mark requirements.

FDA does not intend to enforce standard date formatting, UDI labeling, and GUDID data submission requirements under §§ 801.18, 801.20, 801.50, and 830.300 for class I and unclassified devices, other than I/LS/LS devices, before September 24, 2020. FDA also does not intend to enforce direct mark requirements under § 801.45 for these devices before September 24, 2022. This policy does not apply to class I devices that FDA has by regulation exempted from the good manufacturing practice requirements because such devices are excepted from UDI requirements (see § 801.30(a)(2) (21 CFR 801.30(a)(2))).

In addition, finished class I and unclassified devices, other than I/LS/LS devices, manufactured and labeled prior to September 24, 2018, are excepted from UDI labeling requirements under §§ 801.20 and 801.50, as well as from GUDID data submission requirements for a period of 3 years after the established compliance date or until September 24, 2021. (See §§ 801.30(a)(1) and 830.300(a).) We also do not intend to enforce standard date format requirements under § 801.18 during that same 3-year period for finished class I and unclassified devices, other than I/LS/LS devices, manufactured and labeled before September 24, 2018.

Pursuant to § 801.30(a)(1), finished class I and unclassified devices, other than I/LS/LS devices, manufactured and labeled prior to September 24, 2018, would also be excepted from direct marking requirements until September 24, 2021. However, with the exception of I/LS/LS devices, we do not intend to enforce direct mark requirements before September 24, 2022, for class I and unclassified devices (including those manufactured and labeled prior to September 24, 2018). We believe this policy regarding direct mark compliance dates is appropriate because it is not in the best interest of the public health for labelers of class I and unclassified devices to prioritize remediating devices in inventory to meet direct mark requirements prior to addressing direct marking, and its impact on the safety and effectiveness, for devices manufactured following labelers' full implementation of UDI.

Fully realizing the benefits of the unique device identification system depends on UDI being integrated into data sources throughout our health care system, including in the supply chain, electronic health records, and registries. This requires UDI data to be of a high quality such that all stakeholders in the health care community have sufficient confidence in the accuracy and completeness of that data.

To fully reap the public health benefits and a return on investment of the unique device identification system, the Agency intends to focus its resources on addressing existing implementation challenges and optimizing the quality and utility of UDI data for higher-risk devices before focusing on UDI implementation issues for lower-risk devices. Undertaking this endeavor now will help ensure the transition from development of the unique device identification system to widespread use and sustainability.

This guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2) (21 CFR 10.115(g)(2))). FDA has determined that this guidance document presents a less burdensome policy that is consistent with public health. Although this guidance is immediately in effect, FDA will consider all comments received and revise the guidance document as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* A search capability for all Center for Biologics Evaluation and Research guidance documents is available at *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17029 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485 and the collections of information in 21 CFR part 830 have been approved under OMB control number 0910–0720.

Dated: January 9, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–00550 Filed 1–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 575

Annual Adjustment of Civil Monetary Penalty To Reflect Inflation

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: In compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Act) and Office of Management and Budget (OMB) guidance, the National Indian Gaming Commission (NIGC or Commission) is amending its civil monetary penalty rule to reflect an annual adjustment for inflation in order to improve the penalty's effectiveness and maintain its deterrent effect. The Act provides that the new penalty level must apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: This final rule will have an effective date of January 15, 2018.

FOR FURTHER INFORMATION CONTACT: Contact Armando J. Acosta, Senior Attorney, Office of General Counsel, National Indian Gaming Commission, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74). Beginning in 2017, the Act requires agencies to make annual inflationary adjustments to their civil monetary penalties by January 15th of each year, in accordance with annual OMB guidance.

II. Calculation of Annual Adjustment

On December 15, 2017, OMB issued guidance to agencies to calculate the annual adjustment. *See* M–18–03 Memorandum for the Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, Subject: *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 15, 2017). According to OMB, the cost-of-living adjustment multiplier for 2018, based on the Consumer Price Index (CPI–U) for the month of October 2017, not seasonally adjusted, is 1.02041.

Pursuant to this guidance, the Commission has calculated the annual adjustment level of the civil monetary penalty contained in 25 CFR 575.4 (''The Chairman may assess a civil fine, not to exceed $50,276 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation . . .''). The 2018 adjusted level of the civil monetary penalty is $51,302 ($50,276 × 1.02041).

III. Regulatory Matters

Regulatory Planning and Review

This final rule is not a significant rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy or will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients.

(4) This regulatory change does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Commission certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule makes annual adjustments for inflation.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule will not result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate of more than $100 million per year on state, local, or tribal governments or the private sector. The rule also does not have a significant or unique effect on state, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings

Under the criteria in Executive Order 12630, this final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' Thus, a takings implication assessment is not required.

Federalism

Under the criteria in Executive Order 13132, this final rule has no 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.

Civil Justice Reform

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation. It is written in clear language and contains clear legal standards.

Consultation With Indian Tribes

In accordance with the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments,* Executive Order 13175 (59 FR 22951, November 6, 2000), the

Commission has determined that consultations with Indian gaming tribes is not practicable, as Congress has mandated that annual civil penalty adjustments in the Act be implemented no later than January 15th of each year.

Paperwork Reduction Act

This final rule does not affect any information collections under the Paperwork Reduction Act.

National Environmental Policy Act

This final rule does not constitute a major federal action significantly affecting the quality of the human environment.

Information Quality Act

In developing this final rule, the Commission did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply

This final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

The Commission is required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule that the Commission publishes must:

(a) Be logically organized;

(b) use the active voice to address readers directly;

(c) use clear language rather than jargon;

(d) be divided into short sections and sentences; and

(e) use lists and tables wherever possible.

Required Determinations Under the Administrative Procedure Act

In accordance with the Act, agencies are to annually adjust civil monetary penalties without providing an opportunity for notice and comment, and without a delay in its effective date. Therefore, the Commission is not required to complete a notice and comment process prior to promulgation.

List of Subjects in 25 CFR Part 575

Administrative practice and procedure, Gaming, Indian lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 575 as follows:

PART 575—CIVIL FINES

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 575.4 [Amended]

■ 2. Amend the introductory text of § 575.4 by removing ''$50,276'' and adding in its place ''$51,302''.

Dated: January 9, 2018.

Jonodev O. Chaudhuri,

Chairman,

Kathryn Isom-Clause,

Vice Chair,

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2018–00505 Filed 1–12–18; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0868]

RIN 1625–AA09

Drawbridge Operation Regulation; Isthmus Slough, Coos Bay, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Oregon State secondary highway bridge (Isthmus Slough Bridge), across Isthmus Slough, mile 1.0, at Coos Bay, OR. To accommodate Oregon Department of Transportation's (ODOT) preservation, painting and replacement of the bridge equipment, ODOT will operate half the double bascule span (single leaf). Additionally, during the period of this work, the non-functioning leaf of the span's vertical clearance will be reduced.

DATES: This temporary final rule is effective from 6 a.m. on February 26, 2018 to 6 p.m. on July 31, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Type USCG–2017–0868 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206–220–7282; email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
ODOT Oregon Department of Transportation
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

On October 24, 2017, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Isthmus Slough, Coos Bay, OR, in the **Federal Register** (82 FR 49153). We received no comments on this rule. ODOT owns and operates the double bascule Isthmus Slough Bridge, across Isthmus Slough, mile 1.0, at Coos Bay, OR. The operating regulation has been temporarily modified to accommodate ODOT's painting, preservation, and upgrading of the bridge electrical systems. Isthmus Slough provides no alternate routes to pass around the Isthmus Slough Bridge. To facilitate this event, ODOT will operate the double bascule bridge in single leaf mode (half of the span), and reduce the vertical clearance of the non-functioning leaf. Up to ten feet of containment will be installed under the non-functioning leaf only, and will reduce the vertical clearance to 18 feet. Vessels that do not require an opening may transit under the bridge at any time. We approved a temporary deviation on August 4, 2017 (82 FR 36332), with the same change in bridge operations as this rule change. We have not received any reports of problems or complaints with the subject bridge operating under the temporary deviation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. Isthmus Slough Bridge, across Isthmus Slough, mile 1.0, at Coos Bay, OR, is a double bascule drawbridge, and provides a vertical clearance of 28 feet in the closed-to-navigation position referenced to the vertical clearance above mean high water tide level. ODOT cannot complete scheduled maintenance and equipment upgrades unless the operating schedule for the subject bridge is changed.

We approved a temporary deviation for this event, but later learned 180 days will not be enough time to complete the work. This temporary rule change to 33 CFR 117.879 will allow ODOT time to complete their scheduled maintenance and equipment upgrades. This temporary rule suspends the current paragraph regarding the Isthmus Slough Bridge, and adds a temporary new paragraph which amends the operating schedule of the Isthmus Slough Bridge by authorizing one half of the draw to open on signal, and reduces the horizontal clearance and vertical clearance of the bridge. The temporary rule is necessary to accommodate painting, preservation, and upgrading of its electrical systems. One half of the double bascule bridge will have a containment system installed on the non-functioning half of the span, and therefore reduces the vertical clearance by ten feet to 18 feet. The horizontal clearance with a full opening is 140 feet. In single leaf operation, the horizontal clearance is reduced to approximately 70 feet.

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

We published a NPRM in October 2017 with a 30 day comment period, and did not receive any comments. We approved this temporary rule change to 33 CFR 117.879 to be in effect from 6 a.m. on February 26, 2018, through 6 p.m. on July 31, 2019. This temporary rule authorizes ODOT to operate the Isthmus Slough Bridge one half of the draw on signal if at least 24 hours notice is given to the bridge operator, and reduce the horizontal clearance and vertical clearance of the bridge.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the ability for mariners to transit under the bridge because the Isthmus Slough Bridge can open half the draw allowing for the reasonable needs of navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section VI.A above, this rule would not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Government

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We received no (0) comments in the NPRM for this section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. We received no (0) comments in the NPRM for this section.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32) (e), of the Instruction. A Record of Environmental

Consideration and a Memorandum for the Record are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

§ 117.879 [Suspended]

■ 2. Suspend § 117.879 effective 6 a.m. on February 26, 2018, through 6 p.m. on July 31, 2019.

■ 3. Add temporary § 117.T879, effective 6 a.m. on February 26, 2018, through 6 p.m. on July 31, 2019, to read as follows:

§ 117.T879 Isthmus Slough.

The draw of the Oregon State secondary highway bridge, mile 1.0, at Coos Bay, shall operate in single leaf, and open half the draw on signal if at least 24 hours notice is given. The vertical clearance of the non-functioning leaf will be reduced up to ten feet.

David G. Throop,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2018–00611 Filed 1–12–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

[Docket ID ED–2018–OGC–0004]

RIN 1801–AA17

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. An initial ''catch-up'' adjustment was required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). These final regulations provide the 2018 annual inflation adjustments being made to the penalty amounts in the Department's final regulations published in the **Federal Register** on April 20, 2017 (2017 final rule).

DATES: These regulations are effective January 15, 2018. The adjusted CMPs established by these regulations are applicable only to civil penalties assessed after January 15, 2018, whose associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Levon Schlichter, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6E235, Washington, DC 20202–2241. Telephone: (202) 453–6387 or by email: *levon.schlichter@ed.gov*.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Background

A CMP is defined in the Inflation Adjustment Act (28 U.S.C. 2461 note) as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to its CMPs in the **Federal Register** on April 20, 2017 (82 FR 18559), and those adjustments became effective on the date of publication.

The 2015 Act (section 701 of Pub. Law 114–74) amended the Inflation Adjustment Act to improve the effectiveness of CMPs and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) Adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI–U. Annual inflation adjustments are based on the percentage change between the October CPI–U preceding the date of each statutory adjustment, and the prior year's October CPI–U.[1] The Department published an IFR with the initial ''catch-up'' penalty adjustment amounts on August 1, 2016 (81 FR 50321).

In these final regulations, based on the CPI–U for the month of October 2017, not seasonally adjusted, we are annually adjusting each CMP amount by a multiplier for 2018 of 1.02041, as directed by the Office of Management and Budget (OMB) Memorandum No. M–18–03 issued on December 15, 2017.

The Department's Civil Monetary Penalties

The following analysis calculates new CMPs for penalty statutes in the order in which they appear in 34 CFR 36.2. The penalty amounts are being adjusted up based on the multiplier of 1.02041 provided in OMB Memorandum No. M–18–03.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)), as last set out in statute in 1998 (Pub. Law 105–244, title I, § 101(a), October 7, 1998, 112 Stat. 1602), is a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics. In the 2017 final rule, we increased this amount to $36,849.

New Regulations: The new penalty for this section is $37,601.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M–18–03, the new penalty is calculated as follows: $36,849 × 1.02041 = $37,601.09, which makes the adjusted penalty $37,601, when rounded to the nearest dollar.

[1] If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

Statute: 20 U.S.C. 1022d(a)(3).

Current Regulations: The CMP for 20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA), as last set out in statute in 2008 (Pub. Law 110–315, title II, § 201(2), August 14, 2008, 122 Stat. 3147), provides for a fine of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs. In the 2017 final rule, we increased this amount to $30,694.

New Regulations: The new penalty for this section is $31,320.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M–18–03, the new penalty is calculated as follows: $30,694 × 1.02041 = $31,320.46, which makes the adjusted penalty $31,320, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) (Section 432(g) of the HEA), as last set out in statute in 1986 (Pub. Law 99–498, title IV, § 402(a), October 17, 1986, 100 Stat. 1401), provides for a fine of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program. In the 2017 final rule, we increased this amount to $54,789.

New Regulations: The new penalty for this section is $55,907.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M–18–03, the new penalty is calculated as follows: $54,789 × 1.02041 = $55,907.24, which makes the adjusted penalty $55,907, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA), as set out in statute in 1986 (Pub. Law 99–498, title IV, § 407(a), October 17, 1986, 100 Stat. 1488), provides for a fine of up to $25,000 for an IHE's violation of Title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance. In the 2017 final rule, we increased this amount to $54,789.

New Regulations: The new penalty for this section is $55,907.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M–18–03, the new penalty is calculated as follows: $54,789 × 1.02041 = $55,907.24, which makes the adjusted penalty $55,907, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: The CMP for 20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act), as set out in statute in 1994 (Pub. Law 103–382, title II, § 238, October 20, 1994, 108 Stat. 3918), provides for a fine of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents. In the 2017 final rule, we increased this amount to $1,617.

New Regulations: The new penalty for this section is $1,650.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M–18–03, the new penalty is calculated as follows: $1,617 × 1.02041 = $1,650.00, which makes the adjusted penalty $1,650, when rounded to the nearest dollar.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989, provide for a fine of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts. In the 2017 final rule, we increased these amounts to $19,246 to $192,459.

New Regulations: The new penalties for these sections are $19,639 to $196,387.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M–18–03, the new minimum penalty is calculated as follows: $19,246 × 1.02041 = $19,638.81, which makes the adjusted penalty $19,639, when rounded to the nearest dollar. The new maximum penalty is calculated as follows: $192,459 × 1.02041 = $196,387.09, which makes the adjusted penalty $196,387, when rounded to the nearest dollar.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. Law 99–509, title VI, § 6103(a), Oct. 21, 1986, 100 Stat. 1937), provide for a fine of up to $5,000 for false claims and statements made to the Government. In the 2017 final rule, we increased this amount to $10,957.

New Regulations: The new penalty for this section is $11,181.

Reason: Using the multiplier of 1.02041 from OMB Memorandum No. M–18–03, the new penalty is calculated as follows: $10,957 × 1.02041 = $11,180.63, which makes the adjusted penalty $11,181, when rounded to the nearest dollar.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as ''economically significant'' regulations);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

We have determined that these final regulations: (1) Exclusively implement the annual adjustment; (2) are consistent with OMB Memorandum No. M–18–03; and (3) have an annual impact of less than $100 million. Therefore, based on OMB Memorandum No. M–18–03, this is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations as required by statute and in accordance with OMB Memorandum No. M–18–03. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Under Executive Order 13771, if the Department proposes for notice and comment or otherwise promulgates a new regulation that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two existing regulations for elimination. For fiscal year 2018, any new incremental costs associated with the new regulation must be fully offset by the elimination of existing costs through the repeal of at least two regulations. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2018 penalty amounts notwithstanding section 553 of title 5, United States Code. Therefore, the requirements of 5 U.S.C. 553 for notice and comment and delaying the effective date of a final rule do not apply here.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the Secretary's discretion. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 36

Claims, Fraud, Penalties.

Dated: January 10, 2018.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 36 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

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

Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by section 701 of Pub. Law 114–74, unless otherwise noted.

■ 2. Section 36.2 is amended by revising Table I to read as follows:

§ 36.2 Penalty adjustment.

* * * * *

TABLE I—SECTION 36.2.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as set by Congress in 1998, of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics.	$37,601.
20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA)	Provides for a fine, as set by Congress in 2008, of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	$31,320.
20 U.S.C. 1082(g) (Section 432(g) of the HEA)	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.	$55,907.
20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA)	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for an IHE's violation of Title IV of the HEA, which authorizes various programs of student financial assistance.	$55,907.

TABLE I—SECTION 36.2.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act).	Provides for a civil penalty, as set by Congress in 1994, of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents.	$1,650.
31 U.S.C. 1352(c)(1) and (c)(2)(A)	Provides for a civil penalty, as set by Congress in 1989, of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	$19,639 to $196,387.
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty, as set by Congress in 1986, of up to $5,000 for false claims and statements made to the Government.	$11,181.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

§ 668.84 [Amended]

■ 4. Section 668.84 is amended by, in paragraph (a), removing the number ''$27,500'' and adding, in its place, the number ''$55,907''.

[FR Doc. 2018–00614 Filed 1–12–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

[NPS–WASO–23396; GPO Deposit Account 4311H2]

RIN 1024–AE32

General Regulations; Areas of the National Park System, Free Distribution of Other Message-Bearing Items

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service revises its general rule governing the sale or distribution of printed matter to include the free distribution of message-bearing items that do not meet the regulatory definition of ''printed matter.'' This change gives visitors an additional channel of communication while protecting the resources and values of the National Park System.

DATES: This rule is effective on February 15, 2018.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Use Program Manager, at (202) 513–7092 or *lee_dickinson@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

Authority and Jurisdiction To Promulgate Regulations

In the National Park Service (NPS) Organic Act (54 U.S.C. 100101), Congress granted the NPS broad authority to regulate the use of areas under its jurisdiction. The Organic Act authorizes the Secretary of the Interior, acting through the NPS, to ''prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.'' 54 U.S.C. 100751(a).

National Park System

Consisting of over 400 units in 50 states, the District of Columbia and multiple territories, the National Park System covers more than 84 million acres. These units are located in a wide range of environments as diverse as the United States itself. The size of these units also varies tremendously, ranging from Wrangell-St. Elias National Park and National Preserve, Alaska, at 13.2 million acres, to Thaddeus Kosciuszko National Memorial, Pennsylvania, at 0.02 acres.

About one-third of the units—such as Great Smoky Mountains National Park, Tennessee; Grand Canyon National Park, Arizona; Everglades National Park, Florida; and Hawaii Volcanoes National Parks, Hawaii—preserve nature's many and varied gifts to the nation. The other two-thirds of the units recognize benchmarks of human history in America. These units protect elements of great native cultures, far older than European exploration and settlement; preserve battle sites from the Revolutionary and Civil Wars—including the key surrender fields of both great conflicts; embrace Thomas Edison's New Jersey laboratories where he and his staff led a technological revolution more dramatic even than the coming of the computer age; and more. These historical park units reflect the development of both art and industry in America, along with landmarks of social and political change.

As a broader understanding of history took hold, the National Park System eventually grew to include the historic homes of civil rights, political, and corporate leaders, and the lands of the poor, struggling to build lives for themselves on a Nebraska homestead claim or in an urban community. The National Park System now embraces the birthplace, church, and grave of Dr. Martin Luther King at Martin Luther King, Jr. National Historical Site, Georgia; the birth of jazz at New Orleans Jazz National Historical Park, Louisiana; the flowering of a literary giant at the Eugene O'Neill National Historical Site, California; and the artistic grace of a great sculptor's studios at Saint-Gaudens National Historical Site, New Hampshire. Because of the lessons they help us remember, the National Park System also includes the Japanese American World War II internment camp in the desert at Manzanar National Historical Site, California, as well as Andersonville National Historical Site, Georgia, one of the very bleakest of the Civil War prison sites.

The National Park System is habitat for 247 threatened or endangered species, has more than 167 million items in museum collections, has 75,000 archaeological sites, and 27,000 historic and prehistoric structures. The National Park System also has an extensive physical infrastructure, which includes thousands of buildings, tens of thousands of miles of trails and roads,

and almost 30,000 housing units, campgrounds, and picnic areas as well as 3,000 water and waste water treatment systems.

Over 325 million visitors visited the National Park System in 2016, where visitors find not only visual, educational, and recreational experiences but also inspirational, contemplative, and spiritual experiences. For Native Americans, certain national parks are also considered sacred religious sites, where the NPS asks visitors to respect these long-held beliefs, such as by voluntarily not walking under a natural bridge.

Final Rule

First Amendment activities in units of the National Park System are governed by longstanding but ever-evolving First Amendment jurisprudence; by the statutes and regulations governing the National Park System as a whole; and by park-specific statutes and regulations.

Title 36 CFR 2.52 currently allows the sale or distribution only of printed matter and only in areas of a park designated by the superintendent. The regulation defines ''printed matter'' as ''message-bearing textual printed material such as books, pamphlets, magazines, and leaflets, provided that it is not solely commercial advertising.'' The NPS recognizes, however, that items other than ''printed matter'' may also contain or present speech, either literal or symbolic, that is not solely commercial and whose expression may be protected by the First Amendment. Accordingly, the NPS is revising its regulations to allow the free distribution of message-bearing items other than printed matter in areas of a park designated by the superintendent, subject to compliance with the regulations at 36 CFR 2.51 and 2.52. These items include readable electronic media like CDs, DVDs, and flash drives; articles of clothing like hats and accessories like buttons and pins; key chains; and bumper stickers.[1]

Under the rule, message-bearing items other than printed matter may not be sold within a park unit; they may only be distributed free of charge. This restriction is necessary to prevent the proliferation of unregulated commercial activity that would be inconsistent with park resources and values, that would impinge upon and degrade park scenery, and that would disrupt the visitor experience in many park units.

The revision to § 2.52 to allow the free distribution of other message-bearing items is consistent with the NPS's National Capital Region (NCR) regulation at 36 CFR 7.96(k). As discussed in the preambles to the proposed and final rules for the NCR regulation, 59 FR 25855 (1994) and 60 FR 17639 (1995), the NPS promulgated § 7.96 to resolve serious issues created by unregulated sales of merchandise on NPS-administered lands that resulted in conflicting and excessive commercialism; degraded aesthetic values; had negative impacts on visitor circulation and contemplation and historic scenes; and inhibited the conservation of park property. In upholding the constitutionality of the NCR regulation limiting the sales of such items, the U.S. Court of Appeals for the District of Columbia Circuit found that the regulation was ''content neutral'' and ''narrowly tailored to serve significant government interests'' and offered ''ample alternative channels of communication'' insofar as ''members may display and give the audio tapes and [religious] beads to members of the public so long as they do not try to exact a payment or request a donation in exchange for them.'' *ISKCON of Potomac* v. *Kennedy,* 61 F.3d 949, 952, 958 (D.C. Cir. 1995).

Summary of and Responses to Public Comments on the Proposed Rule

The NPS published the proposed rule on October 14, 2016 (81 FR 71026) with request for public comment through the Federal eRulemaking portal at *www.regulations.gov,* or by mail or hand delivery. The 60-day comment period ended on December 13, 2016. A total of 26 comments were received. The NPS evaluated these comments when developing this final rule. A summary of comments and NPS responses is provided below. Many comments supported the rule and expressed gratitude that it provides an alternative means of communication in national parks. After taking the public comments into consideration and after additional review, the NPS has not made any substantive changes in the final rule. A few conforming edits to 36 CFR 2.51 and 2.52 are included in this final rule. These changes simply add references to the free distribution of other message-bearing items to reflect the substantive revisions to section 2.52 that were included in the proposed rule.

1. Comment: Some commenters were concerned that the rule would lead to the commercialization of national parks and take away from the serenity and beauty of the environment. One commenter suggested that the rule should prohibit the sale of printed matter as well as other message-bearing items in order to prevent rampant consumerism in national parks. Several commenters suggested that the rule prohibit all items that include or function as commercial advertising, or any items that are predominantly or primarily commercial advertising, rather than only prohibiting those items that are ''solely commercial advertising.'' One commenter stated that t-shirts, even when given away for free, are primarily used as marketing devices and not to communicate information.

NPS Response: The rule only allows the free distribution of other message-bearing items. Asking for or requiring payment or donations in exchange for these items is prohibited without written authorization under 36 CFR 5.3 (Business operations) or 36 CFR 2.37 (Noncommercial soliciting). The NPS will use the permit process to ensure that the free distribution of other message-bearing items will not result in the commercialization of national parks and the degradation of park values and visitor experiences. This activity will only be allowed in areas designated as available for First Amendment activities by the Superintendent.

Items with some amount of commercial advertising may also contain protected speech under the First Amendment. For this reason, the free distribution of these items is properly regulated under 36 CFR 2.52 rather than 36 CFR 5.3, which focuses on business operations. Examples may include t-shirts and water bottles that contain a message unrelated to commercial advertising that are freely distributed by a corporate sponsor at a permitted event. Although these items may also contain a logo or other mark associated with the company, they are not solely commercial advertising and are therefore subject to regulations addressing speech rather than business operations.

2. Comment: One commenter questioned the basis for allowing the sale of printed matter, but not the sale of other message-bearing items, when both may contain speech protected by the First Amendment.

NPS Response: Experiences on the National Mall and in other national parks suggest that other message bearing items such as t-shirts, mugs, hats, and jewelry are more likely than printed matter to be sold primarily as a commercial enterprise rather than as part of a sincere First Amendment activity. In the past, the proliferation of sales of other message bearing items has

[1] This rule therefore enshrines in regulation NPS Policy Memorandum 14–01,(January 28, 2014), which requires superintendents to allow the free distribution of message-bearing items to the public other than printed matter, so long as the activity occurs within an area designated as available for First Amendment activities under 36 CFR 2.51(c)(l) and otherwise complies with 36 CFR 2.52.

degraded the purposes and values of the National Park System in manner not experienced with the sale of printed matter that is primarily focused on communicating a message. The distinction in this rule between printed matter and other message bearing items will provide the public with a broader opportunity to engage in protected speech without opening national parks to unchecked commerce. The sale of an unlimited range of message bearing merchandise, including t-shirts, would negatively impact park resources and values as well as the visitor experience. In order to sell other message bearing items in national parks, written authorization must be obtained under 36 CFR 5.3.

3. Comment: Several commenters were concerned that allowing the free distribution of other message-bearing items will result in litter and waste that will harm resources, including wildlife, and the ability of visitors to enjoy national parks. These commenters were concerned about items such as CDs and keychains that are made out of plastic and other materials that are not biodegradable and are costly to recycle.

NPS Response: Groups of more than 25 people who wish to freely distribute other message bearing items must obtain a permit that will contain terms and conditions addressing the proper disposal of litter and waste. These items will not be allowed to be distributed outside of designated First Amendment areas, reducing their impact on more unspoiled and sensitive areas of the Parks. Designated First Amendment areas are generally developed and have more foot traffic and nearby amenities such as trash and recycling cans. National parks have existing programs in place to collect and dispose of litter that will help mitigate any incremental waste associated with the free distribution of these items. The NPS will not regulate substantially more speech than necessary to implement the NPS's substantial government interest in protecting park resources from impairment. This rule allows the exercise of protected speech. The NPS has determined that any additional measures the NPS could take at this time to prevent additional litter associated with this speech, including, for example, prohibiting the free distribution of plastic message bearing items, are unnecessary. If the NPS determines at a later date that additional management actions are needed to address increases in litter attributable to message-bearing items, then the NPS will consider appropriate responses, including new terms and conditions to permits and changes to this rule.

4. Comment: Some commenters felt that the free distribution of other message-bearing items will lead to an influx of visitors and material objects, such as t-shirts and keychains, to national parks, which will degrade the natural beauty, contemplative quality, and integrity of these areas. One commenter suggested that the rule allow the Superintendent to deny a permit application based upon the severity of impacts to park resources and values imposed by these items. One commenter was concerned about audio and visual pollution from the distribution of these items that will harm park resources and values.

NPS Response: There are several protections in place that will mitigate the impacts of this activity on park values and resources. Groups of more than 25 people who wish to freely distribute other message bearing items must obtain a permit that will contain terms and conditions that will address potential impacts. The Superintendent may deny a permit if the number of persons engaged in the distribution cannot be reasonably accommodated, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities. 36 CFR 2.52(e). The free distribution of other message-bearing items may only occur in locations designated under 36 CFR 2.51(c). These locations may only be designated if the free distribution of other message-bearing items in these locations would not (i) cause injury or damage to park resources; (ii) unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative zones; or (iii) be incompatible with the nature and traditional use of the particular park area.

5. Comment: Some commenters were concerned that the content of other message-bearing items could be offensive or contain political messages that are not appropriate in national parks.

NPS Response: Similar to other types of protected speech that occurs in the National Park System, the NPS does not regulate the content of protected speech contained in other message- bearing items.

6. Comment: One commenter suggested that the NPS define other message-bearing items by a closed list of items that meet the definition, rather than an open-ended definition that lists only examples of items that qualify. This commenter felt that an exclusive list would relieve park managers from the burden of having to identify which items are message-bearing on a case-by-case basis.

NPS Response: A non-exhaustive list of things that qualify as other message-bearing items gives the NPS more flexibility than a closed list to determine which items are message- bearing. This will allow the NPS to adapt to the introduction of new message-bearing technologies such as digital downloads and other means of delivering electronic content.

7. Comment: One commenter suggested that the rule establish standard locations in all national park units that are designated for First Amendment activities, including the free distribution of other message-bearing items, in order to preserve the integrity of the parks. This commenter suggested visitor centers or information kiosks as potential places that could be designated across the National Park System.

NPS Response: NPS regulations at 36 CFR 2.51 require Superintendents to identify on a map the locations that are designated for demonstrations and the sale and distribution of printed matter. As stated above, these locations must meet certain criteria that will help address the commenter's concerns. This rule updates these regulations to state that these locations are also designated for the free distribution of other message-bearing items. The geography, infrastructure, and frequency and size of First Amendment activities are unique for each national park unit. This makes it difficult to identify a standard location that can be designated as appropriate for First Amendment activities in every unit. The NPS believes that the Superintendents are in the best position to determine which areas in the parks they manage are most appropriate for First Amendment activities.

Compliance With Other Laws, Executive Orders, and Department Policy Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for

achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is an E.O. 13771 deregulatory action because once finalized, it will have costs less than zero.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will generate positive benefits and no costs. This certification is based upon the cost-benefit and regulatory flexibility analyses found in the report entitled ''Cost-Benefit and Regulatory Flexibility Analyses: Proposed Regulation Revisions for Free Distribution of Other Message-Bearing Items'' that is available to the public upon request.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

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

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

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

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

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

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

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the information collection requirements associated with NPS Special Park Use Permits and has assigned OMB Control Number 1024–0026 (expires 01/31/20). 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.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined that the rule is categorically excluded under 516 DM 12.5(A)(10) as it is a modification of existing NPS regulations that does not increase public use to the extent of compromising the nature and character of the area or causing physical damage to it. Further, the rule will not result in the introduction of incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it. Finally, the rule will not conflict with adjacent ownerships or lands uses, or cause a nuisance to adjacent owners or occupants.

We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 2

Environmental protection, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 2 as set forth below:

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

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

Authority: 54 U.S.C. 100101, 100751, 320102.

■ 2. Amend § 2.51 by revising the section heading and paragraphs (c)(1) introductory text and (c)(2) to read as follows:

§ 2.51 Demonstrations and designated available park areas.

* * * * *

(c) *Designated available park areas.* (1) Locations may be designated as

available for demonstrations under this section, and for the sale or distribution of printed matter and the free distribution of other message-bearing items under § 2.52, only if these activities would not:

* * * * *

(2) The superintendent must designate on a map, which must be available in the office of the superintendent and by public notice under § 1.7 of this chapter, the locations designated as available for demonstrations, the sale or distribution of printed matter, and the free distribution of other message bearing items.

* * * * *

■ 3. Amend § 2.52 by:

■ a. Revising the section heading;

■ b. Revising the paragraph (a) subject heading;

■ c. Adding two sentences at the end of paragraph (a);

■ d. Revising paragraph (b) introductory text; and

■ e. Revising paragraph (i) introductory text.

The revisions and additions to read as follows:

§ 2.52 Sale of printed matter and the distribution of printed matter and other message-bearing items.

(a) *Printed matter and other message-bearing items.* * * * The term ''other message-bearing items'' means a message-bearing item that is not ''printed matter'' and is not solely commercial advertising. Other message-bearing items include, but are not limited to: Readable electronic media such as CDs, DVDs, and flash drives; clothing and accessories such as hats and key chains; buttons; pins; and bumper stickers.

(b) *Permits and the small group permit exception.* The sale or distribution of printed matter, and the free distribution of other message-bearing items without asking for or demanding payment or donation, is allowed within park areas if it occurs in an area designated as available under § 2.51(c)(2) and when the superintendent has issued a permit for the activity, except that:

* * * * *

(i) *Misrepresentation.* Persons engaged in the sale or distribution of printed matter or the free distribution of other message-bearing items under this section are prohibited from misrepresenting the purposes or affiliations of those engaged in the sale or distribution, and misrepresenting whether the printed matter or other message-bearing items are available without cost or donation.

* * * * *

Jason Larrabee,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2018–00515 Filed 1–12–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 14

[NPS–WASO–24690; PPWOVPADU0/PPMPRLE1Y.Y00000]

RIN 1024–AE42

Rights of Way; Removal of Outdated Reference

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule removes an outdated reference to a document establishing environmental criteria for electric transmissions lines that is no longer used by the National Park Service to evaluate applications for right-of-way permits.

DATES: This rule is effective January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Jay Calhoun, NPS Division of Jurisdiction, Regulations, and Special Park Uses, (202) 513–7112, *john_calhoun@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1980, the National Park Service (NPS) promulgated regulations at 36 CFR part 14 that provide a process for the review, consideration, and approval or disapproval of requests for rights-of-way across all areas of the National Park System. 45 FR 47092. Section 14.78 describes the process for filing applications for rights-of-way for power transmission lines. Paragraph (b)(6)(i) of this section requires that the applicant include a detailed description of the environmental impact of the project that provides information about the impact of the project on airspace, air and water quality, scenic and aesthetic features, historical and archeological features, and wildlife, fish, and marine life. Paragraph (b)(6)(ii) requires that the proposed site, design, and construction of the project be consistent with a document entitled the ''Environmental Criteria for Electric Transmission Lines.'' This document was published by the Department of the Interior and the Department of Agriculture in 1970 and revised in 1979. This document is no longer available and no longer used by the NPS to evaluate applications for right-of-way permits for power transmission lines.

This rule removes paragraph (b)(6)(ii) from § 14.78 because the reference to the environmental criteria document is obsolete and outdated. The NPS will continue to evaluate applications for rights-of-way for power transmission lines in accordance the other provisions in subpart F of 36 CFR part 14. This rule also updates the authority line for 36 CFR part 14 to reflect the 2014 recodification of former 16 U.S.C. 5 and 79 into 54 U.S.C. 100902.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is an E.O. 13771 deregulatory action because it will have costs less than zero. This rule will remove an outdated requirement. This will reduce the potential for confusion and may result in a more efficient application process for those applying for rights of way for power transmission lines across NPS-administered lands. This rule meets the goals of E.O. 13771 because the regulatory requirement

being removed is outdated and unnecessary.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

(a) Does not have an annual effect on the economy of $100 million or more;

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

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

Administrative Procedure Act (Notice of Proposed Rulemaking)

We recognize that under 5 U.S.C. 553(b) and (c) notice of proposed rules ordinarily must be published in the **Federal Register** and the agency must give interested parties an opportunity to submit their views and comments. We have determined under 5 U.S.C. 553(b) and 318 DM HB 5.3, however, that notice and public comment for this rule are not required. We find good cause to treat notice and comment as unnecessary. As discussed above, the document entitled ''Environmental Criteria for Electric Transmission Lines'' is no longer used by the NPS to evaluate applications for right-of-way permits for power transmission lines. The current reference in 36 CFR 14.78(b)(6)(ii) is potentially confusing for right-of-way applicants and its removal will simply reflect how the NPS currently processes applications. This correction will not benefit from public comment, and further delaying it is contrary to the public interest.

We also recognize that rules ordinarily do not become effective until at least 30 days after their publication in the **Federal Register**. We have determined, however, that good cause exists for all the rule to be effective immediately upon publication for the reasons stated above.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined it has no substantial direct effects on federally recognized Indian tribes and consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This rule does not contain new collections of information that require approval by the Office of Management and Budget under the PRA. The rule does not impose new recordkeeping or reporting requirements on State, tribal, or local governments; individuals; businesses; or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects in not required.

Drafting Information: The primary author of this regulation was Jay Calhoun, Regulations Program Specialist, National Park Service.

List of Subjects in 36 CFR Part 14

Electric power, Highways and roads, Public lands-rights-of-way.

In consideration of the foregoing, the National Park Service amends 36 CFR part 14 as follows:

PART 14—RIGHTS-OF-WAY

■ 1. The authority citation for part 14 is revised to read as follows:

Authority: 54 U.S.C. 100902; 23 U.S.C. 317.

§ 14.78 [Amended]

■ 2. In § 14.78, remove and reserve paragraph (b)(6)(ii).

Jason Larrabee,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, exercising the authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2018–00516 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–EJ–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017–8]

Secure Tests: Extension of Comment Period

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Interim rule with request for comments; extension of comment period.

SUMMARY: The U.S. Copyright Office is further extending the deadline for the submission of written comments in response to its June 12, 2017 and November 13, 2017 interim rules, regarding changes to the special procedure for examining secure tests, and the creation of a new group registration option for secure tests, respectively.

DATES: The comment period for the interim rules, published on June 12, 2017 (82 FR 26850), and November 13, 2017 (82 FR 52224), is extended by an additional sixty days. Comments must be made in writing and must be received in the U.S. Copyright Office no later than April 2, 2018.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/securetests/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office for special instructions using the contact information below.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Sarang Vijay Damle, General Counsel and Associate Register of Copyrights; Erik Bertin, Deputy Director of Registration Policy and Practice; or Kevin R. Amer, Senior Counsel for Policy and International Affairs, by telephone at 202–707–8040 or by email at *rkas@loc.gov, sdam@loc.gov, ebertin@loc.gov,* and *kamer@loc.gov.*

SUPPLEMENTARY INFORMATION: On June 12, 2017, the U.S. Copyright Office issued an interim rule memorializing its special procedures for examining secure texts.[1] On November 13, 2017, the Office issued an additional interim rule establishing a new group registration option for secure test questions.[2] The Office invited public comment on each of these interim rules, and previously extended its initial deadline for the submission of written comments.[3] To ensure that members of the public have sufficient time to respond, and to ensure that the Office has the benefit of a complete record, the Office is further extending the submission deadline by an additional sixty days. Written comments now are due no later than April 2, 2018.

Dated: January 9, 2018.

Sarang V. Damle,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2018–00549 Filed 1–12–18; 8:45 am]

BILLING CODE 1410–30–P

[1] 82 FR 26850 (June 12, 2017).

[2] 82 FR 52224 (Nov. 13, 2017).

[3] 82 FR 56890 (Dec. 1, 2017).

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

National Endowment for the Arts

45 CFR Parts 1149 and 1158

RIN 3135–AA33

Civil Penalties Adjustment for 2018

AGENCY: National Endowment for the Arts, National Foundation for the Arts and Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is adjusting the maximum civil monetary penalties (CMPs) that may be imposed for violations of the Program Fraud Civil Remedies Act (PFCRA) and the NEA's Restrictions on Lobbying to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. This final rule provides the 2018 annual inflation adjustments to the initial ''catch-up'' adjustments made on June 15, 2017.

DATES: *Effective date:* This rule is effective January 15, 2018. *Applicability date:* The adjusted civil monetary penalties established by this rule are applicable only to civil penalties assessed after January 15, 2018.

FOR FURTHER INFORMATION CONTACT: Aswathi Zachariah, Assistant General Counsel, National Endowment for the Arts, 400 7th St., SW, Washington, DC 20506, Telephone: 202–682–5418.

SUPPLEMENTARY INFORMATION:

1. Background

On December 12, 2017 the NEA issued a final rule entitled ''Federal Civil Penalties Adjustments'' which finalized the NEA's June 15, 2017 interim final rule entitled ''Implementing the Federal Civil Penalties Adjustment Act Improvements Act'', implementing the 2015 Act (section 701 of Pub. L. 114–74), which amended the Inflation Adjustment Act (28 U.S.C. 2461 note) requiring catch-up and annual adjustments to the NEA's CMPs. The 2015 Act requires agencies make annual adjustments to its CMPs for inflation.

A CMP is defined in the Inflation Adjustment Act as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

These annual inflation adjustments are based on the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, relative to the October CPI–U in the year of the previous adjustment. The formula for the amount of a CMP inflation adjustment is prescribed by law, as explained in OMB Memorandum M–16–06 (February 24, 2016), and therefore the amount of the adjustment is not subject to the exercise of discretion by the Chairman of the National Endowment for the Arts (Chairman).

The Office of Management and Budget has issued guidance on implementing and calculating the 2018 adjustment under the 2015 Act.[1] Per this guidance, the CPI–U adjustment multiplier for this annual adjustment in 1.02041. In its prior rules, the NEA identified two civil penalties which require adjustment: The penalty for false statements under the PFCRA and the penalty for violations of the NEA's Restrictions on Lobbying. The NEA adjusts the amount of those CMPs amount accordingly.

2. Effective Dates

The inflation adjustments contained in this rule shall apply to any violations assessed after January 15, 2018, the effective date of this rule.

3. Adjustments

Two civil penalties in NEA regulations require adjustment in accordance with the 2015 Act: (1) The penalty associated with Restrictions on Lobbying (45 CFR 1158.400; 45 CFR part 1158, app. A) and (2) the penalty associated with the Program Fraud Civil Remedies Act (45 CFR 1149.9).

[1] OMB Memorandum M–18–03 (December 15, 2017).

A. Adjustments to Penalties Under the NEA's Program Fraud Civil Remedies Act Regulations

The current penalty under the PFCRA for false claims and statements is currently set at $10,957. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to the nearest dollar. Between October 2016 and October 2017, the CPI–U increased by 102.041 percent. Therefore, the new post-adjustment maximum penalty under the PFCRA for false statements is $10,957 × 1.02041 = $11,180.63, which rounds to $11,180. Therefore, the maximum penalty under the PFCRA for false claims and statements will be $11,180.

B. Adjustments to Penalties Under the NEA's Restrictions on Lobbying Regulations

The penalty for violations of the Restrictions on Lobbying is currently set at a range of a minimum of $19,246 and a maximum of $192,459. The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the percent change in the CPI–U over the relevant time period and rounding to the nearest dollar. Between October 2016 and October 2017, the CPI–U increased by 102.041 percent. Therefore, the new post-adjustment minimum penalty under the Restrictions on Lobbying is $19,246 × 1.02041 = $19,638.81, which rounds to $19,639, and the maximum penalty under the Restrictions on Lobbying is $192,459 × 1.02041 = $196,387.09, which rounds to $196,387. Therefore, range of penalties under the law on the Restrictions on Lobbying shall be between $19,639 and $196,387.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act requires agencies to provide an opportunity for notice and comment on rulemaking and also requires agencies to delay a rule's effective date for 30 days following the date of publication in the **Federal Register** unless an agency finds good cause to forgo these requirements. However, section 4(b)(2) of the 2015 Act requires agencies to adjust civil monetary penalties notwithstanding section 553 of the Administrative Procedure Act (APA) and publish annual inflation adjustments in the **Federal Register**. ''This means that the public procedure the APA generally requires . . . is not required for agencies to issue regulations implementing the annual adjustment.'' OMB Memorandum M–18–03.

Even if the 2015 Act did not except this rulemaking from section 553 of the APA, the NEA has good cause to dispense with notice and comment. Section 553(b)(B), authorizes agencies to dispense with notice and comment procedures for rulemaking if the agency finds good cause that notice and comment are impracticable, unnecessary, or contrary to public interest. The annual adjustments to civil penalties for inflation and the method of calculating those adjustments are established by section 5 of the FCPIAA, as amended, leaving no discretion for the NEA. Accordingly, public comment would be impracticable because the NEA would be unable to consider such comments in the rulemaking process.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only ''significant'' proposed and final rules are subject to review under this Executive Order. ''Significant,'' as used in E.O. 12866, means ''economically significant.'' It refers to rules with (1) an impact on the economy of $100 million; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change and OMB has not reviewed this final rule under E.O. 12866. The NEA has made the assessments required by E.O. 12866 and determined that this rule: (1) Will not have an effect of $100 million or more on the economy; (2) will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (5) does not raise novel legal or policy issues.

Executive Order 13771

Executive Order 13771 section 5 requires that agencies, in most circumstances, remove or rescind two regulations for every regulatory action (such as the promulgation of regulations) unless they request and are specifically exempted from that order's requirements by the Director of the Office of Management and Budget (the Director).

This rule is not subject to the requirements of Executive Order 13771 because this rule is not significant under Executive Order 12866. Per OMB guidance, annual inflation adjustments ''are not significant regulatory actions under E.O. 12866, they are not considered E.O. 13771 regulatory actions.'' [2] Furthermore, the NEA has requested and has received an exemption from the requirement that the agency rescind two regulations for every regulation it promulgate from the Director.

Federalism (Executive Order 13132)

This rule does not have Federalism implications, as set forth in E.O. 13132. As used in this order, Federalism implications mean ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The NEA has determined that this rulemaking will not have Federalism implications within the meaning of E.O. 13132.

Civil Justice Reform (Executive Order 12988)

This Directive meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Indian Tribal Governments (Executive Order 13175)

Under the criteria in E.O. 13175, the NEA has evaluated this final rule and determined that it would have no potential effects on Federally recognized Indian Tribes.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

[2] *Id.*

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This rulemaking will not impose any ''information collection'' requirements under the Paperwork Reduction Act. Under the act, information collection means the obtaining or disclosure of facts or opinions by or for an agency by 10 or more nonfederal persons.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104–4)

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

The final rule will not have significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996 (Sec. 804, Pub. L. 104–121)

This final rule would not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible website. All information about the NEA required to be published in the **Federal Register** may be accessed at *www.arts.gov.* This Act also requires agencies to accept public comments on their rules ''by electronic means.'' See heading ''Public Participation'' for directions on electronic submission of public comments on this final rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The website *https://www.regulations.gov* contains electronic dockets for the NEA's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term ''plain writing'' means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this rule has been written in plain and clear language so that it can be used and understood by the public, the NEA has modeled the language of this rule on the Federal Plain Language Guidelines.

Public Participation

The NEA encourages public participation by ensuring its documentation is understandable by the general public, and has written this final rule in compliance with E.O. 13563 by ensuring its accessibility, consistency, simplicity of language, and overall comprehensibility.

List of Subjects in 45 CFR Parts 1149 and 1158

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Lobbying, Penalties.

For the reasons stated in the preamble, the NEA amends 45 CFR chapter XI, subchapter B, as follows:

PART 1149—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 1. The authority citation for part 1149 continues to read as follows:

Authority: 5 U.S.C. App. 8G(a)(2); 20 U.S.C. 959; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

■ 2. Revise § 1149.9(a)(1) to read as follows:

§ 1149.9 What civil penalties and assessments may I be subjected to?

(a) * * *

(1) A civil penalty of not more than $10,957 for each false, fictitious or fraudulent statement or claim; and

* * * * *

PART 1158—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1158 continues to read as follows:

Authority: 20 U.S.C. 959; 28 U.S.C. 2461; 31 U.S.C. 1352.

■ 4. Revise § 1158.400(a), (b), and (e) to read as follows:

§ 1158.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $19,639 and not more than $196,387 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B of this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $19,639 and not more than $196,387 for each such failure.

* * * * *

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of $19,639, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $19,639 and $196,387, as determined by the agency head or his or her designee.

* * * * *

Appendix A to Part 1158 [Amended]

■ 5. Amend appendix A to part 1158 by:

■ a. Removing ''$19,246'' and adding in its place ''$19,639'' each place it appears.

■ b. Removing ''$192,459'' and adding in its place ''$196,387'' each place it appears.

Dated: January 9, 2018.

Jillian Miller,

Director of Guidelines and Panel Operations, Administrative Services, National Endowment for the Arts.

[FR Doc. 2018–00537 Filed 1–12–18; 8:45 am]

BILLING CODE P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1230 and 2554

RIN 3045–AA68

Annual Civil Monetary Penalties Inflation Adjustment

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule.

SUMMARY: The Corporation for National and Community Service (CNCS) is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective date:* This rule is effective January 15, 2018.

Comment due date: Technical comments may be submitted until February 15, 2018.

ADDRESSES: You may send your comments electronically through the Federal government's one-stop rulemaking website at *www.regulations.gov.* Also, you may mail or deliver your comments to Stephanie Soper, Law Office Manager, Office of General Counsel, at the Corporation for National and Community Service, 250 E Street SW, Washington, DC 20525. Due to continued delays in CNCS's receipt of mail, we strongly encourage comments to be submitted online electronically. The TDD/TTY number is 800 833–3722. You may request this notice in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: Stephanie Soper, Law Office Manager, Office of General Counsel, at 202–606–6747 or email to *ssoper@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation for National and Community Service (CNCS) is a federal agency that engages more than five million Americans in service through its AmeriCorps, Senior Corps, and Volunteer Generation Fund programs to further its mission to improve lives, strengthen communities, and foster civic engagement through service and volunteering. For more information, visit *NationalService.gov.*

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the ''Act''), which is intended to improve the effectiveness of civil monetary penalties and to maintain the deterrent effect of such penalties, requires agencies to adjust the civil monetary penalties for inflation annually.

II. Method of Calculation

CNCS has two civil monetary penalties in its regulations. A civil monetary penalty under the Act is a penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law and is assessed or enforced by an agency pursuant to Federal law and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. (*See* 28 U.S.C. 2461 note).

The inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the year in which the amount of each civil money penalty was most recently established or modified. In the December 15, 2017, OMB Memo for the Heads of Executive Agencies and Departments, M–18–03, *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,* OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2018, based on the CPI–U for the month of October 2017, not seasonally adjusted, is 1.02041.

CNCS identified two civil penalties in its regulations: (1) The penalty associated with Restrictions on Lobbying (45 CFR 1230.400) and (2) the penalty associated with the Program Fraud Civil Remedies Act (45 CFR 2554.1).

The civil monetary penalties related to Restrictions on Lobbying (Section 319, Pub. L. 101–121; 31 U.S.C. 1352) range from $19,246 to $192,459. Using the 2018 multiplier, the new range of possible civil monetary penalties is from $19,639 to $196,387.

The Program Fraud Civil Remedies Act of 1986 (Pub. L. 99–509) civil monetary penalty has an upper limit of $10,957. Using the 2018 multiplier, the new upper limit of the civil monetary penalty is $11,181.

III. Summary of Final Rule

This final rule adjusts the civil monetary penalty amounts related to Restrictions on Lobbying (45 CFR 1230.400) and the Program Fraud Civil Remedies Act of 1986 (45 CFR 2554.1). The range of civil monetary penalties related to Restrictions on Lobbying increase from ''$19,246 to $192,459'' to ''$19,639 to $196,387.'' The civil monetary penalties for the Program Fraud Civil Remedies Act of 1986 increase from ''up to $10,957'' to ''up to $11,181.''

IV. Regulatory Procedures

A. Determination of Good Cause for Publication Without Notice and Comment

CNCS finds, under 5 U.S.C. 553(b)(3)(B), that there is good cause to except this rule from the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b). Because CNCS is implementing a final rule pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires CNCS to update its regulations based on a prescribed formula, CNCS has no discretion in the nature or amount of the change to the civil monetary penalties. Therefore, notice and comment for these proscribed updates is impracticable and unnecessary. As an interim final rule, no further regulatory action is required for the issuance of this legally binding rule. If you would like to provide technical comments, however, they may be submitted until February 15, 2018.

B. Review Under Procedural Statutes and Executive Orders

CNCS has determined that making technical changes to the amount of civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive Orders that govern rulemaking procedures.

V. Effective Date

This rule is effective January 15, 2018. The adjusted civil penalty amounts apply to civil penalties assessed on or after January 15, 2018, when the violation occurred after November 2, 2015. If the violation occurred prior to November 2, 2015, or a penalty was assessed prior to August 1, 2016, the pre-adjustment civil penalty amounts in effect prior to August 1, 2106, will apply.

List of Subjects

45 CFR Part 1230

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 2554

Claims, Fraud, Organization and functions (Government agencies), Penalties.

For the reasons discussed in the preamble, under the authority of 42 U.S.C. 12651c(c), the Corporation for National and Community Service amends chapters XII and XXV, title 45 of the Code of Federal Regulations as follows:

PART 1230—NEW RESTRICTIONS ON LOBBYING

■ 1. The authority citation for part 1230 continues to read as follows:

Authority: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 93–113; 42 U.S.C. 4951, *et seq.;* 42 U.S.C. 5060.

§ 1230.400 [Amended]

■ 2. Amend § 1230.400 by:
■ a. In paragraphs (a), (b), and (e), removing ''$19,246'' and adding in its place ''$19,639'' each place it appears.
■ b. In paragraphs (a), (b), and (e), removing ''$192,459'' and adding in its place ''$196,387'' each place it appears.

Appendix A to Part 1230 [Amended]

■ 3. Amend appendix A to part 1230 by:
■ a. Removing ''$19,246'' and adding in its place ''$19,639'' each place it appears.
■ b. Removing ''$192,459'' and adding in its place ''$196,387'' each place it appears.

PART 2554—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 4. The authority citation for part 2554 continues to read as follows:

Authority: Pub. L. 99–509, Secs. 6101–6104, 100 Stat. 1874 (31 U.S.C. 3801–3812); 42 U.S.C. 12651c–12651d.

§ 2554.1 [Amended]

■ 5. Amend § 2554.1 by removing ''$10,957'' in paragraph (b) and adding in its place ''$11,181.''

Dated: January 5, 2018.

Tim Noelker,

General Counsel.

[FR Doc. 2018–00558 Filed 1–12–18; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17–287, 11–42, 09–197; FCC 17–155]

Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes a fresh look at the Commission's Lifeline program and makes changes to the Lifeline rules to ensure that the program can more effectively and efficiently help close the digital divide for low-income consumers, while minimizing the contributions burden on ratepayers by tackling waste, fraud, and abuse.

DATES: Effective February 15, 2018, except for § 54.411, which will become effective March 19, 2018, and §§ 54.403(a)(3), 54.413, and 54.414 which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of those rules awaiting OMB approval.

FOR FURTHER INFORMATION CONTACT: Jodie Griffin, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order in WC Docket Nos. 17–287, 11–42, 09–197; FCC 17–155, adopted on November 16, 2017 and released on December 1, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1201/FCC-17-155A1.pdf.* The Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) that was adopted concurrently with the Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order are published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. This Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order takes a series of steps to address ongoing areas of concern in the Lifeline program to prevent waste, fraud, and abuse. Specifically, the Orders target enhanced Lifeline support to residents of rural areas on Tribal lands, establish mapping resources to identify rural Tribal lands, require independent certification of residency on rural Tribal lands, and direct enhanced support to facilities-based providers. In addition, this document makes changes to increase Lifeline benefit portability by eliminating the port freezes for voice and broadband internet access services. This document also clarifies that ''premium Wi-Fi'' and other similar networks of Wi-Fi-delivered broadband internet access service do not qualify as mobile broadband under the Lifeline program rules. Together, the Orders target enhanced Lifeline support for Tribal lands to support the deployment of modern communications networks, promote consumer choice within the program, and remove uncertainty and streamline our rules regarding the application of Lifeline support and eligibility for Lifeline reimbursement.

II. Fourth Report and Order

2. In this Fourth Report and Order, the Commission adopts several reforms to our Tribal Lifeline policies to increase the availability and affordability of high-quality communications services on Tribal lands. The Commission first targets enhanced Lifeline support on Tribal lands to residents of rural areas on Tribal lands. Since 2000, the Lifeline and Link Up programs have provided an enhanced subsidy of up to an additional $25 per month for service provided to qualified residents of Tribal lands, and a Link Up reduction of up to $100 for the cost to initiate supported service for qualifying residents of Tribal lands. This targeted support is in recognition of not only the low income levels but also the particularly poor connectivity on many Tribal lands. When it adopted the enhanced Lifeline Tribal subsidy, the Commission noted that the ''unavailability or unaffordability of telecommunications service on Tribal lands is at odds with our statutory goal of ensuring access to such services to '[c]onsumers in all regions of the Nation, including low-income consumers,''' and explained that the added Lifeline and Link Up support would help lead to the deployment of more robust networks. While the Commission provided the enhanced support as a discount on services, that support was focused to most efficiently encourage ''investment and deployment'' in facilities, especially since all Lifeline providers in the program at the time were facilities-based. Because of an overly-broad definition of the geographic areas eligible for the enhanced subsidy, however, many areas where this enhanced subsidy is currently available are *not* lacking in either voice or broadband networks. To remedy this, the Commission refines its approach to target enhanced Lifeline support to residents of rural areas on Tribal lands. Focusing the enhanced subsidy for Tribal lands on rural areas is consistent with the enhanced subsidy's purpose and will ensure that the Fund is better directed toward the residents of Tribal lands who typically have the least choice for communications services.

3. The Commission believes that targeting enhanced support toward rural, facilities-based providers is consistent with the intent of the *2000 Tribal Order,* 65 FR 47883, August 4, 2000. While the *2000 Tribal Order* referenced reducing the costs of

telecommunications services, it specifically premised the support on the idea that enhanced support would incentivize providers to ''deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable.'' The Commission's creation of an enhanced Lifeline benefit in the *2000 Tribal Order* both reduced telecommunications costs *and* supported the deployment of networks because, at the time, all ETCs were facilities-based. (The Commission did not forbear from the Act's facilities-based requirements at all until 2005.) While the Commission must consider and address appropriate distinctions between support for facilities-based and non-facilities-based providers, the Commission does so in a way that continues to follow the principles identified in the *2000 Tribal Order* and Sections 214 and 254 of the Act. (*See* U.S.C. 214(e) and 254(b)(3).)

4. To identify rural areas on Tribal lands, the Commission adopts the definition of ''rural'' used in the E-rate program rules, which define ''urban'' as ''an urbanized area or urban cluster area with a population equal to or greater than 25,000.'' The Commission defines all other areas as ''rural.'' (47 CFR 54.505(b)(3).) In the *2015 Lifeline FNPRM,* 80 FR 42669, July 17, 2015, the Commission asked for comment on ''what level of density'' and at ''what level of geographic granularity'' it should define such rural areas. Shortly thereafter, the Commission began consultations with Tribal Nations regarding the Lifeline proposals that the Commission sought comment on in the *2015 Lifeline FNPRM.* After consideration of the comments, including comments by numerous Tribal stakeholders, and evaluation of the practicality of implementation, the Commission believes this definition will reasonably identify the Tribal areas the Commission intends to benefit from additional Lifeline funding. Accordingly, the Commission amends §§ 54.403(a)(3), 54.413, and 54.414 of the Lifeline program rules and directs the Universal Service Administrative Company (USAC) to develop a tool that will allow Lifeline service providers to determine whether a subscriber residing on Tribal lands resides in a rural area according to this definition. USAC shall update this tool pursuant to the same update schedule used for the E-rate rurality tool.

5. Selection of the E-rate program's ''rural'' definition is based on consideration of the record and matters of administrative efficiency. In the *2015 Lifeline FNPRM,* the Commission sought comment on focusing enhanced support to those Tribal lands with lower population densities. Specifically, the Commission sought comment on ''focus[ing] enhanced support only on areas of low population density that are likely to lack the facilities necessary to serve subscribers.'' The Commission also sought comment on the approach taken by the United States Department of Agriculture's Food Distribution Program on Indian Reservations (FDPIR), which excludes from eligibility residents of towns or cities in Oklahoma with populations of 10,000 or more, and sought comment on whether the Commission ''should implement a similar approach that excludes urban areas on Tribal lands from receiving enhanced Tribal support.'' Some commenters expressed concerns with a population density approach, but provided alternative density-based proposals ranging from limiting enhanced support to areas with fewer than 10,000 people and a county population density of less than 125 people per square mile, (Navajo Nation Telecommunications Regulatory Commission Comments at 12–13.) or ''only to Tribal lands that are located outside of a Metropolitan Statistical Area and that have less than 100 persons per square mile.'' (Smith Bagley Inc., Comments at 16) These proposals are more restrictive than the E-rate program's definition of rural. Other commenters opposed limiting the enhanced Tribal subsidy based on population density. The Commission disagrees with those commenters because their path would preserve the status quo of providing enhanced support to Lifeline subscribers on Tribal lands in densely populated areas where service providers already have sufficient incentive to deploy broadband facilities as in non-Tribal areas.

6. The Commission agrees that focusing enhanced support on less-dense areas will improve the Tribal support mechanism and better serve the goals of enhanced Tribal Lifeline support to incent deployment in areas that need it most and to increase the affordability of Lifeline services for Tribal lands residents. Based on the record, however, the Commission declines to adopt a population-density threshold to identify the Tribal areas that are eligible for enhanced Tribal support. Instead, the Commission takes an approach similar to the approach used by the FDPIR and use the E-rate program definition of ''rural'' to identify Tribal areas that are eligible for enhanced Lifeline support. This approach provides consistency between the E-rate and Lifeline programs. In addition, the Commission's definition of ''rural'' in the E-rate program serves the goals of enhanced Tribal Lifeline support by focusing enhanced support where communications services are more costly. As explained in the *2014 E-rate Order,* 80 FR 5961, February 4, 2015, the Commission adopted the current E-rate program definition of ''rural'' after numerous parties demonstrated that a narrower definition would result in an urban classification for numerous schools and libraries in small towns and remote areas where E-rate supported services are more costly. Using the E-rate definition of ''rural'' to identify Tribal areas that are eligible for enhanced support would ensure that the enhanced support is available for Tribal lands in these small towns and remote areas where supported services are more costly. Further, the E-rate definition of ''rural'' is less restrictive than the alternative population density-based methodologies proposed by Smith Bagley and the Navajo Nation Telecommunications Regulatory Commission.

7. The Commission also concludes that identifying less-dense areas by using the same definition of ''rural'' as the E-rate program (which was adopted in December 2014 and implemented for E-rate Funding Year 2015) will allow for more accurate, efficient administration by USAC. The Commission expects that consistency between the two USF programs will simplify the urban/rural determinations for carriers and eligible households. Specifically, standard program definitions of rurality would allow USAC to develop master data sources and simplify the development and updating of service provider tools for identifying addresses that qualify for enhanced support. The Commission therefore declines to adopt commenters' proposals to create an entirely new definition of rurality based directly on the number of persons per square mile in a particular geographic area. Those proposals would create unnecessary administrative difficulties and uncertainty for Lifeline providers, which the Commission believes would in turn create confusion and fewer choices for eligible low-income consumers.

8. The Commission also concludes that the provision of enhanced support in more densely populated Tribal lands, such as large cities (*e.g.,* Tulsa, Oklahoma or Reno, Nevada), is inconsistent with the Commission's primary purpose of the enhanced support. (Despite being ''The Biggest Little City in the World,'' Reno, NV has a population of 446,154 and, according to Form 477 data, 97.5% percent of the

population in its county have access to fixed broadband speeds of at least 25 Mbps/3 Mbps. Tulsa, OK has a population of 637,215 and 100% percent of the population in its county has access to fixed broadband speeds of at least 25 Mbps/3 Mbps. *See* Fixed Broadband Deployment Data, Deployment (last visited Oct. 24, 2017), *https://www.fcc.gov/maps/fixed-broadband-deployment-data/.*) When the Commission first adopted enhanced support on Tribal lands, it noted that ''unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve Tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses.'' That remains too true today. Approximately 98 percent of Americans in urban areas already have access to fixed broadband internet access service at speeds of 25 Mbps/3 Mbps, including residents of both Tulsa and Reno. (*See* Fixed Broadband Deployment Data, Deployment (last visited Oct. 24, 2017), *https://www.fcc.gov/maps/fixed-broadband-deployment-data/.*) Directing enhanced support to Tribal lands in urban areas is unlikely to materially increase the deployment of facilities in such areas and, therefore, risks wasting scarce program resources. In contrast, rural Americans, particularly those residing on Tribal lands, are much less likely to have access to high-speed internet access services, with Commission data showing that 63 percent of Americans living on rural, Tribal lands lack access to fixed broadband services at speeds of 25 Mbps/3 Mbps, making enhanced support more likely to incentivize deployment to serve low-income, rural residents on Tribal lands. (*See* Fixed Broadband Deployment Data, Deployment (last visited Oct. 24, 2017), *https://www.fcc.gov/maps/fixed-broadband-deployment-data/.*) This policy supports our view that enhanced Tribal support should be targeted to rural areas where the need is greatest.

9. The Commission next identifies mapping resources that can be used to locate ''Tribal lands'' under our rules. These maps can then be intersected with the maps delineating rural areas in order to create a map showing where enhanced Tribal lands Lifeline support is available. The Commission directs USAC to make these mapping resources available to providers.

10. Section 54.400(e) of our rules defines Tribal lands to include any federally recognized Indian tribe's reservation, pueblo, or colony (including former reservations in Oklahoma); Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act; Indian allotments; Hawaiian Home Lands held in trust for Native Hawaiians pursuant to the Hawaiian Homes Commission Act; and ''. . . any land designated as such by the Commission for purposes of this subpart.'' Before 2015, the Commission had not established any mapping resources to provide ready access to the boundaries of these Tribal lands.

11. The geographic areas described in § 54.400(e) of the Lifeline program rules correspond with the map of Hawaiian Home Lands maintained by the Department of Hawaiian Home Lands (DHHL), the U.S. Census Bureau's American Indians and Alaska Natives Map, the Oklahoma Historical Map 1870–1890, as amended by the Commission to include the Cherokee Outlet, and the Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act. (*See* 85 Stat. 688.)

12. To assist carriers and subscribers, the Commission identifies specific maps of these Tribal lands. In the *2015 Lifeline FNPRM,* the Commission interpreted the term ''former reservations in Oklahoma'' to establish boundaries for Tribal lands in the Lifeline program for residents in Oklahoma. The Commission and USAC later provided a map and shapefile for carriers to use in determining whether their customers reside on Tribal lands in Oklahoma. The Commission believes making this map available has successfully given clarity to providers and subscribers about the boundaries of Tribal lands in Oklahoma. The Commission thus believes providing additional maps and data, including in shapefile format, is appropriate for the other Tribal lands listed in § 54.400(e) of the Commission's rules. By providing carriers the information they need to quickly and accurately determine if an enrolling customer qualifies for enhanced support under the Lifeline rules, these maps and data will help prevent waste, fraud, and abuse in the program. These maps and data will also help Lifeline providers avoid situations in which the provider improperly requests enhanced Tribal support for customers who self-certified their Tribal residence but did not actually reside on Tribal lands.

13. The Hawaiian Homes Commission Act of 1921 (42 Stat. 108.) delineated the boundaries of ''Hawaiian Home Lands'' and tasked the DHHL with maintaining those boundaries, along with the responsibility of promulgating rules under that Act. As part of its responsibilities, the DHHL makes available a map and shapefile that precisely defines the geographic areas within the state of Hawaii considered ''Hawaiian Home Lands.'' Using this map will assist both Lifeline providers and consumers. Likewise, the Census Bureau maintains a map of every ''federally recognized Indian tribe's reservation, pueblo, or colony,'' called the American Indian and Alaska Native Areas Map. (*See* 47 CFR 54.400(e).) This map, and its accompanying shapefile, comports with the data sources the Commission uses regularly and will also provide clear guidance for Lifeline providers and consumers.

14. In light of these identified mapping resources, as well as the expected need for a reasonable transition period, the Commission directs USAC to prepare a map and the corresponding shapefiles to delineate the areas on which subscribers may receive enhanced Lifeline support for rural Tribal lands. USAC shall make this map and data available at least sixty (60) days before the effective date of this Order's rule changes for enhanced Lifeline support on Tribal lands. If, in the future, any of the sources identified in this section issue updated maps or shapefiles, the Commission directs USAC to make an updated map and the underlying data available within a reasonable time period but no later than ninety (90) days after the updated map or shapefile is issued.

15. The Commission also directs USAC to incorporate the map discussed above in its administration and implementation of the National Lifeline Accountability Database (NLAD) and National Eligibility Verifier (NV).

16. In the *2015 Lifeline FNPRM,* the Commission sought comment on requiring additional evidence of Tribal residency beyond the current self-certification requirement and placing the obligation to confirm Tribal residency with the Lifeline provider. To see that enhanced Lifeline support for rural Tribal lands is actually directed to subscribers who verifiably reside on Tribal lands, the Commission now establishes that only subscribers whose residential address or location is shown to fall within the boundary of the enhanced Tribal Lifeline map discussed above may receive enhanced support. Previously, the Commission had permitted providers to accept subscribers' self-certifications that they reside on Tribal lands according to the Commission's Lifeline rules, which made the program vulnerable to fraud and abuse and resulted in a $2 million settlement with one provider for claiming enhanced Tribal support for

subscribers who did not reside on Tribal lands. The Commission finds that the provision of maps delineating the boundaries of areas eligible for enhanced Tribal Lifeline support will give consumers and providers a more effective and simpler means of determining rural Tribal residency, thereby eliminating the need for reliance on self-certification. Accordingly, going forward, Lifeline providers will be required to independently verify and document subscribers' rural Tribal residency according to the map and data sources identified above. An ETC may seek enhanced reimbursement only for subscribers whose residential address is located within the bounds of that map.

17. In response to the *2015 Lifeline FNPRM,* some commenters urged the Commission to continue to permit consumers to self-certify their residence on Tribal lands. Commenters supporting this approach argue that there is no evidence of abuse of the self-certification mechanism, and eliminating self-certification would only increase subscriber costs. However, the Commission has recently found concrete evidence of abuse of the self-certification mechanism, resulting in improper payments that had to be reclaimed through an enforcement proceeding. (*See Blue Jay Wireless, LLC, Order,* 31 FCC Rcd 7603 (EB 2016).) In that instance, a Lifeline provider relied on subscriber self-certifications to improperly enroll several thousand customers as residents of Tribal lands, and continued to do so even after being informed that it was apparently over-claiming enhanced Tribal support. The Commission also finds that providing a map against which providers can verify eligibility for enhanced Tribal support provides greater certainty to providers and consumers alike, and thus eliminates questions about how to handle a consumer's self-certification if that consumer seems to reside outside Tribal lands.

18. The Commission concludes that a process by which providers determine enhanced eligibility by comparing the subscriber's residential address to data sources delineating rural Tribal lands is a more accurate method of verifying that a subscriber is entitled to enhanced Tribal reimbursement. If a subscriber does not reside within the bounds of the map that the Commission now provides, permitting that subscriber to receive reimbursement by simply certifying that she or he lives on Tribal lands leaves the program open to improper payments, waste, and possibly fraud and abuse.

19. The Commission is also sensitive to Tribal residences that have not been assigned conventional addresses and instead use descriptive addresses that are not recognized by the U.S. Postal Service. For those residences, a Lifeline subscriber may provide a descriptive address when enrolling in the program. A provider enrolling a subscriber with a descriptive residential address in a state where the National Verifier is not responsible for eligibility determinations must retain records documenting compliance with the program rules, including the rules the Commission amends in this Order limiting enhanced Lifeline support to rural Tribal lands and removing subscriber self-certification of Tribal lands residency. Accordingly, the Commission reminds providers that they must retain the documentation demonstrating how the provider determined that a subscriber with a descriptive address resides on rural Tribal lands to claim the enhanced Tribal Lifeline support. For example, as providers do today to verify the accuracy of consumers' self-certification, providers may note if a subscriber has a ZIP code that is entirely located in an area eligible for enhanced support, or may record the latitude and longitude of the subscriber's residence to compare against a map identifying areas eligible for enhanced support. The Commission directs USAC to develop a process for subscribers with descriptive addresses who reside on Tribal lands for use in the National Verifier, and to make public the steps in that process to better inform providers about acceptable methods of determining whether such subscribers are eligible for enhanced support.

20. In the *2015 Lifeline FNPRM,* the Commission sought comment on limiting enhanced Tribal Lifeline support to facilities-based service providers, just as the Commission in 2012 had limited enhanced Tribal Link Up support to facilities-based service providers that also received high-cost support. The Commission now concludes that such a limitation is appropriate. Accordingly, the Commission amends § 54.403(a)(3) of the Lifeline program rules to effectuate this change.

21. The Commission finds that last-mile facilities are critical to deploying, maintaining, and building voice- and broadband-capable networks on Tribal lands and Lifeline funds are more efficiently spent when supporting such networks. When the Lifeline discount is applied to a consumer's bill for a facilities-based service, those funds go directly toward the cost of providing that service, including provisioning, maintaining, and upgrading that provider's facilities. Since the introduction of enhanced Tribal and Link Up support in 2000, facilities-based providers have used that support to construct and upgrade networks on Tribal lands.

22. In contrast, Lifeline funds disbursed to non-facilities-based providers will still lower the cost of the consumer's service, but cannot directly support the provider's network because the provider does not have one. When the Commission eliminated Link Up support for non-facilities-based carriers on Tribal lands in 2012, it noted that at least one wireless reseller ''has received approximately a million in Link Up support for two months in 2011 on Tribal lands in [Oklahoma] without building infrastructure''—contravening the purposes of the enhanced support. And in the *2015 Lifeline FNPRM,* the Commission explained, ''Lifeline program data show that two-thirds of enhanced Tribal support goes to non-facilities based providers, and it is unclear whether the support is being used to deploy facilities in Tribal areas''—which contravened the Commission's express ''desire to use enhanced support to incent the deployment of facilities on Tribal lands.''

23. For the purposes of the Lifeline program, to enforce our revised § 54.403(a)(3), the Commission limits enhanced Tribal support to (1) fixed or mobile wireless facilities-based Lifeline service provided on Tribal lands with wireless network facilities covering all or a portion of the relevant Lifeline ETC's service area on Tribal lands; and (2) facilities-based fixed broadband or voice telephony service provided through the ETC's ownership or a long-term lease of last-mile wireline loop facilities capable of providing Lifeline service to all or a portion of the ETC's service area on Tribal lands. For purposes of enhanced Lifeline support, a fixed wireless provider must, consistent with FCC Form 477 instructions, provision or equip a broadband wireless channel to the end-user premises over licensed or unlicensed spectrum, while a mobile wireless provider must hold usage rights under a spectrum license or a long-term spectrum leasing arrangement along with wireless network facilities that that can be used to provide wireless voice and broadband services. (The Commission considers a long-term spectrum leasing arrangement as long-term *de facto* transfer spectrum leasing arrangements as defined and identified in 47 CFR 1.9003 and 1.9030, and long-

term spectrum manager leasing arrangements as defined and identified in 47 CFR 1.9003 and 1.9020(e).) For wireline providers, the Commission considers a ''long-term lease'' as an indefeasible right of use (IRU) of 10 years or more over the last-mile facility in question. The Commission has found that IRUs carry many of the same indicia of control as full ownership and therefore are considered fully owned facilities in other regulatory contexts.

24. The Commission concludes that, in the Lifeline program, an ETC's use of tariffed and un-tariffed special access services, resold services offered pursuant to sections 251(b) and (c), commercially available resold services, or unbundled network elements (UNEs) does not demonstrate that the service is ''facilities-based'' because such services do not reflect investment in broadband-capable networks in the service area by the ETC. Previously, the Commission found that competitors' use of incumbent local exchange carrier (LEC) special access services is not relevant to whether there is sufficient facilities-based competition in a market to justify forbearance from the incumbent LEC's obligation to provide UNEs. Additionally, UNEs themselves are only available in those cases where competitors are ''impaired'' without access—that is, UNEs are available to competitive carriers for those network components that a ''reasonably efficient'' competitor would not likely be able to construct on its own and without which market entry would likely be uneconomic.

25. If an ETC offers service using its own as well as others' facilities in its service area on rural Tribal lands, it may only receive enhanced support for the customers it serves using its own last-mile facilities. The Commission finds this definition is technology-neutral as between fixed and mobile services.

26. For many of the same reasons the Commission limited Link Up support to facilities-based carriers on Tribal lands, the Commission finds that limiting enhanced Lifeline support to facilities-based service provided to subscribers residing on Tribal lands will focus the enhanced support toward those providers directly investing in voice- and broadband-capable networks on rural Tribal lands. The Commission finds that this result comports with the Act's direction to the Commission to base its policies on the principle that ''low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas. . . .'' (47 U.S.C. 254(b)(3).) Directing enhanced Lifeline funds to facilities-based services makes those services more affordable and competitive for low-income consumers and also encourages investment that will ultimately provide more robust networks and higher quality service on rural Tribal lands. Doing so also ensures that the payments Lifeline providers receive from the Fund to serve rural Tribal lands will be reinvested in the ''provision, maintenance, and upgrading'' of facilities in those areas. (47 U.S.C. 254(e).) A number of Tribal Nations, Tribally-owned Lifeline providers, and other Lifeline providers agree with this decision and favor limiting enhanced support to providers with facilities, arguing that it will ensure that the enhanced subsidies reach the Tribal lands and residences that have never been connected and will support those network facilities already constructed.

27. The Commission disagrees with parties who argue that resellers' purchase of wholesale services from carriers that own facilities increases the incentive of those carriers to deploy and maintain their networks. Resellers offer little evidence beyond their own assertions that funneling Lifeline enhanced support funding through middle men will spur facilities-based carriers to invest in their rural, Tribal networks. Moreover, even if revenue from resellers marginally increases the ability and incentive of other providers to deploy or maintain facilities, the Commission concludes that this benefit is outweighed by our need to prudently manage Fund expenditures. Indeed, these resellers cannot explain how passing only a fraction of funds through to facilities-based carriers will mean more investment in rural Tribal areas than ensuring that facilities-based carriers receive 100 percent of the support. The Commission concludes that providing the enhanced support to Lifeline providers deploying, building, and maintaining critical last mile infrastructure is a more appropriate way to support the expansion of voice- and broadband-capable networks on Tribal lands. (The Commission reminds all ETCs that they may not discontinue Lifeline service to any community they serve without first relinquishing their ETC designation after the approval of the designation (state or federal) commission. *See* 47 U.S.C. 214(e)(4).)

28. To ensure compliance with this requirement and prevent potential waste, fraud, and abuse, the Commission directs USAC to take appropriate measures to verify that any ETC claiming enhanced rural Tribal support satisfies the facilities requirement outlined in this section prior to disbursing the enhanced support.

29. The Commission also clarifies that the ''facilities-based'' standard it describes bears only on whether the Lifeline provider is eligible to receive enhanced rural Tribal support. Whether a provider is ''facilities-based'' under the Act for purposes of seeking a Lifeline-only ETC designation and must obtain approval for a compliance plan to take advantage of blanket forbearance from the facilities requirement is unaffected by this standard and remains the same. (*See* 47 U.S.C. 214(e)(1)(A) (requiring ETCs to offer service ''either using its own facilities or a combination of its own facilities and resale of another carrier's services'').)

30. To ensure all impacted parties have sufficient time to make the necessary changes adopted in this Fourth Report and Order, the Commission provides a transition period. The changes made in this Fourth Report and Order for enhanced Lifeline support on Tribal lands shall be effective 90 days after the Wireline Competition Bureau announces that the Commission has received approval from the Office of Management and Budget (OMB) for the new information collection requirements in this Fourth Report and Order subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, or on August 1, 2018, whichever date occurs later. The Commission directs ETCs to notify, in writing, any customers who are currently receiving enhanced support who will no longer be eligible for enhanced support as a result of the changes in this Order. This notice must be sent no more than 30 days after the announcement of PRA approval. (Or, if the Commission has not received approval from the Office of Management and Budget (OMB) for the new information collection requirements in this Order subject to the Paperwork Reduction Act of 1995 (PRA), once OMB approval has been received.) This notice must inform any impacted customers that they will not receive the enhanced Lifeline discount beginning 90 days after the announcement of PRA approval or on August 1, 2018, whichever occurs later, and that customers residing on rural Tribal lands who are currently receiving service from a non-facilities-based provider have the option of switching their Lifeline benefit to a facilities-based provider to continue receiving enhanced rural Tribal support. The notice must also detail the ETC's offerings for Lifeline subscribers who are not eligible for enhanced support.

III. Order on Reconsideration

31. By this Order, the Commission eliminates the port freeze for voice and broadband internet access services found in § 54.411 of the Commission's rules. The Commission takes this action in response to significant concerns regarding the port freeze raised in Petitions for Reconsideration and other recent filings in the docket. In the *2016 Lifeline Order,* 81 FR 33026, May 24, 2016, the Commission codified port freezes lasting 12 months for broadband internet access service and 60 days for voice telephony service. After reconsideration of certain findings in the *2016 Lifeline Order,* the Commission now eliminates the Lifeline port freeze for voice and broadband internet access service.

32. The Commission established the extended port freeze for broadband internet access service ''[t]o facilitate market entry for Lifeline-supported BIAS [broadband internet access service] offerings, provide additional consumer benefits, and encourage competition'' by ''allowing broadband providers the security of a longer term relationship with subscribers. . . .'' Since the Commission adopted these requirements, multiple parties have filed Petitions for Reconsideration raising a variety of concerns regarding the port freeze rule. Petitioners argue that the port freeze requirements adversely impact consumers by restricting consumer choice and the record lacks evidence that demonstrates new entrants were or are having difficulty entering the Lifeline market. Petitioners also argue that the port freeze requirements were imposed without adequate notice, as required under the Administrative Procedure Act (APA); and raise concerns regarding the challenges ETCs will face from an administrative perspective in attempting to comply with the 12-month port freeze requirement. Because the Commission grants the petitions for reconsideration on other grounds below, it does not address the APA and administrative burden arguments here. Additionally, since implementation of the port freeze rule, other parties have raised concerns regarding the alleged improper invocation of consumer port freezes by certain Lifeline providers, which limits consumer choice, especially with regard to the 12-month port freeze for broadband service.

33. The Commission agrees with arguments raised by Petitioners and others that the disadvantages to consumers of the port freeze rule, in practice, outweigh the anticipated advantages; accordingly, the Commission eliminates the codified Lifeline benefit port freeze for voice and broadband internet access service. (*See* 47 CFR 54.411.) The Commission concludes that restricting the ability of Lifeline consumers to transfer their Lifeline benefit between service providers ultimately disadvantages Lifeline consumers. Such a restriction limits Lifeline consumers' ability to seek more competitive offerings and obtain those services that best meet their needs. In addition, restricting consumers' ability to transfer their Lifeline benefit will not promote competitive service offerings and, in fact, may diminish providers' motivation to provide higher quality service after enrolling a Lifeline-supported broadband subscriber, because the provider is assured a 12-month commitment from the subscriber. The Commission also agrees that the record evidence does not clearly support the view that a 12-month port freeze is necessary to ease market entry, and indeed can discourage new providers from entering the Lifeline market or a new geographical area because a significant portion of Lifeline subscribers would not be able to transfer their benefit to otherwise compelling new services offerings. Nor does the Commission believe that the 60-day port freeze for voice services adopted in the *2016 Lifeline Order,* while leading to these disadvantages, is effective in furthering its desired goals.

34. In general, parties that filed in support of a longer port freeze argued that carriers will be willing to make more significant investments as a result of longer term customer-carrier relationships and that a longer port freeze will discourage consumers from ''flipping.'' Indeed, several carriers decry ''flipping'' and explain how consumer churn makes it harder for carriers to recover their costs, including the costs of free phones. But flipping and consumer churn are not unique to the Lifeline marketplace, and companies have repeatedly turned to voluntary agreements (such as contracts) and alternative business models (such as prepaid plans) to address such concerns without the federal government artificially limiting consumer choice. In addition, the Commission notes that the primary intent of the Lifeline program is to provide a discount on service rather than devices. To the extent that providing discounted or free devices incentivizes consumers to engage in flipping, that outcome primarily results from a service provider's own marketing practices. The Commission also notes that supporters of the port freeze generally did not assert the 12-month port freeze was needed to address impediments to entering the market.

35. The Commission disagrees with those commenters who contend that removing the 12-month broadband internet access service port freeze will reduce provider participation in the Lifeline program and make it ''impossible to meet the Commission's minimum service standards and handset requirements at a cost that is affordable for low-income consumers.'' (Joint Lifeline ETC Respondents' Opposition at 7–8.) The Commission adopted minimum service standards after considering the record and concluding that minimum service standards are not unduly burdensome. Affordability was an important factor in adopting minimum service standards, and the standards the Commission adopted struck ''a balance between the demands of affordability and reasonable comparability.'' While the Commission considered concerns raised by some providers that they would not be able to offer services that meet the minimum standards, the Commission ultimately concluded that allowing the Lifeline benefit to be used on services that do not meet minimum service standards would lead to the type of ''second class'' service that the minimum service standards are meant to eliminate. Furthermore, prior to the *2016 Lifeline Order,* the shorter USAC-administered 60-day benefit port freeze for voice service did not drive providers out of the program. Indeed, the Commission is now acting in response to requests *from Lifeline providers* to eliminate or shorten the port freeze due to the administrative burdens associated with compliance.

36. The Commission codified the port freeze in part because it anticipated that consumers would benefit from greater choice and innovative service offerings as a result. In addition, the Commission envisioned benefits would accrue to consumers from a longer term relationship with their service providers. Since the implementation of the port freeze, the Commission has been presented with evidence, however, that it has not delivered the consumer benefits the Commission envisioned when it codified the requirement, but instead has incented certain providers to enroll consumers in offerings that provide little meaningful residential broadband access while locking in their Lifeline benefit with that provider for the following 12 months. These providers have used the port freeze to prevent customer churn, asserting that the service falls within the 12-month port freeze timeframe, even when

offering plans with only 10 MB of guaranteed mobile cellular data. As a result, although the port freeze rule has in some instances resulted in longer term relationships as anticipated, any benefits have come at the expense of consumers who find themselves trapped in low-quality plans for a full year. Parties such as Consumer Action and the National Consumers League have urged the Commission ''to stop the abuse of the so-called 'port freeze' rule, which is now being used to limit consumer choice and access to true broadband service and broadband-suitable devices.'' Because implementation of the port freeze has not, on balance, resulted in the anticipated benefits to Lifeline consumers and instead appears to have harmed consumers, the Commission now determines that this rule should be eliminated. The Commission also finds that retaining existing customers' port freezes would hinder consumer choice without leading or having led to improved offerings for consumers, and so the Commission declines to continue subscribers' existing port freezes.

37. Finally, the Commission clarifies the application of the Commission's rolling recertification rule in the absence of the port freeze rule and the port freeze exceptions. (47 CFR 54.410(f).) For purposes of rolling recertification, the subscriber's service initiation date is twelve months from the date of the most recent transfer or enrollment with the subscriber's current service provider, and recertification will be required every twelve months thereafter.

38. These changes to § 54.411 of the Commission's rules will become effective 60 days after publication of this Order in the **Federal Register**.

39. To ensure that qualifying low-income Americans receive quality, affordable Lifeline-supported broadband service, the Commission revises its rules concerning the application of Lifeline support. Section 54.403(b)(1) of the Commission's rules requires ETCs ''that charge federal End User Common Line charges or equivalent federal charges'' to apply federal Lifeline support to waive such charges for Lifeline subscribers. (47 CFR 54.403(b)(1).) The rule is silent, however, on the application of Lifeline support for subscribers receiving the Lifeline benefit for broadband internet access service, either in a bundle with qualifying voice telephony service or on a standalone basis, which does not have an End User Common Line charge. The Commission hereby clarifies that § 54.403(b)(1) of the Commission's rules only applies to subscribers receiving Lifeline-supported standalone voice telephony service or a bundled offering where the ETC is requesting reimbursement from the Lifeline program for the voice telephony component of the bundle.

40. USTelecom has filed a petition for reconsideration requesting, in relevant part, that the Commission eliminate § 54.403(b) of the Commission's rules to resolve the rule's ambiguity with regard to Lifeline-supported broadband internet access service. USTelecom argues that broadband internet access service does not have a federal End User Common Line charge or intrastate service, creating confusion as to how ETCs may comply with § 54.403(b) of the Commission's rules when the customer is receiving Lifeline-supported broadband internet access service. No parties filed in opposition to USTelecom's petition on this issue.

41. The Commission declines to eliminate the rule, as requested by USTelecom, so that ETCs seeking reimbursement for Lifeline voice telephony service, either on a standalone basis or in a bundle, will continue to apply the Lifeline discount to the EUCL. Instead the Commission now modifies § 54.403(b)(1) to clarify that this rule only applies to subscribers receiving standalone voice telephony service or a bundled offering where the ETC is requesting reimbursement from the Lifeline program for the voice telephony component of the bundle. By not addressing whether and how § 54.403(b)(1) applies to Lifeline-supported broadband internet access service, the rule causes unnecessary uncertainty for ETCs and may result in less affordable offerings for subscribers without any corresponding benefit for Lifeline subscribers. This revision of § 54.403(b)(1) also comports with the longstanding Commission goal of simplifying administration of the Lifeline program and reflecting current marketplace conditions. Accordingly, the Commission amends § 54.403(b)(1) to clarify that ETCs are only required to apply the Lifeline discount to the End User Common Line charge or equivalent federal charges where the ETC is receiving Lifeline support for that subscriber's voice telephony service.

42. The *2016 Lifeline Order* modified § 54.410(b)(2)(ii), (c)(2)(ii), and (e) to require the National Verifier, where it is responsible for determining subscriber eligibility or conducting recertification, to provide a copy of the subscriber's certification to the provider. (47 CFR 54.410(b)(2)(ii), (c)(2)(ii), (e).) The Commission now resolves an apparent conflict in our rules and alters § 54.410(b)(2)(ii), (c)(2)(ii), and (e) of the Commission's rules to eliminate the requirement that the National Verifier provide copies of certifications to ETCs where the National Verifier is responsible for eligibility determinations.

43. USTelecom filed a petition for reconsideration requesting, in relevant part, modifications to § 54.410(b)(2)(ii), (c)(2)(ii), and (e) of the Commission's rules to properly reflect the *2016 Lifeline Order's* intent with regard to the National Verifier. USTelecom argues that the text of the rule is in direct conflict with the *2016 Lifeline Order's* language and intent. The *2016 Lifeline Order* states: ''[t]he National Verifier will retain eligibility information collected as a result of the eligibility determination process'' and that ''Lifeline providers will not be required to retain eligibility documentation for subscribers who have been determined eligible by the National Verifier.'' However, § 54.410(b)(2)(ii), (c)(2)(ii), and (e) require Lifeline providers to retain eligibility documentation and certifications even when the National Verifier was responsible for the enrollment process. USTelecom adds that the cost and burden to providers of maintaining duplicative subscriber eligibility information from the National Verifier are unsupported by any ''sound policy basis.'' Further, USTelecom argues the rule may actually subvert program goals of ''. . . 'ensur[ing] that the National Verifier will incorporate robust privacy and data security best practices in its creation and operation of the National Verifier.' '' No parties filed in opposition to USTelecom's petition on this issue.

44. The Commission now modifies § 54.410(b)(2)(ii), (c)(2)(ii), and (e) to clarify that where the National Verifier is responsible for the consumer's initial eligibility determination or recertification, the National Verifier is not required to deliver copies of those certifications to the ETC. The Commission finds that this amendment to the rules is consistent with the goals of the National Verifier to ease burdens on Lifeline providers while improving privacy and security for consumers applying to participate in the program. This amendment also brings § 54.410 of the Commission's rules in line with the Commission's stated intent in the *2016 Lifeline Order* that Lifeline providers would not be required to retain eligibility documentation for eligibility determinations made by the National Verifier. Additionally, the Commission agrees with USTelecom that requiring Lifeline providers to maintain duplicative subscriber enrollment documentation presents unnecessary

risk to the privacy and security of subscriber information.

IV. Memorandum Opinion and Order

45. To fully realize the Commission's objectives of providing Lifeline-support for broadband services, the Commission provides clarity to ensure that service providers claiming Lifeline support for broadband service actually provide Lifeline customers with the level of broadband service intended in the *2016 Lifeline Order.* In February 2017, the Wireline Competition Bureau solicited public comment on a TracFone Wireless, Inc. (TracFone) request for clarification regarding §§ 54.408 and 54.411 of the Commission's rules. The Commission now removes any uncertainty in the record with respect to whether certain Wi-Fi technologies qualify for Lifeline reimbursement by clarifying that broadband internet access delivered via Wi-Fi is not eligible for reimbursement as mobile broadband under the Lifeline program rules, and the Commission reiterates that mobile broadband service eligible for Lifeline reimbursement must be provided on a network using at least 3G (Third Generation) mobile technologies. The Commission also clarifies that a provider does not directly serve a customer with fixed broadband service under the Lifeline rules if that customer cannot access the services at their residential address and, therefore, Wi-Fi offerings like the ''premium Wi-Fi'' service described in the record also do not qualify for Lifeline support as fixed broadband service offerings.

46. In its request for clarification, TracFone sought clarification regarding the types of service that meet the minimum service standards for Lifeline-supported mobile broadband and qualify for the twelve-month benefit port freeze. In response, several commenters expressed concerns that interpreting the minimum service standards for Lifeline-eligible mobile broadband to allow for Wi-Fi-delivered broadband as described in the request would inhibit the Commission's goal of supporting quality service to low-income consumers, while others supported an interpretation of the Commission's rules that would permit Lifeline support for ''premium Wi-Fi'' access offerings.

47. The Commission clarifies that ''premium Wi-Fi'' and other similar networks of Wi-Fi-delivered broadband internet access service do not qualify as mobile broadband under the Lifeline program rules. (*See* 47 CFR 54.400 *et seq.*) In the *2016 Lifeline Order,* the Commission focused on ''mobile network technologies'' and mobile service offerings over different generations of mobile technologies in adopting rules for Lifeline-eligible mobile broadband service. (*See* 47 CFR 54.408(b)(2)(i).) Against this backdrop, the Commission established minimum service standards, including minimum 3G (Third Generation mobile network) speeds, to qualify for Lifeline support. There is no evidence in the record that Wi-Fi-only technology, as deployed today, is a ''mobile technology'' or one of the ''generations'' of mobile technologies, as contemplated by the Commission in the *2016 Lifeline Order.* Further, nothing in the record demonstrates that Wi-Fi, including ''premium Wi-Fi,'' as deployed today, should be treated as an industry accepted generation of mobile technology.

48. The Commission also disagrees with Telrite that the use of the term ''3G'' in the § 54.408(b)(2)(i) of the Commission's rules was only intended as a proxy for a particular minimum network speed threshold and not a generation of mobile technology. In the *2016 Lifeline Order,* the Commission's discussion makes it clear that it was incorporating industry mobile technology generations, and that 3G was not just a proxy for a speed threshold. The Commission, for example, stated that ''[f]or the mobile broadband minimum service standard for speed, it relies on Form 477 data while also incorporating *industry mobile technology generation* (*i.e., 3G, 4G).''*

49. Unlike Wi-Fi, mobile networks provide ubiquitous mobility with large service area coverage. Wi-Fi access, however, can be a complement to a consumer's primary broadband service. Lifeline-eligible mobile broadband requires a mobile service provided through 3G mobile broadband technologies or subsequent and superior generations of mobile broadband technologies. Accordingly, the rules governing Lifeline support for a ''mobile broadband service'' contemplate not just a minimum of ''3G'' mobile network threshold speeds, but also a mobile network. (47 U.S.C. 153(33) (defining ''mobile service''); 47 CFR 20.3 (same).) As noted above, mobile networks, unlike current Wi-Fi networks, provide ubiquitous mobility within a large service area. Was the Commission to interpret the minimum service standard otherwise, an ETC could offer any fixed service with an arguably fast-enough speed, limit it to serve end users primarily using mobile devices, and claim that such a service was in fact ''mobile'' broadband because it offers speeds faster than ''3G.'' As a result, the section establishing Lifeline minimum service standards for fixed broadband service would have no meaningful application, because ETCs could simply offer the much lower data allowances permitted under the mobile broadband standards, supplement that amount with Wi-Fi-delivered data, and receive the same Lifeline support amount. (*See* 47 CFR 54.408(b)(1).)

50. The Commission also clarifies that a provider does not directly serve a customer with fixed broadband service under the Lifeline rules if that customer cannot access the service at their residential address. (*See* 47 CFR 54.407(a) (''Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers it serves directly as of the first day of the month.'')) The *2016 Lifeline Order* contemplates Lifeline-supported fixed broadband service as a residential service. A service that, for example, purports to offer Lifeline-supported fixed broadband service but only provides customers with access to hotspots that a qualifying low-income subscriber cannot access from their own residence undermines the Commission's requirement that carriers directly provide service to receive reimbursement. A review of the Wi-Fi service disputed in the record before us indicates that the iPass network used to provide the premium Wi-Fi service keeps customers connected in ''hotels, airports, and other business venues,'' trains, airplanes, and convention centers, and in many towns only includes hotspots at establishments with pre-existing free public Wi-Fi offerings, like McDonald's, Burger King, and Walmart. (*See* The iPass Global Wi-Fi Network, iPass (last visited Oct. 24, 2017), *https://www.ipass.com/mobile-network/. See also, e.g.,* iPass hotspot locations in Indianola, Iowa, and Forrest City, Arkansas, *https://hotspot-finder.ipass.com/united-states/indianola-iowa, https://hotspot-finder.ipass.com/united-states/forrest-city-arkansas* (last visited Oct. 24, 2017).) Some commenters indicated that these hot spot locations are ''likely to be of little use to most Lifeline customers'' because few of the hot spots are located in low-income residential areas, and the hot spot locations ''may not be common areas in which Lifeline customers would find themselves trying to utilize their Lifeline supported [broadband internet access service].'' (TracFone Wireless Reply at 7 & n. 12; Public Utility Division of Oklahoma Comments at 4.) TracFone also states that based on its sample testing for one Florida ZIP

Code, ''[l]ess than one percent of the 10,223 Lifeline households within that ZIP Code reside within areas covered by iPass hotspots'' and that nine of the twelve iPass hot spots within that ZIP Code ''are located inside business locations (typically, restaurants and hotels, and only available to patrons of those businesses).'' Accordingly, these types of premium Wi-Fi services would be functionally inaccessible to many Lifeline consumers and, thus, offering such services does not directly serve a Lifeline customer with fixed broadband service as required by § 54.407(a) of the Lifeline rules.

V. Procedural Matters

A. Paperwork Reduction Act

51. The Fourth Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

52. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *2015 Lifeline FNPRM* in WC Docket Nos. 11–42, 09–197, 10–90. The Commission sought written public comment on the proposals in the *2015 Lifeline FNPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

53. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Since the *2012 Lifeline Reform Order,* 77 FR 12952, March 2, 2012, the Commission has acted to address waste, fraud and abuse in the Lifeline program and improved program administration and accountability. In this Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order (Order), the Commission takes steps to focus Lifeline program support to effectively and efficiently bridge the digital divide for low-income consumers while minimizing the contributions burden on ratepayers. The Commission resolves questions regarding enhanced Lifeline support for Tribal lands, which were raised in the *2015 Lifeline Further Notice of Proposed Rulemaking* but left unaddressed by the *2016 Lifeline Order.* The Commission resolves Petitions for Reconsideration to improve competition and efficiency in the Lifeline program. The Commission enables competition and empower Lifeline consumers by increasing their ability to switch their Lifeline benefit to a new provider. The Commission also clarifies how Lifeline providers should apply the Lifeline discount to service offerings that include Lifeline-supported broadband internet access service.

54. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

55. *Small Entities, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be directly affected herein. As of 2016, according to the SBA, there were 28.8 million small businesses in the U.S., which represented 99.9 percent of all businesses in the United States. Additionally, a ''small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.'' Nationwide, as of 2014, there were approximately 2,131,200 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand''. U.S. Census Bureau data published in 2012 indicates that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

56. A number of our rule changes will result in additional reporting, recordkeeping, or compliance requirements for small entities. For all of those rule changes, the Commission has determined that the benefit the rule change will bring for the Lifeline program outweighs the burden of the increased requirement/s. Other rule changes decrease reporting, recordkeeping, or compliance requirements for small entities. The Commission has noted the applicable rule changes below impacting small entities.

57. *Compliance burdens.* All of the rules the Commission implements impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. For several of the new rules the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

58. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

59. This rulemaking could impose minimal additional burdens on small entities. In this Order, the Commission

modifies certain Lifeline rules to target funding to areas where it is most needed. In developing these rules, the Commission worked to ensure the burdens associated with implementing these rules would be minimized for all service providers, including small entities. In taking this action, the Commission considered potential impacts on service providers, including small entities. The Commission considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities, including alternatives on how to define ''rural'' for purposes of describing rural Tribal lands and how the Commission and USAC could provide mapping resources to help small entities identify with certainty areas that are eligible for enhanced support. In developing our rules related to Tribal benefits, the Commission carefully crafted the requirements to be easier on all service providers and determined that a specific carve-out for small businesses was not necessary.

60. No commenters specifically offered alternatives to the changes made in this Order. Further, given the narrow and targeted scope of the changes being made no alternative readily presents itself to limit the burdens on small business or organizations. The identified increase in burden is minimal and outweighed by the advantages in combating waste, fraud, and abuse in the program.

VII. Ordering Clauses

61. *Accordingly, it is ordered*, that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 403, and § 1.2 of the Commission's rules, 47 CFR 1.2, this Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order *is adopted* effective thirty (30) days after the publication of this Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order, in the **Federal Register**, except to the extent provided herein and expressly addressed below.

62. *It is further ordered,* that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 403, part 54 of the Commission's rules, 47 CFR part 54, is *amended* as described in the following Final Rules, and such rule amendments to §§ 54.403(b) and 54.410 of the Commission's rules shall be effective thirty (30) days after the publication of this Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order in the **Federal Register**.

63. *It is further ordered,* that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 403, that the removal and reservation of § 54.411 of the Commission's rules shall be effective sixty (60) days after the publication of this Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order in the **Federal Register**.

64. *It is further ordered,* that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 403, part 54 of the Commission's rules, 47 CFR part 54, is *amended* as described in the following Final Rules, and such rule amendments to §§ 54.403(a)(3), 54.413, and 54.414 of the Commission's rules are subject to the PRA and shall be effective ninety (90) days after announcement in the **Federal Register** of OMB approval of the subject information collection requirements or on August 1, 2018, whichever occurs later.

65. *It is further ordered that,* pursuant to the authority contained in sections 1–5 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155 and 254, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration filed by United States Telecom Association on June 23, 2016 and the Petition for Reconsideration/Clarification of NTCA—The Rural Broadband Association and WTA—Advocates for Rural Broadband *are granted* to the extent described above.

66. *It is further ordered* that the Commission *shall send* a copy of this Fourth Report and Order, Order on Reconsideration, and Memorandum Opinion and Order to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unles otherwise noted.

■ 2. Amend § 54.403 by revising paragraphs (a)(3) and (b)(1) to read as follows:

§ 54.403 Lifeline support amount.

* * * * *

(a) * * *

(3) *Tribal lands support amount.* Additional federal Lifeline support of up to $25 per month will be made available to a eligible telecommunications carrier providing facilities-based Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e), if the subscriber's residential location is rural, as defined in § 54.505(b)(3)(i) and (ii), and the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) *Application of Lifeline discount amount.* (1) Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges must apply federal Lifeline support to waive the federal End User Common Line charges for Lifeline subscribers if the carrier is seeking Lifeline reimbursement for eligible voice telephony service provided to those subscribers. Such carriers must apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers must apply the federal Lifeline support amount, plus any additional support amount, to reduce the cost of any generally available residential service plan or package offered by such carriers that provides at least one supported service as described in § 54.101(a), and charge

Lifeline subscribers the resulting amount.

* * * * *

■ 3. Amend § 54.410 by revising paragraphs (b)(2)(ii), (c)(2)(ii), and (e) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(b) * * *

(2) * * *

(ii) If a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, a copy of the subscriber's certification that complies with the requirements set forth in paragraph (d) of this section.

* * * * *

(c) * * *

(2) * * *

(ii) If a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, a copy of the subscriber's certification that complies with the requirements set forth in paragraph (d) of this section.

* * * * *

(e) State Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the state Lifeline administrator or other state agency for that carrier's subscribers.

* * * * *

§ 54.411 [Removed and Reserved]

■ 4. Remove and reserve § 54.411.

■ 5. Revise § 54.413 to read as follows:

§ 54.413 Link Up for rural Tribal lands.

(a) For purposes of this subpart, the term ''Tribal Link Up'' means an assistance program for eligible residents of Tribal lands, if the subscriber's location is rural, as defined in § 54.505(b)(3)(i) and (ii), seeking telecommunications service from a telecommunications carrier that is receiving high-cost support on rural Tribal lands, pursuant to subpart D of this part, that provides:

(1) A 100 percent reduction, up to $100, of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on rural Tribal lands, pursuant to subpart D of this part. For purposes of this subpart, a ''customary charge for commencing telecommunications service'' is the ordinary charge an eligible telecommunications carrier imposes and collects from all subscribers to initiate service with that eligible telecommunications carrier. A charge imposed only on qualifying low-income consumers to initiate service is not a customary charge for commencing telecommunications service. Activation charges routinely waived, reduced, or eliminated with the purchase of additional products, services, or minutes are not customary charges eligible for universal service support; and

(2) A deferred schedule of payments of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on rural Tribal lands, pursuant to subpart D of this part, for which the eligible resident of rural Tribal lands does not pay interest. The interest charges not assessed to the eligible resident of rural Tribal lands shall be for a customary charge for connecting the telecommunications service of up to $200 and such interest charges shall be deferred for a period not to exceed one year.

(b) An eligible resident of rural Tribal lands may receive the benefit of the Tribal Link Up program for a second or subsequent time only for otherwise qualifying commencement of telecommunications service at a principal place of residence with an address different from the address for which Tribal Link Up assistance was provided previously.

■ 5. Amend § 54.414 by revising paragraph (b) to read as follows:

§ 54.414 Reimbursement for Tribal Link Up.

* * * * *

(b) In order to receive universal support reimbursement for providing Tribal Link Up, eligible telecommunications carriers must use the maps made available by the Administrator to determine an eligible resident of rural Tribal lands' initial eligibility for Tribal Link Up. Eligible telecommunications carriers must obtain a certification form from each eligible resident of Tribal lands that complies with § 54.410 prior to enrolling him or her in Tribal Link Up.

* * * * *

[FR Doc. 2018–00152 Filed 1–12–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2017–0081; 4500090024]

RIN 1018–BC54

Endangered and Threatened Wildlife and Plants; Taxonomical Update for Orangutan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the revised taxonomy of the orangutan under the Endangered Species Act of 1973, as amended (Act). When we listed the orangutan in 1970, the listed entity included all orangutans in the genus *Pongo.* At that time, the scientific community recognized one species (*Pongo pygmaeus*) in the genus *Pongo,* which consisted of two subspecies (*P. pygmaeus pygmaeus* and *P. p. abelii*). However, the orangutan has recently been reclassified as belonging to two distinct species: *P. pygmaeus* and *P. abelii.* Therefore, we are revising the List of Endangered and Threatened Wildlife to reflect the current scientifically accepted taxonomy and nomenclature of the orangutan. Because all orangutans in the genus *Pongo* are already included under the original listing of *Pongo pygmaeus* as endangered under the Act, the newly recognized taxonomic species is considered part of the original listed entity, and this technical correction does not alter the regulatory protections afforded to the orangutan. For the same reason, if other *Pongo* species emerge due to future taxonomic revisions to further subdivide the genus *Pongo,* they would be encompassed by the original listing and this technical correction.

DATES: This rule is effective April 16, 2018 without further action, unless we receive significant scientific information that provides strong justifications as to why this rule should not be adopted or why it should be changed on or before February 15, 2018. If we receive significant scientific information regarding this taxonomic change for the orangutan, we will publish a timely withdrawal of this rule in the **Federal Register**.

ADDRESSES: You may submit comments by one of the following methods:

• *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box,

enter FWS–HQ–ES–2017–0081, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, you may submit a comment by clicking on ''Comment Now!''

• *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–ES–2017–0081; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041–3803.

See Public Comments, below, for more information about submitting comments.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service; MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone, 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials regarding this direct final rule by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include. We will not consider comments sent by email or fax, or to an address not listed in **ADDRESSES**.

We will post all comments on *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the internet at *http://www.regulations.gov.* Please note that comments posted to *http://www.regulations.gov* are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after the submission. Information regarding this rule is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

In a final rule published in the **Federal Register** on June 2, 1970 (35 FR 8491), we listed the orangutan (*Pongo pygmaeus*) under the Act's precursor, the Endangered Species Conservation Act of 1969 (Pub. L. 91–135), as an endangered species, and since then, the species has remained listed as an endangered species under the Act (16 U.S.C. 1531 *et seq.*).

This Rule

Background

We are directed by title 50 of the Code of Federal Regulations (CFR) at §§ 17.11(c) and 17.12(b) (50 CFR 17.11(c) and 17.12(b)) to use the most recently accepted scientific name of any wildlife or plant species, respectively, that we have determined to be an endangered or threatened species.

Taxonomy

Orangutans were historically classified as one species with two subspecies, *Pongo pygmaeus pygmaeus* and *P. p. abelii.* In accordance with taxonomic classifications at the time, we listed the orangutan in 1970, recognizing one species of orangutan (*Pongo pygmaeus*) as the listed entity occurring in Indonesia, Malaysia, and Brunei (35 FR 8491; June 2, 1970). However, the orangutan, currently only found in northern Sumatra (Indonesia) and Borneo (Indonesia and Malaysia), has recently been reclassified as belonging to two distinct species: *P. pygmaeus,* which occurs in Borneo (Malaysia and Indonesia), and *P. abelii,* which occurs in northern Sumatra (Indonesia) (Groves, in WWF Orangutan Action Plan, 1999, p. 27; Singleton *et al.* 2016, p. 3; Singleton *et al.* 2004, p. 181; Xu and Arnason 1996, p. 435; Brandon-Jones *et al.* 2004, pp. 153–155; Zhang *et al.* 2001, pp. 522–525). Additionally, orangutans in Borneo (*P. pygmaeus*) are now recognized to contain three subspecies (*P. pygmaeus pygmaeus, P. p. wurmbii,* and *P. p. morio*) (Brandon-Jones *et al.* 2004, pp. 181, 193).

While some scientists question the data and effectiveness of elevating Sumatran and Bornean orangutans to full species (Muir 1998, p. 378; Muir *et al.* 2000, pp. 476–479), species-level classification was advocated jointly in April 2000, by Conservation International, the International Union for the Conservation of Nature Species Survival Commission's Primate Specialist Group, and the Center for Environmental Research and Conservation (Orangutan Species Survival Plan 2015). The newer classification recognizing two distinct species is widely accepted today by most experts based on genetic and morphological data (Singleton *et al.* 2016, p. 3; Ancrenaz *et al.* 2016, p. 3).

The entity that resides closest to Brunei is a subspecies of *P. pygmaeus.* Individual orangutans in Brunei are described as transient, and no permanent populations have been reported there (World Atlas of Great Apes and Their Conservation 2005, p. 427; Orangutan Foundation International 2017, no pagination).

Taxonomic Corrections Made in This Rule

All orangutan populations are encompassed by the previous listed entity, *Pongo pygmaeus.* Using the best available scientific information, this direct final rule documents the reclassification of the orangutan as two distinct species, *Pongo pygmaeus* and *Pongo abelii,* on the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)). This change is supported by published studies in peer-reviewed journals, and it does not affect the range or endangered status of the orangutan. If other *Pongo* species emerge due to future taxonomic revisions to further subdivide the genus *Pongo,* they would be encompassed by the original listing and this technical correction.

Use of Direct Final Rule

The purpose of this direct final rule is to notify the public that we are revising the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to reflect the scientifically accepted taxonomy and nomenclature of the orangutan. In accordance with 50 CFR 17.11(c), we are revising the taxonomy of the orangutan to reflect the reclassification of the previously listed entity into two distinct species, acknowledging both *Pongo pygmaeus* and *P. abelii* as endangered species under the Act.

We are publishing this final rule without a prior proposal because this is a technical action that is in the best interest of the public and should be undertaken in as timely a manner as possible. It does not alter the regulatory protections afforded to the orangutan but is a taxonomic revision necessary to acknowledge that both *Pongo pygmaeus* and *Pongo abelii* retain endangered status under the Act.

This rule will be effective, as published in this document, on the effective date specified in **DATES**, unless we receive significant scientific

information that provides strong justifications as to why this rule should not be adopted or why it should be changed on or before the comment due date specified in **DATES**.

If we receive comments containing significant scientific information that provides strong justifications as to why this rule should not be adopted or why it should be changed regarding the taxonomic change for the orangutan, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. If the rule is withdrawn, we may publish a proposed rule to initiate promulgation of this taxonomic revision or we may end the rulemaking process.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations issued pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (43 FR 49244).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us to revise this rule, your comments should be as specific as possible.

List of References Cited

A list of the references cited in this direct final rule is provided in Docket No. FWS–HQ–ES–2017–0081 at *http://www.regulations.gov.*

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Orangutan'' [*Pongo abelii*] in alphabetical order by common and scientific name and revising the entry for ''Orangutan'' [*Pongo pygmaeus*] under MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* *	*	* *	*	*
Orangutan	*Pongo abelii*	Wherever found	E	35 FR 8491, 6/2/1970; 83 FR [*Insert **Federal Register** page where the document begins*], 1/16/2018.
Orangutan	*Pongo pygmaeus*	Wherever found	E	35 FR 8491, 6/2/1970; 83 FR [*Insert **Federal Register** page where the document begins*], 1/16/2018.
* *	*	* *	*	*

Dated: December 13, 2017.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, exercising the authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–00610 Filed 1–12–18; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 83, No. 10
Tuesday, January 16, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0014; Product Identifier 2017–CE–044–AD]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2017–08–09 for DG Flugzeugbau GmbH Models DG–500MB gliders that are equipped with a Solo 2625 02 engine modified with a fuel injection system following the instructions of Solo Kleinmotoren GmbH Technische Mitteilung (TM)/Service Bulletin (SB) 4600–3 ''Fuel Injection System'' and identified as Solo 2625 02i. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the potential of an in-flight shut-down and engine fire due to failure of the connecting stud for the two fuel injector mounts of the engine redundancy system on gliders equipped with a Solo 2625 02i engine. This proposed AD adds the DG Flugzeugbau GmbH Model DG–1000M glider equipped with Solo 2625 02i engines to the applicability. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

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

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Solo Kleinmotoren GmbH, Postfach 600152, 71050 Sindelfingen, Germany; telephone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com;* internet: *http://aircraft.solo-online.com.* You may review copies of the referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2018–0014; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0014; Product Identifier 2017–CE–044–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued AD 2017–08–09, Amendment 39–18858 (82 FR 18694; April 21, 2017) (''AD 2017–08–09''). That AD required actions intended to address an unsafe condition on DG Flugzeugbau GmbH Model DG–500MB gliders and was based on mandatory continuing airworthiness information (MCAI) originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. That MCAI is EASA AD No.: 2014–0269, dated December 11, 2014 (referred to after this as ''the MCAI'').

Since we issued AD 2017–08–09, the FAA has now type certificated the DG Flugzeugbau GmbH Model DG–1000M glider and that glider model is equipped with a Solo 2625 02i engine.

You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0014.

Related Service Information Under 1 CFR Part 51

Solo Kleinmotoren GmbH issued Technische Mitteilung Nr. (English translation: Service Bulletin No.) 4600–5, Ausgabe 2 (English translation: issue 2), dated December 12, 2014, approved for incorporation by reference on May 26, 2017 (82 FR 18694; April 21, 2017). The service information describes procedures for changing the fuel injector mounts for the engine redundancy system and securing of the connection of the lower to the upper engine mount. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 6 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $67 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $912, or $152 per product.

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–18858 (82 FR 18694; April 21, 2017), and adding the following new AD:

DG Flugzeugbau GmbH: Docket No. FAA–2018–0014; Product Identifier 2017–CE–044–AD.

(a) Comments Due Date

We must receive comments by March 2, 2018.

(b) Affected ADs

This AD replaces AD 2017–08–09, Amendment 39–18858 (82 FR 18694; April 21, 2017) (''AD 2017–08–09'').

(c) Applicability

This AD applies to DG Flugzeugbau GmbH DG–500MB and DG–1000M gliders, all serial numbers, certificated in any category, that are:

(1) Equipped with a Solo 2625 02 engine modified with a fuel injection system following the instructions of Solo Kleinmotoren GmbH Service Bulletin (SB)/Technische Mitteilung (TM) 4600–3 ''Fuel Injection System'' and identified as Solo 2625 02i; or

(2) equipped with a Solo 2625 02i engine at manufacture.

(d) Subject

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

(e) Reason

This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the potential of an in-flight shut-down and engine fire resulting in loss of control due to failure of the connecting stud for the two fuel injector mounts of the engine redundancy system on gliders equipped with a Solo 2625 02i engine. We are issuing this AD to prevent such failure that could lead to the potential of an in-flight shut-down and engine fire and result in loss of control and to include recently FAA type-certificated DG Flugzeugbau GmbH Model DG–1000M gliders equipped with Solo 2625 02i engines.

(f) Actions and Compliance

(1) *For DG Flugzeugbau GmbH Model DG–500MB gliders:* Unless already done, within the next 60 days after May 26, 2017 (the effective date of AD 2017–08–09), modify the engine redundancy system following the actions in Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4600–5, Ausgabe 2 (English translation: Issue 2), dated December 12, 2014.

(2) *For DG Flugzeugbau GmbH Model DG–1000M gliders:* Unless already done, within the next 60 days after the effective date of this AD, modify the engine redundancy system following the actions in Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4600–5, Ausgabe 2 (English translation: Issue 2), dated December 12, 2014.

(3) *For all gliders:* The Note in Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4600–5, Ausgabe 2 (English translation: Issue 2), dated December 12, 2014, stating ''the actions have to be accomplished by a certified maintenance organization and must be released by certifying staff,'' is not applicable to this AD.

Note 1 to paragraph (f) of this AD: This service information contains German to English translation. The EASA used the English translation in referencing the document. For enforceability purposes, we will refer to the Solo Kleinmotoren service information as it appears on the document.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD allows credit for modification of the engine redundancy system as required in paragraph (f) of this AD if done before May

26, 2017 (the effective date of AD 2017–08–09) following Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4600–5, Ausgabe 1 (English translation: Issue 1), dated November 24, 2014.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any glider to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the European Aviation Safety Agency (EASA).

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2014–0269, dated December 11, 2014, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0014. For service information related to this AD, contact Solo Kleinmotoren GmbH, Postfach 600152, 71050 Sindelfingen, Germany; telephone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com;* internet: *http://aircraft.solo-online.com.* You may review this referenced service information at the FAA, Small Airplane Standards Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on January 8, 2018.

Melvin Johnson,

Deputy Director, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2018–00476 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–1246; Product Identifier 2017–NM–086–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2014–02–01, which applies to certain Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes. AD 2014–02–01 requires repetitive inspections of the rudder travel limiter (RTL) return springs and primary actuator, and corrective actions if necessary; and replacement of certain RTL return springs. Since we issued AD 2014–02–01, we received reports that when installing the RTL return springs, the RTL limiter arm assembly lug can become deformed. This proposed AD would require an inspection of the RTL return springs for signs of chafing; an inspection of the casing of the primary actuator for signs of chafing or missing paint; replacement of the RTL return springs; and an inspection of the lugs of the RTL limiter arm assembly for cracks, and modification or replacement, as applicable; and applicable corrective actions. This proposed AD would also add airplanes to the applicability. We are proposing this AD to address the unsafe condition on these products.

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

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1246; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–1246; Product Identifier 2017–NM–086–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We issued AD 2014–02–01, Amendment 39–17729 (79 FR 7382, February 7, 2014) (''AD 2014–02–01''), for certain Bombardier, Inc., Model CL–

600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes. AD 2014–02–01 was prompted by reports of failure of the RTL return spring. AD 2014–02–01 requires repetitive inspections of the RTL return springs and primary actuator, and corrective actions if necessary; and replacement of certain RTL return springs, including related investigative and corrective actions, if necessary. We issued AD 2014–02–01 to prevent failure of the RTL, which would permit an increase of rudder authority beyond normal structural limits and consequently affect the controllability of the airplane.

Since we issued AD 2014–02–01, we received reports that when installing RTL return spring part number BA670–93468–1, the RTL limiter arm assembly lugs can become deformed when the RTL return spring attachment bolt is torqued. We have also determined that additional airplanes are affected by the unsafe condition.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2017–19, dated June 6, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes. The MCAI states:

> Transport Canada AD CF–2010–18R1 [which corresponds to FAA AD 2014–02–01] mandated a repetitive inspection and introduced a new rudder travel limiter (RTL) return spring, part number (P/N) BA670–93468–1, to correct the potential dormant RTL spring failure. This [Canadian] AD is issued to supersede the repetitive inspection and the replacement of the RTL spring due to discoveries made after the issuance of [Canadian] AD CF–2010–18R1.
>
> When installing the RTL return spring P/N BA670–93468–1 as mandated by [Canadian] AD CF–2010–18R1, it was found that it is possible for the RTL limiter arm assembly lug to be deformed. The lugs become bent when the RTL return spring attachment bolt is torqued. This condition, if not corrected, can lead to failure of the limiter arm assembly lug. In combination with failure of the RTL, failure of the limiter arm assembly lug could affect the controllability of the aeroplane.
>
> This [Canadian] AD mandates the inspection for cracked RTL limiter arm lugs and modification of the RTL limiter arm to prevent the RTL limiter arm lugs from bending during RTL assembly.

Required actions include: A detailed visual inspection of the RTL return springs for signs of chafing; a detailed visual inspection of the casing of the primary actuator for signs of chafing or missing paint; replacement of the RTL return springs; an eddy current inspection of the lugs of the RTL limiter arm assembly for cracks, and modification or replacement of the RTL limiter arm assembly, as applicable; and applicable corrective actions. Corrective actions include: replacement of the RTL return springs, repair of the primer and topcoat of the primary actuator, and replacement of the primary actuator. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1246.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued Bombardier Service Bulletin 670BA–27–070, Revision B, dated March 31, 2017. The service information describes procedures for an inspection of the RTL return springs for signs of chafing; an inspection of the casing of the primary actuator for signs of chafing or missing paint; replacement of the RTL return springs; and an inspection of the lugs of the RTL limiter arm assembly for cracks, and modification or replacement, as applicable; and applicable corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 544 airplanes of U.S. registry.

We estimate that it would take about 16 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,960 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $2,350,080, or $4,320 per product.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–02–01, Amendment 39–17729 (79 FR 7382, February 7, 2014), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2017–1246; Product Identifier 2017–NM–086–AD.

(a) Comments Due Date

We must receive comments by March 2, 2018.

(b) Affected ADs

This AD replaces AD 2014–02–01, Amendment 39–17729 (79 FR 7382, February 7, 2014) (''AD 2014–02–01'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial number 10002 through 10344 inclusive.

(2) Bombardier, Inc., Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15397 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by reports that when installing the rudder travel limiter (RTL) return springs, the RTL limiter arm assembly lug can become deformed. We are issuing this AD to prevent deformed RTL limiter arm assembly lugs, which can lead to failure of the limiter arm assembly lug. In combination with failure of the RTL, failure of the limiter arm assembly lug could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Inspections, Modification, and Replacement

(1) For airplanes equipped with RTL return spring part number BA–670–93465–1 or E0650–069–02750S: Within 800 flight hours or 4 months after the effective date of this AD, whichever occurs first, do a detailed visual inspection of the casing of the primary actuator for signs of chafing or missing paint, and all applicable corrective actions; replace the RTL return springs; and do an eddy current inspection of the lugs of the RTL limiter arm assembly for cracks, and modify or replace the RTL limiter arm assembly, as applicable; in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–070, Revision B, dated March 31, 2017. Accomplishment of the actions specified in Bombardier Service Bulletin 670BA–27–059 does not meet the requirements of this paragraph.

(2) For airplanes equipped with RTL return spring part number BA–670–93468–1: Within 8,000 flight hours after the effective date of this AD, do a detailed visual inspection of the RTL return springs for signs of chafing, and applicable corrective actions; a detailed visual inspection of the casing of the primary actuator for signs of chafing or missing paint, and all applicable corrective actions; and do an eddy current inspection of the lugs of the RTL limiter arm assembly for cracks, and modify or replace the RTL limiter arm assembly, as applicable; in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–070, Revision B, dated March 31, 2017. Accomplishment of the actions specified in Bombardier Service Bulletin 670BA–27–059 does not meet the requirements of this paragraph.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (h)(1) or (h)(2) of this AD.

(1) Bombardier Service Bulletin 670BA–27–070, dated December 17, 2015.

(2) Bombardier Service Bulletin 670BA–27–070, Revision A, dated September 01, 2016.

(i) Other FAA AD Provisions

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2017–19, dated June 6, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–1246.

(2) For more information about this AD, contact Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com*; internet: *http://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW, Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

John P. Piccola, Jr.,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–00340 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 801, and 1100

[Docket No. FDA–2015–N–2002]

RIN 0910–AH94

Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding ''Intended Uses''; Proposed Partial Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; partial delay of effective date.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to delay the effective date of certain portions of a final rule published in the **Federal Register** of January 9, 2017. In the **Federal Register** of February 7, 2017, we delayed until March 21, 2017, the effective date of the final rule. In the **Federal Register** of March 20, 2017, we further delayed the effective date of the final rule until March 19, 2018, and invited public comment on the rule. This action, if finalized, will delay until further notice the effective date of the portions of the final rule amending FDA's existing regulations describing the types of evidence that may be considered in determining a medical product's intended uses. FDA received a number of comments on the final rule that raise questions about the amendments to the existing medical product ''intended use'' regulations. FDA is proposing to delay the effective date of the amendments to the existing medical product ''intended use'' regulations to allow further consideration of the substantive issues raised in the comments received. This action, if finalized, will not further delay the effective date of the new regulation that describes the circumstances in which a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or a combination product under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on this proposed rule by February 5, 2018.

ADDRESSES: You may submit comments on the proposed rule for partial delay as follows. Electronic comments must be submitted on or before February 5, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of February 5, 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. Please note that late, untimely filed comments will not be considered.

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–2015–N–2002 for ''Clarification of When Products Made or Derived from Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding 'Intended Uses'; Proposed Partial Delay of Effective Date.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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: *http://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: Kelley Nduom, Center for Drug Evaluation and Research, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6221, Silver Spring, MD 20993, 301–796–8597, *kelley.nduom@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 9, 2017 (82 FR 2193), FDA published a final rule entitled ''Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding 'Intended Uses.' '' The final rule added a new regulation (§ 1100.5) to title 21 of the CFR to describe the circumstances in which a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or a combination product under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The rule also amended FDA's existing regulations describing the types of evidence that may be considered in determining a medical product's intended uses (21 CFR 201.128 (drugs) and 21 CFR 801.4 (devices)).

In the **Federal Register** of February 7, 2017 (82 FR 9501), in accordance with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review,'' we delayed, until March 21, 2017, the effective date of the final rule. In the **Federal Register** of March 20, 2017 (82 FR 14319), we further delayed the effective date of the final rule until March 19, 2018, and reopened the docket to invite additional public comment on the rule.

The comments we received are summarized below. To allow further consideration of the substantive issues raised in these comments, FDA is proposing to delay the effective date of the amendments to the existing medical product ''intended use'' regulations (§§ 201.128 and 801.4) contained in the final rule of January 9, 2017, until further notice. See 21 CFR 10.35(a) and (b) (stating that FDA ''may at any time stay or extend the effective date of an action pending or following a decision on any matter'' and recognizing that the stay may be ''for an indefinite time period''). The Agency must solicit public comment on this proposed delay, consider the comments submitted, and prepare and publish a final notification of the delay before March 19, 2018, when the final rule is scheduled to take effect. In light of this limited timeframe, it is impracticable to provide 60 days for comment on this proposed delay. Thus, the Commissioner of Food and Drugs finds good cause under 21 CFR 10.40(b)(2) for providing a shortened comment period, ending February 5, 2018. In light of the date on which the current delay of the effective date will expire unless further extended, no extensions on the comment period will be granted.

II. Summary of Comments Received in the Reopened Docket of the Final Rule

Fifteen comments were submitted to the docket for the January 9, 2017 final rule after the docket was reopened on March 20, 2017. These comments were submitted by the drug and device industries, various associations, academia, and individual submitters including a health professional and a consumer. A brief summary of these comments is included below.[1]

Two of the comments submitted to the docket related to the new regulation included in the final rule that describes circumstances in which a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or a combination product under the FD&C Act (§ 1100.5). One comment criticized the modified risk tobacco product provisions of the FD&C Act. The other comment supported the new regulation and criticized the delay in its issuance. Neither comment sought a delay in the effective date of that new regulation.

Thirteen of the 15 comments submitted to the docket related to the amendments to FDA's existing regulations describing the types of evidence that may be considered in determining a medical product's intended use (§§ 201.128 and 801.4). Many of these comments opposed what they described as a broadening from the September 25, 2015, proposed rule (see 80 FR 57756 at 57764 to 57765) of the types of evidence that could be considered in determining intended use, and specifically raised concerns with the ''totality of the evidence'' language included in the final rule. Several of these comments urged a narrowing of the types of evidence that could be considered in determining intended use. Some comments stated that only promotional or external claims should be included in the consideration of intended use, while other comments asserted that scientific exchange, truthful non-misleading communications, and/or mere knowledge of unapproved use should be expressly excluded from consideration. In contrast, a few comments stated that the types of evidence included in the final rule were appropriate at least for certain subsets of medical products, such as wholly unapproved medical products and non-prescription devices.

Several comments raised legal concerns with the final rule, including arguments to the effect that the rule: (1) Violates the First Amendment by regulating truthful speech regarding lawful activity; (2) violates the due process clause of the Fifth Amendment to the extent that the types of evidence to be considered are not clearly defined; (3) unlawfully interferes with the practice of medicine; and (4) departs from relevant statutory text, legislative history, case law, and FDA past practices. Several comments asserted that the January 9, 2017, final rule was issued in violation of the notice requirement under the Administrative Procedure Act (APA) based on the inclusion of the ''totality of the evidence'' language in that final rule.

In addition to these legal concerns, several comments asserted that the final rule could have potentially negative public health implications, including impeding important communications between manufacturers and patients, healthcare professionals, and payors; reducing healthcare options for patients; and harming patient outcomes. In contrast, another comment asserted that narrowing the scope of evidence of intended use could jeopardize the Agency's ability to take enforcement actions against illicit substances, counterfeit products, and synthetic drugs, among other products.

Based on some of the above concerns, several comments urged FDA to stay indefinitely or revoke the final rule. Other comments recommended that FDA adopt the ''intended use'' language proposed in the September 25, 2015, proposed rule, or engage in a new rulemaking.

III. Scope of and Rationale for the Proposed Partial Delay of the Effective Date of the Final Rule

We are proposing to delay the effective date of the portions of the final rule amending the existing medical product ''intended use'' regulations (§§ 201.128 and 801.4) until further notice, to allow for additional consideration of the issues raised in the comments described above. This action should not be construed to indicate that FDA has made any decisions about either the substantive arguments made in these comments or the issues discussed in previous **Federal Register** notifications regarding the amendments to these ''intended use'' regulations.

When the Agency proposed amendments to the existing intended use regulations in 2015, the objective was not to reflect a change in FDA's approach regarding evidence of intended use for drugs and devices. These proposed amendments were intended to better reflect FDA's existing interpretation and application of these regulations (see 80 FR 57756 at 57761). Specifically, the amendments were intended to clarify that FDA would not regard a firm as intending an unapproved new use for an approved or cleared drug or device based solely on that firm's knowledge that its product was being prescribed or used by doctors for such use (see 80 FR 57756 at 57761). FDA proposed to delete the last sentence of the intended use regulations to provide this clarification, in addition to some other changes.

In the **Federal Register** of January 9, 2017, we published final regulations adding new § 1100.5 to title 21 of the CFR and amending the intended use regulations found at §§ 201.128 and 801.4. The provisions in the final rule amending the intended use regulations were modified from the proposed rule because of comments we received that

[1] This summary is not intended to be a comprehensive discussion of the comments nor should it be construed to suggest that FDA has made any decisions about the substantive issues raised in the comments.

suggested to us that the proposed changes might not provide adequate clarity to manufacturers (see 82 FR 2193 at 2207). Significant comments were submitted on the proposed rule that indicated misunderstanding of the very limited scope of what FDA intended by the proposed changes to the intended use provisions.

In response to the new language in the final rule, a petition raising concerns with the final language was submitted by various industry organizations on February 8, 2017 (''petition'' and ''petitioners''). The petition requests that FDA reconsider the amendments to the ''intended use'' regulations and issue a new final rule that, with respect to the intended use regulations at §§ 201.128 and 801.4, reverts to the language of the September 25, 2015, proposed rule. The petition also requests that FDA indefinitely stay the rule. Petitioners ask that the final rule be stayed indefinitely and reconsidered for two independent reasons (petition at pg. 10). First, they argue that the final rule was issued in violation of the fair notice requirement under the Administrative Procedure Act (APA) (petition at pgs. 10–13). Second, they argue that the ''totality of the evidence'' language in the final rule is a new and unsupported legal standard (petition at pgs. 10, 13–21). The petitioners contend that the final rule unexpectedly expanded the understanding of intended use, and that adding the new final sentence referencing the ''totality of the evidence'' was a reversal of the proposed rule that violates the APA's notice-and-comment provisions (petition at pg. 11). Petitioners express the view that the wording used in the proposed rule would have helped to address substantial concerns they have regarding FDA's intended use definitions, while the final rule exacerbates those concerns (petition at pg. 11). These concerns include constitutional concerns (petition at pg. 19–21), and public health concerns related to chilling valuable scientific speech (petition at pg. 21). Based in part on the questions raised by the petition, we further delayed the effective date of the final rule until March 19, 2018, and reopened the docket to invite additional public comment on the rule.

The issues raised by the petition, as well as the comments we have received on the 2015 proposed rule, the January 2017 delay of the effective date, and the March 2017 delay of the effective date (discussed above in section II) underscore for FDA the potential for confusion related to the language in the final rule. ''Intended use'' is fundamental to medical product jurisdiction under the FD&C Act (21 U.S.C. 321(g) (definition of ''drug'') and 21 U.S.C. 321(h) (definition of ''device'')). Lack of clarity regarding the text of the final rule might affect FDA's medical product jurisdiction in ways that FDA did not intend when it set out to clarify one point regarding ''intended use.'' Although FDA remains committed to the goal of the intended use rulemaking because it reflects current agency policy, FDA has tentatively concluded, for the reasons set forth above, that the Agency needs additional time for further consideration. FDA continues to work diligently on the issues relating to intended use raised in the underlying rulemaking and remains committed to rulemaking on this issue.

FDA does not propose to further delay the effective date of the portions of the final rule that issued a new regulation that describes the circumstances in which a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or a combination product (§ 1100.5). As noted, the Agency did not receive any comments requesting that we further delay the effective date of § 1100.5 or that we make any changes to that regulation. The effective date of § 1100.5 remains March 19, 2018.

IV. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Moreover, this proposed rule is an action that does not impose more than de minimis costs and, consequently, is not a regulatory or deregulatory action for the purposes of Executive Order 13771.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we expect the proposed rule to impose negligible costs, if any, we propose to certify that the rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $148 million, using the most current (2016) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in expenditure in any year that meets or exceeds this amount.

In table 1, we provide the Regulatory Information Service Center and Office of Information and Regulatory Affairs Consolidated Information Center accounting information.

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized				2016	7	10	
Monetized $millions/year				2016	3	10	
Annualized				2016	7	10	

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Quantified				2016	3	10	
Qualitative	None						
Costs:							
Annualized				2016	7	10	
Monetized $millions/year				2016	3	10	
Annualized				2016	7	10	
Quantified				2016	3	10	
Qualitative	Negligible costs, if any.						
Transfers:							
Federal				2016	7	10	
Annualized				2016	3	10	
Monetized $/year	From:			To:			
Other				2016	3	10	
Annualized				2016	3	10	
Monetized $/year	From:			To:			

Effects:
State, Local or Tribal Government: None
Small Business: None
Wages: None
Growth: None

On January 9, 2017, we published the final rule ''Clarification of When Products Made or Derived from Tobacco are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding 'Intended Uses'.'' We refer to this final rule as the Clarifications Final Rule in this section of the preamble. The Clarifications Final Rule included changes to the ''intended uses'' provisions for medical products. In the **Federal Register** of March 20, 2017, we further delayed the effective date of the final rule—we extended the effective date of the Clarifications Final Rule to March 19, 2018 and reopened the docket to invite public comments on the medical products ''intended uses'' provisions. Comments submitted to the docket revealed a number of stakeholders had questions and concerns about possible implications of our revised ''intended uses'' provisions for medical products. Thus, the proposed rule would delay until further notice the changes to the ''intended uses'' provisions in the Clarifications Final Rule, and give all stakeholders and FDA sufficient time to consider the substantive issues raised by the comments to the docket.

When we conducted our economic analysis of the final rule that published on January 9, 2017, we expected that the benefits and costs of the rule for drug sponsors and for device manufacturers would be negligible, if any, because we anticipated that the final rule would leave the existing policies for these industries unchanged. As discussed in section II, we revised the intended use provisions for medical products in the final rule to clarify our position that the intended use of a medical products can be based on any relevant source of evidence, including a variety of direct and circumstantial evidence. Thus, we expected that the final rule would maintain the status quo and not impact current business practices.

Comments submitted to the reopened docket for the January 9, 2017, final rule indicate that at least some of the medical products industries believe that the final rule would change current practices and impose new burdens not captured in our final regulatory impact analysis. By delaying the final rule's intended use provisions for medical products, this proposed rule would maintain the status quo for medical products.

We judge that the proposed rule, if finalized, would thus avoid any potential unintended burden caused by the final rule. Moreover, drug sponsors and medical device manufacturers would likely learn about the proposed rule through industry news sources and not incur one-time costs to learn about the rule. We request comment on our assumptions.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.20(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

FDA has determined that this proposed rule contains no collection of information as defined by 5 CFR 1320.3(c). Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

VIII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

IX. Other Issues for Consideration

This proposed rule would only delay the effective date of the portions of a final rule amending the ''intended use'' regulations for medical products (§§ 201.128 and 801.4), published in the **Federal Register** of January 9, 2017. Therefore, comments to this proposed rule should pertain to this delay of the effective date only with respect to such provisions.

X. Request for Comments

FDA is proposing to delay, until further notice, the effective date of the amendments to §§ 201.128 and 801.4 that were published at 82 FR 2193 on January 9, 2017. FDA had previously delayed the effective date on February 7, 2017 (82 FR 9501), and on March 20, 2017 (82 FR 14319). FDA requests comment on this proposal to further delay the effective date of the amendments to §§ 201.128 and 801.4.

Dated: January 10, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–00555 Filed 1–12–18; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0697; FRL–9972–98–Region 1]

Air Plan Approval; Connecticut; Revision of the Low Emission Vehicles Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut on December 14, 2015. This SIP revision includes Connecticut's revised regulation for new motor vehicle emission standards. Connecticut has updated its rule to be consistent with various updates made to California's low emission vehicle (LEV) program. The Connecticut LEV regulations also include updates to the zero emission vehicle (ZEV) provision. Connecticut has adopted these revisions to reduce emissions of volatile organic compounds (VOC), particulate matter (PM), and nitrogen oxides (NO_X) in accordance with the requirements of the Clean Air Act (CAA), as well as to reduce greenhouse gases. The intended effect of this action is to propose approval of Connecticut's December 14, 2015 SIP revision. This action is being taken under the CAA.

DATES: Written comments must be received on or before February 15, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2017–0697 at *www.regulations.gov,* or via email to *rackauskas.eric@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, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, 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 *www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1628, fax number (617) 918–0628, email *rackauskas.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. The California LEV Program
III. Relevant EPA and CAA Requirements
IV. Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background and Purpose

On December 14, 2015, the Connecticut Department of Energy and Environmental Protection (DEEP) submitted a revision to its SIP consisting of the amended Section 22a–174–36b ''Low Emission Vehicle II Program'' (LEV II) and the newly adopted Section 22a–174–36c ''Low Emission Vehicle III Program'' (LEV III) of the Regulations of Connecticut State Agencies (RCSA). This SIP revision proposes to adopt regulations to mirror the California Air Resources Board (CARB) emission limits for new passenger cars, light-duty trucks, and medium-duty passenger vehicles sold, leased, imported, delivered, purchased, rented, acquired, or received in the State of Connecticut. Connecticut's amended LEV II and adopted LEV III programs were submitted as part of an overall revision to their ''infrastructure SIP'' for the 2012 Fine Particle ($PM_{2.5}$) National

Ambient Air Quality Standards (NAAQS), as required by section 110(a)(1) and (2) of the CAA.

EPA previously approved RCSA Section 22a–174–36b (LEV II) into the Connecticut SIP on March 17, 2015 (80 FR 13768). The SIP revision approved on March 17, 2015, adopted the California LEV II program, which was effective in Connecticut on December 4, 2004, and subsequently amended on December 22, 2005, August 4, 2009, and September 10, 2012. The previously SIP-approved LEV II program also included all elements of the ZEV program, commencing with 2008 model year vehicles. The current version of Connecticut's LEV II program regulation, which is being proposed for approval, was amended with an effective date of August 1, 2013. The revised Connecticut LEV II program, submitted as part of Connecticut's December 14, 2015 SIP revision, contains minor updates that place an end date to LEV II program standards of model year 2014, for vehicles bought in Connecticut. Any 2015 and subsequent model year vehicle is regulated by the more stringent RCSA Section 22(a)–174–36c (LEV III), also effective in CT on August 1, 2013.

Connecticut's revised regulations also include updates to the California ZEV program. In 2003, CARB finalized modifications to the ZEV program that better aligned the requirements with the status of then-available technology development. The updated CARB regulations require that 10% of vehicles be ZEVs starting in 2005, and allow manufacturers to earn and bank credits for those types of vehicles produced before 2005. The program also includes an ''alternative compliance path'' that allowed advanced technology partial ZEVs (AT PZEVs) (*e.g.* gasoline electric hybrids) to be used to meet ZEV program requirements, provided that manufacturers meet a requirement that a portion of the motor vehicle fleet be fueled by hydrogen fuel cells. The modifications to the ZEV program also broadened the scope of vehicles that qualified for meeting a portion of the ZEV sales requirement.

Additionally, Connecticut's LEV III regulation includes the California updates to the State's greenhouse gas (GHG) program. This update applies to all passenger cars, light-duty trucks, and medium-duty vehicles for 2017 and subsequent model years. Connecticut previously adopted a GHG provision as part of its LEV II regulation, which applies to model year 2009–2016 vehicles. The updated Connecticut GHG language mirrors the California GHG regulation.

II. The California LEV Program

CARB adopted the first generation of LEV regulations (LEV I) in 1990, which impacted vehicles through the 2003 model year. CARB adopted California's second generation LEV regulation (LEV II) following a November 1998 hearing. Subsequent to the adoption of the California LEV II program in February 2000, EPA adopted separate Federal standards known as the Tier 2 regulations (February 10, 2000; 65 FR 6698). In December 2000, CARB modified the California LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California. EPA granted California a waiver for its LEV II program on April 22, 2003 (68 FR 19811). In 2012, CARB 'packaged' the third generation LEV program (LEV III) with updated GHG emission standards and ZEV requirements as part of California's Advanced Clean Cars (ACC) program. EPA granted California a waiver for the ACC program on January 9, 2013 (78 FR 2112).

The LEV II and LEV III regulations expanded the scope of LEV I regulations by setting strict fleet-average emission standards for light-duty, medium-duty (including sport utility vehicles) and heavy-duty vehicles. The standards for LEV II began with the 2004 model year and increased in stringency with each vehicle model year. The LEV III standards began in 2015 and continue to increase emission stringency with each progressive vehicle model year through 2025 and beyond.

An automobile manufacturer must show that the overall vehicle fleet for a given model year meets the specified phase-in requirements according to the fleet average non-methane hydrocarbon requirement for that year. The fleet average non-methane hydrocarbon emission limits are progressively lower with each model year. The program also requires auto manufacturers to include a ''smog index'' label on each vehicle sold, which is intended to inform consumers about the amount of pollution produced by that vehicle relative to other vehicles.

In addition to meeting the LEV II and LEV III requirements, large or intermediate volume manufacturers must ensure that a certain percentage of the passenger cars and light-duty trucks that they market in California are ZEVs. This is referred to as the ZEV mandate. California has modified the ZEV mandate several times since it took effect. One modification allowed an alternative compliance program (ACP) to provide auto manufacturers with several options to meet the ZEV mandate. The ACP established ZEV credit multipliers to allow auto manufacturers to take credit for meeting the ZEV mandate by selling more partial ZEVs (PZEVs) and AT PZEVs than they are otherwise required to sell. On December 28, 2006, EPA granted California's request for a waiver of Federal preemption to enforce provisions of the ZEV regulations through the 2011 vehicle model year. In a letter dated June 27, 2012, CARB requested that EPA grant a waiver of preemption that allowed updated ZEV regulations as part of the ACC program. These updated ZEV regulations will require manufacturers to produce increasing numbers of ZEVs and plug-in hybrid electric vehicles in 2018 and subsequent years. EPA granted this waiver on January 9, 2013 (78 FR 2112).

On October 15, 2005, California amended its LEV II program to include GHG emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles. On December 21, 2005, California requested that EPA grant a waiver of preemption under CAA section 209(b) for its GHG regulations. On June 30, 2009, EPA granted CARB's request for a waiver of CAA preemption to enforce its GHG emission standards for new model year 2009 and subsequent model year motor vehicles (July 8, 2009; 74 FR 32744–32784). Approval for updated and extended GHG emissions standards was granted by EPA as part of the January 9, 2013 ACC waiver (78 FR 2112), which includes regulations that incrementally reduce GHG emissions though 2025 and beyond.

III. Relevant EPA and CAA Requirements

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA shall grant a waiver of the section 209(a) prohibition to the State of California if EPA makes specified findings, thereby allowing California to adopt its own motor vehicle emission standards. Furthermore, other states may adopt California's motor vehicle emission standards under section 177 of the CAA.

For additional information regarding California's motor vehicle emission standards and adoption by other states, please see EPA's ''California Waivers and Authorizations'' web page at URL address: *www.epa.gov/otaq/cafr.htm.* This website also lists relevant **Federal Register** notices that have been issued

by EPA in response to California waiver and authorization requests.

A. Waiver Process

The CAA allows California to seek a waiver of the preemption which prohibits states from enacting emission standards for new motor vehicles. EPA must grant this waiver before California's rules may be enforced. When California files a waiver request, EPA publishes a notice for public hearing and written comment in the **Federal Register**. The written comment period remains open for a period of time after the public hearing. Once the comment period expires, EPA reviews the comments and the Administrator determines whether the requirements for obtaining a waiver have been met.

According to CAA section 209—State Standards, EPA shall grant a waiver unless the Administrator finds that California:

—Was arbitrary and capricious in its finding that its standards are in the aggregate at least as protective of public health and welfare as applicable Federal standards;
—Does not need such standards to meet compelling and extraordinary conditions; or
—Proposes standards and accompanying enforcement procedures that are not consistent with section 202(a) of the CAA.

The most recent EPA waiver relevant to EPA's proposed approval of Connecticut's LEV program is ''California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope confirmation for California's Zero Emissions Vehicle Amendments for 2017 and Earlier Model Years'' (January 9, 2013; 78 FR 2112–2145). This final rulemaking allows California to strengthen standards for LEV regulations and GHG emissions from passenger cars, light-duty trucks and medium-duty vehicles. It also allows for continuing ZEV regulations by requiring more ZEV manufacturing and sales through 2025 and subsequent years.

B. State Adoption of California Standards

Section 177 of the CAA allows other states to adopt and enforce California's standards for the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition, the state must adopt such standards at least two years prior to the commencement of the model year to which the standards will apply. EPA issued guidance (CISD–07–16) [1] regarding its cross-border sales policy for California-certified vehicles. This guidance includes a list and map of states that have adopted California standards, specific to the 2008–2010 model years. All SIP revisions submitted to EPA for approval must also meet the requirements of CAA section 110(l).

The provisions of section 177 of the CAA require Connecticut to amend the Connecticut LEV program at such time as the State of California amends its California LEV program. Connecticut has demonstrated its commitment to maintain a LEV program through the continued adoption of regulatory amendments to Connecticut's initial LEV program.

In addition, Connecticut's December 14, 2015 SIP submittal meets the requirements of section 110(l) of the CAA because the SIP revision would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. This SIP revision sets new requirements, the California LEV III standards, that are more stringent than the California LEV I and LEV II standards previously approved into the Connecticut SIP, and expands program coverage to model year vehicles not covered by the California LEV I and LEV II standards, and by extension, not previously included in the Connecticut SIP. Though the SIP revision places an end date to model year cars covered under the LEV II program, it also adopts the more stringent LEV III program to apply to model years immediately following the LEV II regulated vehicles. Connecticut's SIP revision also includes increasingly stringent GHG emissions and LEV sales requirements that are not currently part of the Connecticut SIP.

IV. Proposed Action

EPA is proposing to approve, and incorporate into the Connecticut SIP, Connecticut's revised RCSA Section 22a–174–36b (LEV II) and adopted RCSA Section 22a–174–36c (LEV III), effective in the State of Connecticut on August 1, 2015, and submitted to EPA on December 14, 2015. The new and revised regulations include: Ending the California LEV II program with model year 2014 vehicles and adopting the California LEV III program for model year 2015 and subsequent model year vehicles, the updated California GHG provisions, and the updated ZEV provisions. EPA is proposing to approve Connecticut's revised RCSA Section 22a–174–36b and adopted RCSA Section 22a–174–36c into the Connecticut SIP because EPA has found that the requirements are consistent with the CAA.

In addition, EPA is proposing to remove 40 CFR 52.381, which was promulgated on January 24, 1995 (60 FR 4737). This section states that Connecticut must comply with the requirements of 40 CFR 51.120, which are to implement the Ozone Transport Commission (OTC) LEV program. As noted above, Connecticut subsequently adopted the California LEV and LEV II programs. Furthermore, today's proposed approval of Connecticut's revised LEV II and adopted LEV III programs, if finalized, will add California's even more stringent standards into Connecticut's SIP. Thus, Connecticut has satisfied 40 CFR 52.381, and therefore, EPA is proposing to remove 40 CFR 52.381 from the Code of Federal Regulations. In addition, on March 11, 1997, the U.S. Court of Appeals for the District of Columbia Circuit vacated the provisions of 40 CFR. 51.120. See *Virginia* v. *EPA,* 108 F.3d 1397. Because of the vacatur, EPA concludes that 40 CFR 52.381 is, in any event, obsolete.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Connecticut's regulations cited in Section IV of this proposed rulemaking. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the appropriate EPA.

[1] See EPA's October 29, 2007 letter to Manufacturers regarding ''Sales of California-certified 2008–2010 Model Year Vehicles (Cross-Border Sales Policy),'' with attachments. *https://iaspub.epa.gov/otaqpub/display_file.jsp?docid=16888&flag=1.*

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: January 2, 2018.

Ken Moraff,

Acting Regional Administrator, EPA New England.

[FR Doc. 2018–00477 Filed 1–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2017–0613; FRL–9972–95–OLEM]

Oklahoma: Approval of State Coal Combustion Residuals State Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comment.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is proposing to approve the application submitted by the Oklahoma Department of Environmental Quality to allow the Oklahoma Coal Combustion Residuals (CCR) state permit program to operate in lieu of the Federal CCR program. EPA has preliminarily determined that Oklahoma's program meets the standard for approval under RCRA. Once approved, the State program requirements and resulting permit provisions will be subject to EPA's inspection and enforcement authorities under RCRA and other applicable statutory and regulatory provisions as discussed below. This notice also announces that EPA is seeking comment on this proposal during a 45-day public comment period, and is providing an opportunity to request a public hearing within the first 15 days of this comment period.

DATES: Comments must be received on or before March 2, 2018. In addition, a public hearing request must be submitted on or before January 31, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2017–0613, at *https://www.regulations.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mary Jackson, Office of Resource Conservation and Recovery, Environmental Protection Agency; *telephone number:* (703) 308–8453; *email address: jackson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. General Information

A. Overview of Proposed Actions

EPA is proposing to approve Oklahoma's CCR state permit program application, pursuant to RCRA 4005(d)(1)(B). Oklahoma's proposed program would allow the Oklahoma Department of Environmental Quality (ODEQ) to enforce rules promulgated under its solid waste statute related to CCR activities in non-Indian Country, as well as to handle permit applications and to enforce permit violations. If approved, Oklahoma's CCR permit program will operate in lieu of the Federal CCR program, codified at 40 CFR part 257, subpart D.

This notice also announces that EPA is seeking comment on this proposal, and providing an opportunity to request a public hearing on whether the State's program is at least as protective as the federal program. If there is significant interest shown in holding a public

hearing EPA will then hold a public hearing. Please submit any request for a public hearing within the first 15 days of the public comment period through the Contact Us form on the following web page: (*https://www.epa.gov/coalash*). If the desire for a public hearing is demonstrated EPA will hold the hearing at the Oklahoma Department of Environmental Quality building located at 707 N Robinson Ave., Oklahoma City, OK on February 13, 2018 starting at 9 a.m. EPA will post a confirmation of the public hearing in the docket and on the EPA CCR website (*https://www.epa.gov/coalash*) providing information for the hearing.

EPA has also engaged federally-recognized Tribes within the State of Oklahoma in consultation and coordination regarding the program authorizations for ODEQ. EPA has established opportunities for formal as well as informal discussion throughout the consultation period, beginning with an initial conference call on October 19, 2017. Tribal consultation will be conducted in accordance with the EPA policy on Consultation and Coordination with Indian Tribes (*https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf*).

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous, subbituminous, and lignite, for the purpose of generating steam for the purpose of powering a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR includes fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent off-site for disposal or beneficial use or disposed in on-site landfills or surface impoundments.

On April 17, 2015, EPA published a final rule, creating 40 CFR part 257, subpart D, that established a comprehensive set of minimum requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302). The rule created a self-implementing program which regulates the location, design, operating criteria, and groundwater monitoring and corrective action for CCR disposal, as well as regulating the closure and post-closure care of CCR units and requiring recordkeeping and notifications for CCR units. The regulations do not cover the ''beneficial use'' of CCR as that term is defined in § 257.53.

C. Statutory Authority

EPA is issuing this proposed determination pursuant to section RCRA sections 4005(d) and 7004(b)(1). See 42 U.S.C. 6945(d), 6974(b)(1).

Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended Section 4005 of the Resource Conservation and Recovery Act (RCRA), creating a new subsection (d) that establishes a Federal permitting program similar to those under RCRA subtitle C and other environmental statutes. See 42 U.S.C. 6945(d). Under the WIIN Act, states may develop and submit a CCR permit program to EPA for approval; once approved the state permit program operates in lieu of the Federal requirements. See 42 U.S.C. 6945(d)(1)(A).

To become approved, the statute requires that a State provide ''evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State.'' See 42 U.S.C. 6945(d)(1)(A). In addition, the statute directs that the State submit evidence that the program meets the standard in section 4005(d)(1)(B), *i.e.,* that it will require each coal combustion residuals unit located in the State to achieve compliance with either: (1) The Federal CCR requirements at 40 CFR part 257, subpart D; or (2) other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the Federal requirements. See 42 U.S.C. 6945(d)(1)(B). EPA has 180 days from receiving a complete application to make a final determination, and must provide public notice and an opportunity for public comment. See 42 U.S.C. 6945(d)(1)(B).

To receive EPA approval, EPA must determine that the state program requires each CCR unit located in the state to achieve compliance either with the requirements of 40 CFR part 257, subpart D, or with state criteria that EPA determines (after consultation with the State) to be at least as protective as the requirements of 40 CFR part 257, subpart D. See 42 U.S.C. 6945(d)(1)(B). EPA may approve a proposed state permit program in whole or in part. *Id.*

Once a program is approved, EPA must review the program at least every 12 years, as well as no later than 3 years after a revision to an applicable section of 40 CFR part 257, subpart D, or 1 year after any unauthorized significant release from a CCR unit located in the state. See 42 U.S.C. 6945(d)(1)(D)(i)(I)–(III). EPA also must review a program at the request of another state alleging that the soil, groundwater, or surface water of the requesting state is or is likely to be adversely affected by a release from a CCR unit in the approved state. See 42 U.S.C. 6945(d)(1)(D)(i)(IV).

In a state with an approved CCR program, EPA may commence administrative or judicial enforcement actions under RCRA § 3008 if the state requests assistance or if the EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the permit program. See 42 U.S.C. 6945(d)(4).

II. Oklahoma's Application

ODEQ issued a Notice of Rulemaking Intent related to its proposed CCR program and accepted public comments from December 1, 2015 through January 13, 2016. ODEQ then published an Executive Summary rulemaking document that included the public comments received and the ODEQ responses.

In September 2016, ODEQ promulgated Oklahoma Administrative Code (OAC) Title 252 Chapter 517 *Disposal of Coal Combustion Residuals from Electric Utilities,* establishing its CCR program. OAC 252:517 incorporates all of the federal regulations at 40 CFR part 257, subpart D, with some minor modifications as discussed below.

On July 31, 2017 Oklahoma submitted to EPA its initial application. The State supplemented its original application on October 18, 2017. EPA determined that the application was complete and notified Oklahoma of its determination by letter dated December 21, 2017.[1]

EPA is aware of six CCR facilities currently in Oklahoma. Approval of ODEQ's CCR application would allow the ODEQ regulations to apply to those existing CCR units as well as any future CCR units not located in Indian country in lieu of the Federal requirements.

EPA is not aware of any existing CCR units in Indian country within Oklahoma, but EPA will maintain sole authority to regulate and permit CCR units in Indian country, meaning formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States.

[1] ODEQ's initial CCR permit program application, subsequent supplementation, and EPA's determination of completeness letter are available in the docket supporting this proposal.

III. EPA Analysis of Oklahoma's Application

As discussed in Section I.C. of this notice, the statute requires EPA to evaluate two components of a state program to determine whether it meets the standard for approval. First, EPA is to evaluate the adequacy of the permit program (or other system of prior approval and conditions) itself. See 42 U.S.C. 6945(d)(1)(A). Second, EPA is to evaluate the adequacy of the technical criteria that will be included in each permit, to determine whether they are the same as the federal criteria, or to the extent they differ, whether the modified criteria are ''at least as protective as'' the federal requirements. See 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. See 42 U.S.C. 6945(d)(1).

On that basis, EPA conducted an analysis of ODEQ's application, including a thorough analysis of OAC 252:517 and its adoption of 40 CFR part 257, subpart D. Based on this analysis, EPA has preliminarily determined that ODEQ's submitted CCR permit program meets the standard for approval in section 4005(d)(1)(A) and (B). EPA is therefore proposing to approve Oklahoma's application. Oklahoma's program contains all the elements of the federal rule, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements. It also contains state-specific language, references and state-specific requirements that differ from the federal rule, which EPA has preliminarily determined to be at least as protective as the Federal criteria. EPA's analysis and preliminary findings are discussed in greater detail below and in the Technical Support Document.

Non-substantive changes include language inserts and deletions to enable the ODEQ to permit CCR units and enforce the Oklahoma rule. The revisions include: The removal of statements regarding national applicability; the inclusion of language to require submittal and approval of plans to ODEQ; the inclusion of permitting provisions to allow the ODEQ to administer the CCR rules in the context of a permitting program; the inclusion of state-specific location restrictions; the inclusion of procedures for subsurface investigation; the inclusion of provisions addressing cost estimates and financial assurance.

Throughout Oklahoma's Chapter 517 rules, references for tribal notifications and/or approval that appear in the federal rule have been deleted along with the terms ''Indian Country,'' ''Indian Lands,'' and ''Indian Tribe.'' EPA will retain sole authority to regulate and permit CCR units in Indian country as defined in 18 U.S.C. 1151, which includes reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States. EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation. *See, e.g., Oklahoma Tax Commission* vs. *Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 511 (1991).

A. Adequacy of Oklahoma's Permit Program

RCRA section 4005(d)(1)(A) requires a State seeking program approval to submit to EPA an application with ''evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State.''

RCRA section 4005(d)(1)(A) does not require EPA to promulgate regulations for determining the adequacy of State programs. EPA is therefore relying in large measure on the existing regulations in 40 CFR part 239, Requirements for State Permit Program Determination of Adequacy, on the statutory requirements for public participation in RCRA Section 7004, and on the Agency's experience in reviewing and approving State programs in general. However, in order to aid States in developing their programs and to provide a clear statement of how, in EPA's judgment, the existing regulations and statutory requirements in both 4005(d) and 7004 apply to state CCR programs, on August 15, 2017 EPA announced the availability of an interim final Guidance for Coal Combustion Residuals State Permit Programs (82 FR 38685). This guidance outlines the process and procedures EPA generally intends to use to review and make determinations on State CCR permit programs. EPA evaluated the adequacy of ODEQ's permit program based on the statutory requirements and EPA's interpretation of the regulatory requirements. A summary of EPA's findings are below, organized by the program elements identified in the Part 239 regulations and the guidance document; our detailed analysis of the submitted State program can be found in the Technical Support Document which is included in the docket for this proposal.

1. Permitting Guidelines

Based on section 7004 and on the part 239 regulations, it is EPA's judgment (as expressed in the interim final guidance) that an adequate permitting program will provide for public participation by ensuring that: Documents for permit determinations are made available for public review and comment; final determinations on permit applications are made known to the public; and public comments on permit determinations are considered.

All environmental permit and modification applications in Oklahoma are subject to the Oklahoma Uniform Environmental Permitting Act (UEPA) and the permitting rules promulgated to carry out UEPA. UEPA classifies all permit applications into three tiers that determine the level of public participation and administrative review the permit application will receive. See OAC 252:4–7–2. Oklahoma classifies solid waste management applications, including CCR applications, into their respective tiers at OAC 252:4–7–58 through 60. All permit documents, regardless of tier, are available for review and copying. OAC 252:4–1–5.

Oklahoma describes the Tier I program as ''the category for those things that are basically administrative decisions which can be made by a technical supervisor with no public participation except for the landowner.'' OAC 252:4–7–2. The Tier I permit application requires an application, notice to the landowner, and Department review. 27A O.S. § 2–14–103(9). Only applications for minor modifications, lateral expansions within the permit boundary below a certain capacity, and approval of technical plans fall within the Tier I category. OAC 252:4–7–58.

The Tier II permit application process expands upon the Tier I requirements to include published notice of the application filing and published notice of the draft permit or denial and opportunity for a public meeting. 27A O.S. § 2–14–103(10). The Tier II process covers new permits for on-site CCR disposal units and more substantial modifications to existing facilities beyond Tier I. OAC 252:4–7–59.

The Tier III permit application process includes the requirements of Tiers I and II and adds notice of an opportunity for a process meeting, response to public comments, and notice of an opportunity for an administrative permit hearing. 27A O.S. § 2–14–103(11). The Tier III process covers new permits for off-site disposal

units and permits for some significant modifications to off-site disposal units. OAC 252:4–7–60.

UEPA provides for public notice and review of permit applications and significant permit modifications through its Tier II and III programs. Tier II and III programs also provide the opportunity for public hearing, and, in the case of Tier III applications, the opportunity for an administrative hearing. These programs appear to provide adequate opportunities for public participation in the permitting process, and the application of UEPA to the CCR permitting program is consistent with Oklahoma's practice across environmental programs. Permit and modification applications for CCR facilities fall under the existing solid waste management application at OAC 252:4–7–58 through 60, and those classifications are used for Oklahoma's authorized Municipal Solid Waste Landfill program.

2. Guidelines for Compliance Monitoring Authority

Based on the part 239 regulations, it is EPA's judgment (as expressed in the interim final guidance), that a state's application for permit program approval should demonstrate that the state has the authority to gather information about compliance, perform inspections, and ensure that information it gathers is suitable for enforcement.

ODEQ has compliance monitoring authority under 27A O.S. § 2–3–501, allowing for inspections, sampling, information gathering, and other investigation. This authority extends to ODEQ's proposed CCR permit program and would provide the authority to adequately gather information for enforcement.

3. Guidelines for Enforcement Authority

Further, based on the part 239 regulations, it is EPA's judgment (as expressed in the interim final guidance), that a state's application for permit program approval should demonstrate that the state has authority to administer RCRA § 4005(c)(1)(B) and (C) programs to have adequate enforcement authority to administer those programs, including: The authority to restrain any person from engaging in activity which may damage human health or the environment, the authority to sue to enjoin prohibited activity, and the authority to sue to recover civil penalties for prohibited activity.

ODEQ appears to have adequate enforcement authority for its existing programs under 27A O.S. § 2–3–501–507 and that authority extends to ODEQ's proposed CCR permit program.

4. Intervention in Civil Enforcement Proceedings

Based on section 7004 and on the part 239 regulations, it is EPA's judgment (as expressed in the interim final guidance) that a state application for permit program approval should demonstrate that the state provides adequate opportunity for citizen intervention in civil enforcement proceedings through the requirements found in 40 CFR 239.9. In general, those requirements state that the state must provide authority to allow citizen intervention or provide assurance of (1) a notice and public involvement process, (2) investigating and providing responses about violations, and (3) not opposing intervention when permitted by statute, rule, or regulation.

ODEQ's CCR program appears to satisfy the civil intervention requirement (40 CFR 239.9(a)) by allowing intervention by right. (see 12 OK Stat § 12–2024). In addition, ODEQ's CCR program would satisfy the requirements of 40 CFR 239.9(b) by providing a process to respond to citizen complaints (see 27A O.S. § 2–3–101,503) and by not opposing citizen intervention when allowed by statute (see 27A O.S. § 2–7–133). ODEQ in meeting 40 CFR 239.9(b)(2) has an extremely robust process for responding to citizen complaints. In 27A O.S. § 2–3–101–F–1, The complaints program is responsible for intake processing, mediation and conciliation of inquiries and complaints received by the Department and which shall provide for the expedient resolution of complaints within the jurisdiction of the Department. In 27A O.S. § 2–3–503, if the Department undertakes an enforcement action as a result of a complaint, the Department shall notify the complainant of the enforcement action by mail. The State program in 27A O.S. § 2–3–503 offers the complainant an opportunity to provide written information pertinent to the complaint within fourteen (14) calendar days after the date of the mailing. The State's program also goes further in 27A O.S. § 2–3–104 that the complaints program shall, in addition to the responsibilities specified by Section 2–3–101 of this title, refer, upon written request, all complaints in which one of the complainants remains unsatisfied with the Department's resolution of said complaint to an outside source trained in mediation. It is clear that ODEQ takes public intervention seriously in enforcement actions considering the additional elements of the State's complaint process.

EPA has preliminarily determined that these requirements allow a minimum necessary level of citizen involvement in the enforcement process.

B. Adequacy of Technical Criteria

EPA has preliminarily determined that ODEQ's submitted CCR permit program generally meets the standard for approval in RCRA section 4005(d)(1)(B)(i), as it will require each CCR unit located in Oklahoma to achieve compliance with the applicable criteria for CCR units under 40 CFR part 257. To make this preliminary determination, EPA compared ODEQ's proposed CCR permit program to 40 CFR part 257 to determine whether it differed from the federal requirements, and if so, whether those differences met the standard for approval in RCRA section 4005(d)(1)(B)(ii) and (C).

Oklahoma has adopted all of the technical criteria at 40 CFR part 257, subpart D into its regulations at OAC Title 252 Chapter 517. While ODEQ's CCR permit program also includes some modification of 40 CFR part 257, subpart D, the majority of ODEQ's modifications were merely those that were needed to allow the State to implement the part 257 criteria through a permit process. As mentioned above, the 40 CFR part 257, subpart D rules were meant to be implemented directly by the regulated facility, without the oversight of any regulatory authority, such as a state permitting program. For example, ODEQ removed 40 CFR 257.61(a)(2)(iv), which references the Marine Protection, Research, and Sanctuaries Act requirements because Oklahoma does not have any coastal or ocean environments which apply under the MPRSA regulations. EPA considers these revisions to be ministerial, and as such, they do not substantively modify the federal technical criteria.

ODEQ also made a few minor changes to the 40 CFR 257, Subpart D criteria. These changes reflect the integration of the CCR rules with the responsibilities of other state agencies or state specific conditions. There are a few minor changes that were made inadvertently that will be changed by the State through another rulemaking, including a typographic error in Chapter 517–9–4(g)(5) and removal of the words ''*and the leachate collection and removal*'' from 40 CFR 257.70(e). The State has acknowledged these differences and has plans to correct any errors. Additional changes include removal of the web link to EPA publication SW–846 under the definition ''*Representative Sample*'' in 40 CFR 257.53; and the replacement of 40 CFR 257.91(e) with a reference to the

Oklahoma Water Resources Board (OWRB) Section 785:35–7–2. After review of this OWRB regulation, an EPA groundwater expert finds the Oklahoma rules to be more stringent than the requirements under 40 CFR 257.91(e). EPA preliminarily finds these changes to be minor because the key aspects of the CCR program including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements are not substantially changed or reduced by the Oklahoma revisions and in one example is more stringent. These changes do not keep the overall program from being at least as protective as 40 CFR part 257, subpart D. EPA's full analysis of Oklahoma's CCR permit program can be found in the Technical Support Document (TSD) located in the docket for this notice.

IV. Proposed Action

In accordance with 42 U.S.C. 6945(d), EPA is proposing to wholly approve ODEQ's CCR permit program application.

Dated: January 3, 2018.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2018–00474 Filed 1–12–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 17–287, 11–42, 09–197; FCC 17–155]

Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes and seeks comment on reforms to ensure the Lifeline program rules comport with the authority granted to the Commission in the Communications Act and to curb wasteful and abusive spending in the Lifeline program. The Commission also seeks comment on how Lifeline might more efficiently target funds to areas and households most in need of help in obtaining digital opportunity.

DATES: Comments are due on or before January 24, 2018, and reply comments are due on or before February 23, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 17–287, 11–42, and 09–197, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jodie Griffin, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking and Notice of Inquiry (NPRM and NOI) in WC Docket Nos. 17–287, 11–42, 09–197; FCC 17–155, adopted on November 16, 2017 and released on December 1, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1201/FCC-17-155A1.pdf.* The Fourth Report and Order, Order on Reconsideration and Memorandum Opinion and Order that was adopted concurrently with the NPRM and NOI are published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. In this Notice of Proposed Rulemaking, the Commission proposes and seeks comment on reforms to ensure the Lifeline program rules comport with the authority granted to the Commission in the Communications Act and to curb wasteful and abusive spending in the Lifeline program. Specifically, the NPRM seeks comment on ending the Commission's previous preemption of states' role in designating certain eligible telecommunications carriers and removing the Lifeline Broadband Provider designation; targeting Lifeline funds to facilities-based broadband-capable networks offering both voice and broadband services; adopting a self-enforcing budget cap for the program; improving the eligibility verification and recertification processes to further prevent waste, fraud, and abuse in the program; and improving providers' incentive to provide quality communications services by establishing a maximum discount level for Lifeline-supported service. In the Notice of Inquiry, the Commission seeks comment on how Lifeline might more efficiently target funds to areas and households most in need of help in obtaining digital opportunity.

II. Notice of Proposed Rulemaking

2. In this Notice of Proposed Rulemaking, the Commission proposes and seeks comment on reforms to ensure that the Commission is administering the Lifeline program on sound legal footing, recognizing the important and Congressionally mandated role of states in Lifeline program administration, and rooting out waste, fraud, and abuse in the program. These steps must precede broader discussions about how the Lifeline program can be updated to effectively bring digital opportunity to those who are currently on the wrong side of the digital divide.

3. The Commission first seeks comment on ways the Commission can better accommodate the important and lawful role of the states in the Lifeline program. The Commission proposes to eliminate the Lifeline Broadband Provider category of ETCs and the state preemption on which it is based. The Commission also seeks comment on ways to encourage cooperative federalism between the states and the Commission to make the National Verifier a success.

4. In this section, the Commission addresses the serious concerns that have been raised that the Commission's creation of Lifeline Broadband Provider (LBP) ETCs and preemption of state commissions' designations of such LBPs was inconsistent with the role contemplated for the states in Section 214 of the Act. In the *2016 Lifeline Order,* 81 FR 33026, May 24, 2016, the Commission established a framework to designate providers as Lifeline Broadband Providers (LBPs), eligible to receive Lifeline reimbursement for qualifying broadband internet access

service provided to eligible low-income consumers, but not Lifeline voice service. The Commission's role in this framework was premised on the Commission's authority to designate a common carrier ''that is not subject to the jurisdiction of a State commission.'' And to effectuate that policy goal, the agency preempted state authority in a manner wholly inconsistent with Section 214 of the Communications Act, which gives primary responsibility for designation of eligible telecommunications carriers to the states. (47 U.S.C. 214(e)(2), (3)). Based on these circumstances and on further review, the Commission believes it erred in preempting state commissions from their primary responsibility to designate ETCs under section 214(e) of the Act and seek comment on this issue. (*See* 47 U.S.C. 214(e)).

5. The *2016 Lifeline Order's* preemption of state designation of LBPs was challenged by the National Association of Regulatory Utility Commissioners (NARUC) and a coalition of states led by the State of Wisconsin (State Petitioners). (*See NARUC* v. *FCC,* Case No. 16–1170 (DC Cir., filed June 3, 2016); *Wisconsin* v. *FCC,* Case No. 16–1219 (DC Cir. filed June 30, 2016). Among other issues, NARUC and the State Petitioners contend the Commission's decision to preempt states from exercising any authority to designate broadband providers as LBPs violates the Act and the Administrative Procedure Act. The United States Court of Appeals for the DC Circuit has remanded the legal challenges to the Commission for further proceedings. (*NARUC* v. *FCC,* Case No. 16–1170, Order (DC Cir., Apr. 19, 2017), granting the Commission's motion for voluntary remand.) The legal challenges to the LBP designation process question the Commission's legal authority to create an LBP designation process and designate providers under that process. Additionally, members of Congress have introduced legislation to reverse the Commission's preemption and clarify that the Communications Act of 1934 and the Telecommunications Act of 1996 cannot be interpreted to limit the jurisdiction of any state to designate an ETC. (*See* Preserving State Commission Oversight Act of 2017, S. 421, 115th Cong. (2017)). Would reversing the preemption in the *2016 Lifeline Order* resolve the legal issues surrounding LBPs and their designation process? How would reversing the preemption in the *2016 Lifeline Order* impact the future of LBPs in the Lifeline program? Should ETCs be designated through traditional state and federal roles either for purposes of only Lifeline or for both the high-cost and Lifeline programs? (*See* 47 U.S.C. 214(e)). What rule changes would be needed to restore the traditional state and federal roles for ETC designations? The Commission seeks comment on this proposal and on any alternatives.

6. The *2016 Lifeline Order* ''applaud[ed] state programs for devoting resources designed to help close the affordability gap for communications services.'' Although not formally constraining how states administer those state programs for voice and/or broadband support, the Order recognized that its approach to ETC designations could create inconsistencies with the operation of those state programs. States continue to play an important role in ensuring affordability of voice, and also supporting broadband; accordingly, reversing the preemption in the *2016 Lifeline Order* may resolve inconsistencies between state and federal efforts and provide benefits to the operation of state and federal programs. The Commission seeks comment on these issues.

7. The Commission also proposes eliminating stand-alone LBP designations to better reflect the structure, operation, and goals of the Lifeline program, as set forth in the Communications Act, as well as related state programs. For example, the existence of an LBP designation enables entities to participate in the Lifeline program without assuming any obligations with respect to voice service. The Commission seeks comment on this proposal.

8. In the *2016 Lifeline Order,* the Commission established the National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program. As outlined in the *2016 Lifeline Order,* ''[t]he Commission's key objectives for the National Verifier are to protect against and reduce waste, fraud, and abuse; to lower costs to the Fund and Lifeline providers through administrative efficiencies; and to better serve eligible beneficiaries by facilitating choice and improving the enrollment experience.'' A strong cooperative effort between the Commission and its state partners is critical to advancing these laudable objectives. In this Notice of Proposed Rulemaking, the Commission seeks comment on ways to ensure the Commission can partner with states to facilitate the successful implementation of the National Verifier.

9. The Commission seeks comment on ways states can be encouraged to work cooperatively with the Commission and USAC to integrate their state databases into the National Verifier without unnecessary delay. Because the National Verifier is a critical part of improving the integrity of the Lifeline program, it is important all states join the National Verifier in a timely manner. To protect the integrity of the enrollment and eligibility determination process, the Commission seeks comment on whether new Lifeline enrollments should be halted in a state at any point if the launch of the National Verifier has been unnecessarily delayed in that state. For example, when the plan for National Verifier initiation in a state falls behind schedule, what steps should be taken to ensure no ineligible subscribers enroll in the program because of the delay? What is the proper response when the scheduled launch of the National Verifier in a state is not accomplished by the announced date and carriers relying on the launch announcement are unprepared to handle eligibility determinations? Should enrollments be halted for all consumers in the state or only for those whose eligibility must be verified using a state database?

10. The Commission seeks comment on other steps to encourage cooperation and collaboration between the states, the Commission, and USAC to ensure the National Verifier is launched in a state in a timely fashion. Should the Commission adopt specific benchmarks or proposed timelines to guide this process? Are there ways to streamline the process of developing and executing the agreements necessary to allow data sharing between states and the Commission? In the event a state has demonstrated an unwillingness to engage in the effort to deploy the National Verifier or to do so at reasonable costs, are there other measures the Commission should take? In these situations, USAC is able to conduct a manual review of all eligibility documentation for potential Lifeline subscribers in that state but that measure is costly, burdensome, and inefficient; the Commission believes program expenses would be better directed towards electronic connections between state systems and the National Verifier platform. How can the Commission encourage states to work cooperatively with USAC to avoid unnecessary costs?

11. The Lifeline program has an important role in bringing digital opportunity to low-income Americans. The Commission believes that changes to Lifeline policies are warranted to ensure the Commission's administration

of Lifeline support is faithful to Congress's stated universal service goals and is focused on helping low-income households obtain the benefits that come from access to modern communications networks. In this section, the Commission proposes policy changes to focus Lifeline support on encouraging service provider investment in networks that offer quality, affordable broadband service. The Commission also seeks comment on the Commission's legal authority for these proposed changes.

12. *Lifeline Support for Facilities-Based Broadband Service.* The Commission seeks comment on focusing Lifeline support to encourage investment in broadband-capable networks. As explained in the *2016 Lifeline Order,* broadband service is increasingly important for participation in the 21st Century economy. However, broadband service is not as ubiquitous or as affordable as voice service. This is particularly true in rural and rural Tribal areas, where broadband deployment lags behind other areas of the country.

13. Section 254(b) of the Act requires the Commission to base its policies for the preservation and advancement of universal service on the principles that ''[q]uality services should be available at just, reasonable, and affordable rates,'' ''[a]ccess to advanced telecommunications and information services shall be provided in all regions of the Nation'' and ''[c]onsumers in all regions of the Nation . . . should have access to . . . advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.'' (47 U.S.C. 254(b)(1)–(3)).

14. Mindful of the direction given to the Commission by Congress, the Commission believes Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable networks. The Commission therefore proposes limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC's voice- and broadband-capable last-mile network. The Commission believes this proposal would do more than the current reimbursement structure to encourage access to quality, affordable broadband service for low-income Americans. In particular, Lifeline support can serve to increase the ability to pay for services of low-income households. Such an increase can thereby improve the business case for deploying facilities to serve low-income households. In this way, Lifeline can serve to help encourage the deployment of facilities-based networks by making deployment of the networks more economically viable. Furthermore, the competitive impacts of having multiple competing facilities-based networks can also help to lower prices for consumers. If Lifeline can help promote more facilities, it can then indirectly also serve to reduce prices for consumers.

15. The Commission seeks comment on this proposal. What rule changes would be necessary to implement this proposal? How can the Commission ensure Lifeline support is only disbursed to ETCs that provide broadband service over facilities-based networks? How would his proposal impact the availability and affordability of Lifeline broadband services? Are there other steps the Commission should take to focus Lifeline support to encourage investment in broadband networks?

16. *Discontinuing Lifeline Support for Non-Facilities-Based Service.* Next, the Commission seeks comment on discontinuing Lifeline support for service provided over non-facilities-based networks, to advance our policy of focusing Lifeline support to encourage investment in voice- and broadband-capable networks. The Commission proposes limiting Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service. Under this proposal, Lifeline providers that are partially facilities-based may obtain designation as an ETC, but would only receive Lifeline support for service provided over the last-mile facilities they own. The Commission seeks comment on how the Commission should define ''facilities'' for this purpose. Should the Commission adopt the same definition of facilities that the Fourth Report and Order uses for enhanced support on rural Tribal lands? If the Commission adopts different facilities-based criteria for Lifeline generally, should the Commission also use that definition of ''facilities'' for purposes of enhanced Tribal support? The Commission seeks comment on any other rule changes that would be necessary to implement this proposal.

17. How would this proposal impact the number of Lifeline providers participating in the program and the availability of quality, affordable Lifeline broadband services? Are there other means of providing broadband service that should be considered facilities-based for purposes of the Lifeline program? How should the facilities-based requirement apply in a situation where a reseller and a facilities-based provider form a joint venture to provide Lifeline services? How should the Commission ensure Lifeline support is only issued to ETCs that satisfy the facilities requirement? Would the facilities-based requirement further the Commission's goal of eliminating waste, fraud, and abuse in the Lifeline program? On this last point, the Commission notes that the vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based providers. And the proliferation of Lifeline resellers in 2009 corresponded with a tremendous increase in households receiving multiple subsidies under the Lifeline program. How do the incentives of resellers differ from those who use their own last-mile facilities? Why have waste, fraud, and abuse increased—including multiple-subsidies-per-household problems, self-certification problems, authentication-of-subscriber problems, phantom-subscriber problems, and eligibility problems—since the advent of multiple resellers within the program in 2009?

18. The Commission does not expect that this approach would impact the forbearance relief from section 214(e)(1)(A)'s facilities requirement. However, the Commission recognizes that not reversing this forbearance relief may create a tension that could be relieved by making the requirements for obtaining a Lifeline-only ETC designation under section 214(e)(1)(A) match the facilities requirement for receiving Lifeline reimbursement. The Commission seeks comment on such matters.

19. Alternatively, should the Commission reverse the forbearance from section 214(e)(1)(A)'s facilities requirement? If the Commission found that forbearing from the facilities-based requirement was no longer in the public interest, what other findings, if any, would the Commission need to make under section 10? If the Commission rescinded this forbearance, what effective date would give impacted ETCs and their customers an appropriate amount of time to make the transition? Furthermore, if the Commission were to rescind forbearance from the facilities requirement, should it reconsider its interpretation of that requirement? For example, § 54.201(g) of our current rules states that an ETC's facilities need not be located within the relevant service area as long as the carrier uses them within the designated

service area. But the Commission has previously noted that ''[s]everal ETCs, some of which call themselves 'facilities-based resellers,' have previously maintained they are facilities-based based on facilities that provision operator and/or directory assistance services, which are provided in conjunction with their retail offering.'' The Commission seeks comment on revising those rules to make clear that a carrier is only facilities-based under our rules if its facilities are located in its service area and it uses those facilities to provide last-mile service to its supported customers. The Commission also notes that the Act defines a facilities-based carrier as one that offers service ''either using its own facilities or a combination of its own facilities and resale of another carrier's services.'' (47 U.S.C. 214(e)(1)(A)). The Commission seeks comment on how to balance Congress's expectation that ETCs would invest universal service support in the areas they serve (*See* 47 U.S.C. 254(e).) and its recognition that some amount of resale should be permissible. The Commission seeks comment on any other formulations of this rule it should consider to ensure that facilities-based Lifeline carriers are in fact reinvesting the support they receive in facilities in the communities they serve.

20. The Commission also seeks comment on the transition period for implementing this approach. If Lifeline support is only provided to ETCs that provide Lifeline broadband services over facilities-based voice- and broadband-capable last-mile networks, what should the transition period and transition process be for non-facilities-based providers currently participating in the Lifeline program and their customers? Should the transition process consider whether there is a facilities-based provider in a specific market that intends to continue providing Lifeline service? If so, what geographic area would be the appropriate focus of this determination? What sources could the Commission use to determine whether a facilities-based Lifeline provider is present in and plans to continue offering Lifeline service in a particular geographic market? What other factors should the Commission consider in developing the transition process? What would be an appropriate transition period for impacted ETCs and their customers? Should the Commission provide a three-year support phase down period for non-facilities-based ETCs participating in the Lifeline program, or would a shorter period be appropriate? How would the transition process and period differ if the Commission reversed the forbearance from section 214(e)(1)(A)'s facilities requirement?

21. The Commission also seeks comment on how to determine whether existing or future resellers have fully complied with the statute's exhortation that universal service funding must be spent ''only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' (47 U.S.C. 254(e)). Have Lifeline resellers passed through all Lifeline funding to their underlying carriers to ensure federal funding is appropriately spent on the required ''facilities and services'' rather than non-eligible expenses like free phones and equipment? What accounting measures have Lifeline resellers instituted to ensure that Lifeline funding has only been used for eligible expenses? Would eliminating resellers from the program address any concerns about the appropriate use of federal funds by Lifeline providers? Would limiting payments to resellers to what they pay their wholesale carriers fully effectuate the congressional intent of section 254(e)? What auditing or other review should the Commission or USAC carry out to ensure that resellers that have been receiving funds used them properly?

22. Alternatively, the Commission seeks comment on TracFone's suggestions that it minimizes waste, fraud, and abuse in the Lifeline program through ''conduct-based requirements.'' One form of conduct-based requirement would be to suspend for a year or disbar any Lifeline ETC with sufficiently high improper payment rates, whether on the basis of Payment Quality Assurance reviews or program audits. The Commission seeks comment on such a conduct-based requirement. If the Commission were to adopt such a requirement, what should be the measuring stick it uses and what should be the trigger? Should the Commission use a percent of Lifeline revenues improperly paid in a given state? Should the Commission establish a threshold amount of improper payments, such as $50,000, as a trigger for suspension in a state? What levels should be established for disbarment? And should the Commission apply such a requirement to all Lifeline providers, as TracFone suggests, or only wireless resellers, the historic source of most of the Commission's enforcement actions and investigations with respect to waste, fraud, and abuse? Another conduct-based requirement could be the suspension of companies that regularly engage in fraud-related conduct—such as practices that TracFone has previously suggested eliminating from the program. Would banning such practices and suspending those who engaged in them mitigate our concerns about rampant waste, fraud, and abuse? Would any of the conduct-based requirements minimize waste, fraud, and abuse in the Lifeline program to the same extent as the proposed facilities requirement? How could TracFone's proposals be implemented with minimal additional administrative burden on Lifeline service providers? How would such proposals ensure that Lifeline support is being appropriately used to advance the deployment of broadband-eligible networks?

23. *Continuing the Phase Down of Lifeline Support for Voice Service.* The Commission also seeks comment on continuing the phase down of Lifeline support for voice-only services. In the *2016 Lifeline Order,* the Commission adopted rules to gradually phase out Lifeline support for voice-only services to further the Commission's goal of transitioning to a broadband-focused Lifeline program. The current rules provide that Lifeline support will decrease to zero dollars on December 1, 2021, with an exception permitting Lifeline voice support to continue in Census blocks where there is only one Lifeline provider. (47 CFR 54.403(a)(2)(iv).) In deciding to phase down Lifeline support for voice-only service, the Commission explained that continuing to provide Lifeline support for voice-only service may ''artificially perpetuate a market with decreasing demand'' and may incent Lifeline providers to ''avoid providing low-income consumers with modern services as Congress intended.'' The Commission also cited the declining prices of fixed and wireless voice-only services and the availability of a wide-range of voice-only services in the marketplace.

24. Continuing the phase down of Lifeline support is faithful to section 254(b)'s mandates and would support our proposal to focus Lifeline support to encourage investment in broadband-capable networks. (*See* 47 U.S.C. 254(b)(1)–(3)). The Commission acknowledges that some parties have argued against the phase down of Lifeline support for voice service, citing, among other concerns, the lack of affordable of voice service. However, the Commission expects that even without Lifeline voice support, low-income consumers would be able to obtain quality, affordable voice service in urban areas. Based on the *2018 Urban Rate Survey,* several providers charge monthly rates of fifteen dollars or less

for fixed voice-only service, and the national average monthly rate for fixed voice-only service is $25.50. (*See* 2018 Urban Rate Survey, Voice Data, Column J, Rows 423, 496, 501, 763, 788, *https://www.fcc.gov/general/urban-rate-survey-data-resources.*) The *2016 Universal Service Monitoring Report* indicates that telephone expenses represent under four percent of after-tax income for low-income households. (*See* Universal Service Monitoring Report, CC Docket No. 96–45, et al., at 57, Table 6.12 (2016) *https://apps.fcc.gov/edocs__public/attachmatch/DOC-343025A1.pdf.*) Therefore, the Commission expects that even without Lifeline support for voice-only service, the monthly cost of such service in urban areas would represent a small percentage of low-income households' after-tax income. The Commission seeks comment on continuing the phase down of Lifeline support for voice-only service. Should the Commission make any changes to the current schedule for phasing out Lifeline support for voice services to support the policy changes the Commission proposes in this section? Should the Commission retain the exception permitting Lifeline support for voice services after December 1, 2021 in areas where there is only one Lifeline provider? (47 CFR 54.403.) Would retaining this exception impede the adoption of Lifeline broadband service or investment in broadband-enabled networks?

25. In contrast, it is unclear whether low-income consumers would be able to obtain quality, affordable voice service in rural areas without Lifeline voice support. The Commission's rules require high-cost ETCs to offer voice service at rates that are reasonably comparable to the rates for similar services in urban areas, *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011. Although such rates may be affordable in theory, they may not be in practice: The 2018 reasonable-comparability benchmark for voice services is $45.38—almost double the average urban rate. The Commission accordingly seeks comment on eliminating the phase down of Lifeline support for voice-only service in rural areas. Would eliminating the phase down be the best way to ensure that consumers in rural areas are offered affordable voice services? Should voice-only support be limited to a subset of rural areas where voice rates are actually above the urban average? If so, by how much? And how should the Commission determine the areas where voice-only support is available? Would offering voice-only support to rural Tribal lands ensure more affordable voice services in those areas? If so, what should be the level of support offered compared to the amount of support available for broadband?

26. *Legal Authority.* The Commission believes it has authority under Section 254(e) of the Act to provide Lifeline support to ETCs that provide broadband service over facilities-based broadband-capable networks that support voice service. Section 254(e) provides that a carrier receiving universal service support ''shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' Our proposed changes to Lifeline support comport with the Commission's authority under Section 254 because voice service would continue to be defined as a supported service under the Commission's rules, and the networks receiving Lifeline support would also support voice service. (47 CFR 54.401(a)(2)). Thus, under the proposed changes, Lifeline support would be used ''for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' (47 U.S.C. 254(e)). This legal authority does not depend on the regulatory classification of broadband internet access service and, thus, ensures the Lifeline program has a role in closing the digital divide regardless of the regulatory classification of broadband service.

27. Relying on the Commission's authority under Section 254(e) for the proposed changes to Lifeline support would also better reconcile the Commission's authority to leverage the Lifeline program to encourage access to broadband with the Commission's efforts to promote access to broadband through high-cost support. In the universal service high-cost program, the Commission relied on section 254(e) as its authority to require ETCs receiving support through the Connect America Fund (including the Mobility Fund) or the existing high cost-support mechanisms to invest in broadband-capable networks, but declined to add broadband internet access service to the list of supported services. In adopting this requirement, the Commission explained that Section 254(e) grants the Commission the authority to ''support not only voice telephony service but also the facilities over which it is offered'' and that Congress's use of the words ''services'' and ''facilities'' in Section 254(e) provides the ''Commission the flexibility not only to designate the types of telecommunications services for which support would be provided, but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) and any other universal service principle that the Commission may adopt under section 254(b)(7), *USF/ICC Transformation Order.* The Commission further explained that it has a '' 'mandatory duty' to adopt universal service policies that advance the principles outlined in section 254(b) and the Commission has the authority to 'create some inducement' to ensure that those principles are achieved.'' In 2014, the U.S. Court of Appeals for the Tenth Circuit upheld the Commission's interpretation of its section 254(e) authority in the *USF/ICC Transformation Order.*

28. The Commission seeks comment on the Commission's legal authority to adopt the proposed changes to Lifeline support. Are there other sources of authority that allow the Commission to make these changes to Lifeline support proposed in this section?

29. The Commission seeks comment on ways the Lifeline program can responsibly empower Lifeline subscribers to obtain the highest value for the Lifeline benefit through consumer choice in a competitive market. In particular, the Commission seeks comment on a request from TracFone Wireless, Inc. (TracFone) to allow providers to meet the minimum service standards through plans that provide subscribers with a particular number of ''units'' that can be used for either voice minutes or broadband service. TracFone argues that the Bureau's previous guidance that such ''units'' plans do not meet the minimum service standards was given without public comment and represented an improper reading of the relevant rule. (47 CFR 54.408.) Should the Commission now allow ''units'' plans to receive reimbursement from the Lifeline program? What impact would these plans have on consumer choice in the Lifeline market? Would such a decision require a change in the Commission's rules? If the Commission permits such plans, how should the Commission determine the appropriate support amount for those plans that combine voice and broadband options when the support level for voice service decreases to $7.25 while the support amount for broadband service remains at $9.25? (*See* 47 CFR 54.403(a).)

30. The Commission also seeks comment on eliminating the Lifeline program's ''equipment requirement.'' (*See* 47 CFR 54.408(f).) That rule mandates that any Lifeline provider that ''provides devices to its consumers[] must ensure that all such devices are

Wi-Fi enabled,'' prohibits ''tethering charge[s],'' and requires mobile broadband providers to offer devices ''capable of being used as a hotspot.'' (*See* 47 CFR 54.408(f)(1)–(3)). The Commission never sought comment on such requirements before imposing them on all Lifeline providers and appears to lack the statutory authority to adopt or enforce such requirements. And although well-intentioned, the equipment mandate appears unnecessary if not affirmatively harmful. As the *2016 Lifeline Order* recognized, a ''substantial majority'' of Americans already own Wi-Fi enabled smartphones, suggesting such mandates are not needed. And even those Lifeline providers that appear to support offering Wi-Fi-enabled devices or hotspot-enabled equipment acknowledge the increased cost of such equipment, and fail to explain why consumers should not be free to choose lower-cost options. For example, the equipment mandate would prohibit a cable Lifeline provider from offering a low-cost modem rather than an integrated modem-Wi-Fi-router, even if a Lifeline consumer wanted to use a desktop computer to access the internet. What is more, the *2016 Lifeline Order* lacked record evidence suggesting that these mandates would have any meaningful impact on the homework gap—their nominal purpose. As such, it appears these mandates are more likely to widen the digital divide than close it. And so, for the first time, the Commission seeks comment on whether the Commission may or should retain the equipment mandates in our rules, or whether they instead should be eliminated.

31. In the interest of removing regulations that no longer benefit consumers, the Commission proposes to eliminate § 54.418 of the Commission's rules, and the Commission seeks comment on this proposal. (See 47 CFR 54.418.) When enacted, section 54.418 required ETCs to notify their customers about the then-upcoming transition for over-the-air full power broadcasters from analog to digital service (the ''DTV transition'') over the course of several months in 2009. The DTV transition has since occurred, and it appears that the rule is no longer relevant. The Commission seeks comment on this proposal.

32. As the Commission embarks on an effort to reform the incentives and effectiveness of the Lifeline program, it is incumbent on the Commission to consider ways it can continue to fight and prevent waste, fraud, and abuse in the program. To that end, the Commission seeks comment on a number of proposals to improve the Lifeline program's administration to preserve program integrity.

33. The Commission proposes to adjust the process that USAC currently uses to identify which service providers will be subjected to Lifeline audits by transitioning to a fully risk-based approach. The Commission proposes to transition the independent audit requirements required by section 54.420 of the Commission's rules away from a $5 million threshold and, instead, to move toward identifying companies to be audited based on established risk factors and taking into consideration the potential amount of harm to the Fund. The Commission proposes modifying section 54.420 to allow companies to be selected based on risk factors identified by the Wireline Competition Bureau and Office of Managing Director, in coordination with USAC. This approach allows for adaptable, independent audits that respond to risk factors that change over time. The Commission believes this new audit approach will better target waste, fraud, and abuse in the program and also utilize administrative resources more efficiently and effectively than in prior years.

34. USAC's current audit program consists of audits targeted to high-risk participants as well as mandatory audits of certain carriers, such as all carriers offering Lifeline for the first time and any carrier receiving more than $5 million in program support in a given year. Recognizing that some mandatory audits were unnecessary, the Commission in the *2016 Lifeline Order* directed the Office of Managing Director to work with USAC to modify the approach for determining the first-year Lifeline providers to be audited. The Commission intended this direction to prevent wasteful auditing of companies with limited subscriber bases, for example, and to allow USAC to more efficiently direct audit resources to higher risk providers. The Commission's rules still require carriers drawing more than $5 million annually from the program to obtain independent biennial audits. (47 CFR 54.420.)

35. The Commission seeks comment on transitioning from the mandatory $5 million threshold for the biennial independent audits under § 54.420(a) of the Commission's rules to a purely risk-based model of targeted Lifeline audits. Under this approach, the Wireline Competition Bureau and Office of Managing Director, with support from USAC, would establish risk factors to identify the companies required to complete the biennial independent audits. The independent audits would then follow the same process currently outlined in the rules with the identified carriers obtaining an independent auditor and following a standardized audit plan outlined by the Commission. (47 CFR 54.420(a)). The Commission believes this approach would be more efficient and more effective at rooting out waste, fraud, and abuse in the program because the identified risk factors would better target potential violations than merely focusing on companies receiving large Lifeline disbursements. A wider range of risk factors would be more responsive to identified program risks.

36. The Commission also seeks comment on the impact and burdens the current audit program imposes on providers and whether this risk-based approach reduces those burdens. What resources have the current, non-risk-based audits consumed in terms of employee time, recordkeeping systems, and other related audit costs? Would transitioning all Lifeline audits to a risk-based model improve the accountability of the program? What factors are key indicators of potential abuse in the program? Are there other risk factors the Wireline Competition Bureau, Office of Managing Director, and USAC should consider when identifying companies that should be subject to audit? How many companies should be required to obtain independent audits?

37. In its recent report, the Government Accountability Office (GAO) identified significant fraud and an absence of internal controls by performing undercover work to determine whether ETCs would enroll subscribers who are not eligible for Lifeline support. (*See* GAO, Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO–17–538, at 44–46 (2017), *http://www.gao.gov/products/GAO-17-538*.) The Commission seeks comment on conducting similar undercover work as part of the audits administered by USAC or a third-party auditor acting on USAC's behalf. Would such auditing techniques be a cost-effective way to eliminate fraud in the program? What administrative challenges would the Commission or USAC face in undertaking such undercover work?

38. Finally, the Commission seeks comment on how Lifeline program audits can ensure that Lifeline beneficiaries are actually receiving the service for which ETCs are being reimbursed. What documentation should an audit require to demonstrate that service is being provided? How should an audit detect and report instances where the subscriber's equipment makes it difficult or

impossible for the subscriber to use the relevant service? Would changes to auditing methods on this issue require any changes to the Lifeline program rules? Should the Commission require Lifeline service providers to demonstrate that they have addressed any issues that resulted in PQA failures above a certain threshold, or audit findings that result in recovery of more than a certain percentage of the disbursements during the audit period?

39. The Lifeline enrollment and recertification processes continue to demonstrate significant weaknesses that open the program to waste, fraud, and abuse that harms contributing ratepayers and fails to benefit low-income subscribers. The Commission therefore seeks comment on a number of potential changes to the eligibility verification and reverification processes in the Lifeline program.

40. *ETC Representatives.* The Commission seeks comment on prohibiting agent commissions related to enrolling subscribers in the Lifeline program and on codifying a requirement that ETC representatives who participate in customer enrollment register with USAC. The Commission believes these measures may benefit ratepayers by reducing waste, fraud, and abuse in the program. Many ETCs compensate sales employees and contractors with a commission for each consumer enrolled, and these sales and marketing practices can encourage the employees and agents of ETCs to enroll subscribers in the program regardless of eligibility, enroll consumers in the program without their consent, or engage in other practices that increase waste, fraud, and abuse in the program.

41. The Commission seeks comment on codifying in the Commission's rules the USAC administrative requirement that ETCs' customer enrollment representatives register with USAC in order to be able to submit information to the NLAD or National Verifier systems. The Commission also seeks comment on the scope of the use of representatives' information. USAC is currently implementing an ETC representative registration database to help detect and prevent impermissible activity when enrolling or otherwise working with USAC to enroll Lifeline subscribers. The Commission is aware of certain practices of sales representatives resulting in improper enrollments or otherwise violating the Lifeline rules. (*See* Letter from Ajit V. Pai, Chairman, FCC, to Vickie Robinson, Acting Chief Executive Officer and General Counsel, USAC, at 1–4 (July 11, 2017), *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0711/DOC-345729A1.pdf;* GAO, Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO–17–538 (2017), *http://www.gao.gov/products/GAO-17-538.*) These practices include data manipulation to defeat NLAD protections, using personally identifying information (PII) of an eligible subscriber to enroll non-eligible subscribers, and obtaining false certifications from subscribers. USAC's current administrative efforts to create this database of ETC representatives would also combat waste in the event a representative using impermissible enrollment tactics is engaged by multiple ETCs. The Commission seeks comment on codifying the ETC representative registration requirement. How should the Commission define an ETC enrollment representative for these purposes? What information would be necessary for the creation of this database? What privacy and security practices should be used to safeguard this information?

42. The Commission also seeks comment on its ability to take appropriate enforcement action against registered ETC representatives who violate the rules governing Lifeline enrollment. For the Commission to exercise its forfeiture authority for violations of the Act and its rules without first issuing a warning, the wrongdoer must hold (or be an applicant for) some form of authorization from the Commission, or be engaged in activity for which such an authorization is required. (*See* 47 U.S.C. 503(b).) Toward this end, the Commission seeks comment on whether it should implement a certification or blanket authorization process applicable to ETC representatives who register with USAC. How would this blanket authorization coincide with the Commission's existing authority over Lifeline providers' officers, agents, and employees under Section 217 of the Act? (*See* 47 U.S.C. 217).

43. The Commission also seeks comment on whether the Commission should require ETCs to implement procedures that prohibit commission-based ETC personnel from verifying eligibility of Lifeline subscribers. By prohibiting commissions, the Commission hopes to dis-incent improper, fraudulent, or otherwise illegal enrollment processes sometimes utilized by ETCs' representatives. The Commission proposes that those employees, agents, or third parties who receive a significant portion of their compensation based on the number of Lifeline subscribers they enroll in the program be precluded from determining eligibility. The Commission is concerned that ETCs implementing procedures barring commission-based personnel from reviewing and verifying subscriber eligibility certifications and documentation will reduce financial incentives for commission-based personnel to enroll ineligible subscribers. Should this proposal preclude ETCs from using commission-based personnel altogether, or should it instead require ETCs to simply implement procedures precluding commission-based personnel from determining eligibility? As an additional safeguard, should the Commission require Lifeline providers to ensure that service provider representatives involved in soliciting customers are separated from service provider representatives who are involved in the verification process?

44. *NLAD Dispute Resolution.* The Commission seeks comment on requiring USAC to directly review supporting documents for manual NLAD dispute resolutions, including information regarding the ETC agent submitting the documentation. The Commission believes this requirement would reduce improper enrollments in the program. Currently, manual documentation review is required when a subscriber wishes to dispute an NLAD denial. An NLAD denial occurs when a subscriber fails one of the protective checks contained in the NLAD system. For example, if USAC's automated identity check rejects a consumer's application, that consumer may produce documentation verifying their identity, because the databases that are available to automatically verify identity are not comprehensive. A Lifeline subscriber may dispute an NLAD denial by submitting the appropriate documentation to the ETC. The ETC then reviews the documents, verifies the information at issue in the dispute, and processes the dispute resolution with USAC.

45. The current system's reliance on carrier certification for dispute resolution has been questioned for making the Lifeline program vulnerable to waste, fraud, and abuse. (*See* Testimony of FCC Commissioner Ajit Pai Before the Subcommittee on Communications and Technology of the United States House of Representatives Committee on Energy and Commerce, Oversight of the Federal Communications Commission, at 4–5 (July 12, 2016), available at *https://www.fcc.gov/document/commissioner-pai-statement-house-oversight-hearing.*) Having USAC conduct actual document review associated with NLAD dispute resolutions would increase the

accountability of the resolutions. The Commission seeks comment on this proposal. Do the associated costs and administrative burdens associated with such review justify this additional step? If the Commission directed USAC to adopt this measure, what would be the optimal response time for USAC to process such disputes? How should USAC collect the documentation and what privacy safeguards should be taken to protect that information? Should USAC offer a list of acceptable documentation, and what documentation should qualify?

46. *Subscriber Recertification.* The Commission seeks comment on prohibiting subscribers from self-certifying their continued eligibility during the Lifeline program's annual recertification process if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program. Section 54.410(f) of the Commission's rules allows subscribers to self-certify that they continue to be eligible for the Lifeline program if their eligibility cannot be determined by querying an eligibility database. This is true even where the subscriber is seeking to recertify under a different qualifying program than the one they used to demonstrate their initial eligibility. Requiring eligibility documentation to be submitted in such cases would help to ensure the self-certification option for the eligibility recertification process is accurate and the subscriber is still eligible to participate in the Lifeline program through a different eligibility path. Should the Commission amend its rules to require documentation be submitted when the subscriber attempts to recertify by self-certification only when the subscriber seeks to recertify under a different program than the one through which they initially demonstrated eligibility and cannot be recertified through an eligibility database? Should the Commission require USAC to review that documentation?

47. *Independent Economic Household Forms.* The Commission next seeks comment on limiting ETCs' use of the Independent Economic Household (IEH) worksheet only when the consumer shares an address with other subscribers already enrolled in the Lifeline program. The *2016 Lifeline Order* amended the language of § 54.410(g) of the Commission's rules to require a prospective subscriber to complete an IEH worksheet upon initial enrollment and during any recertification in which the subscriber changes households and as a result shared an address with another Lifeline subscriber. The intended purpose of the IEH worksheet was for use when multiple independent households reside at the same residence. If an ETC collects an IEH worksheet from all subscribers regardless of whether another Lifeline subscriber resides at the same address, it is more difficult for USAC to monitor aggregate trends and particular ETCs' use of the IEH worksheet to detect improper activity. Prophylactic use of the household worksheet can therefore subvert the duplicate address protections and may result in increased waste, fraud, and abuse. The Commission seeks comment on amending the language of § 54.404(b)(3) to only permit the use of an IEH worksheet after the ETC has been notified by the NLAD, or state administrator in the case of NLAD opt-out states, that the prospective subscriber resides at the same address as another Lifeline subscriber.

48. Additionally, the Commission seeks comment on other methods to prevent abuse of the IEH worksheet process. Should the Commission direct USAC to develop a list of addresses known to contain multiple households? The addresses would primarily be assisted-living and retirement facilities, homeless shelters, public housing, and similar institutions. This list would enable USAC or the Commission to more effectively investigate addresses with high numbers of enrollments that do not appear to be physically or organizationally capable of housing many independent economic households. How should this list of known multiple-household addresses impact whether an ETC may collect an IEH worksheet from the prospective Lifeline consumer? Should the Commission require Lifeline applicants residing in multi-person residences (*e.g.,* homeless shelters, nursing homes, assisted living facilities) to submit a certification from the facility manager confirming that the applicant resides at the address and is not part of the same economic household as any other resident already receiving Lifeline support? What administrative approaches would reduce burdens on subscribers without creating vulnerabilities in the program's integrity?

49. More broadly, the Commission seeks comment on other dispute resolutions or ''overrides'' to Lifeline enrollment requirements that should be restricted or eliminated. Are there other points of the enrollment process that rely on the consumer's certification or manual document review in a way that irreparably weakens the integrity of the enrollment process? The Commission notes that, currently, a consumer may go through a dispute resolution process if that consumer is not found in a third-party identity verification database, has the same address as another Lifeline subscriber, has an address not recognized by the U.S. Postal Service, or cannot be found in an available eligibility program database. What additional steps should the Commission institute as part of this resolution process to reduce the opportunity for abuse? Should the Commission limit the ability of providers or subscribers to override those initial failures with additional documentation to prevent fraudulent or abusive practices?

50. *Other Measures.* Finally, the Commission seeks comment on whether there are other measures the Commission could take to further reduce waste, fraud, and abuse and improve transparency in the program. Should the Commission require USAC to conduct ongoing targeted risk-based reviews of eligibility documentation or dispute resolution documentation? Should the Commission codify a requirement that subscribers be compared to the Social Security Master Death Index during the enrollment and recertification processes? Should the Commission amend its rules to require that a provider's Lifeline reimbursement be based directly on the subscribers it has enrolled in the NLAD to prevent claims for ''phantom'' subscribers? Should the Commission prohibit Lifeline providers from distributing handsets in person to Lifeline consumers and, if so, should there be any exceptions? Are there additional measures the Commission should take to address waste, fraud, and abuse in the program? The Commission seeks comment on these proposals.

51. The Commission seeks comment on additional reports USAC could make public or available to state agencies to increase program transparency and accountability. The Commission seeks comment on directing USAC to periodically report suspicious activity or trends to the Wireline Competition and Enforcement Bureaus, as well as the Office of Managing Director, and any relevant state agencies. Suspicious activity would include trend analysis of NLAD exemptions, subscriber churn, TPIV failure rates, and IEH worksheet rates. It will also include information gained from analytics on the National Verifier data. In addition to more transparent reporting of NLAD exemptions, what information would state agencies need to access to increase the effectiveness of state enforcement in the Lifeline program? Further, what information should USAC make

accessible to other Lifeline stakeholders to increase the effectiveness and transparency of the program?

52. The Commission seeks comment on what additional reports USAC should make available for state agencies. USAC currently makes available a number of Lifeline program statistics and reports showing eligible Lifeline population estimates, Lifeline participation, and ETCs receiving Lifeline support. In addition to this information, state agencies may request NLAD access for their respective state. This access allows the state agency to review detailed subscriber information in the NLAD to aid their own program administration and enforcement, including information regarding which carriers are providing service. In the *2016 Lifeline Order,* the Commission directed USAC to publish Lifeline subscriber counts on the study area code (SAC) level to ''increase[] transparency and continue[] to promote accountability in the program.''

53. In the *2016 Lifeline Order,* the Commission implemented a budget process for the Lifeline program. This budget approach, however, does not include any mechanism that automatically curtails disbursements beyond the budget amount absent further action by the Commission. Instead, if Lifeline disbursements in a given year meet or exceed 90 percent of that year's budget, initially set at $2.25 billion, the Bureau is required to issue a report to the full Commission detailing the reasons for the increased spending and recommending next steps.

54. The Commission proposes to adopt a self-enforcing budget mechanism to ensure that Lifeline disbursements are kept at a responsible level and to prevent undue burdens on the ratepayers who contribute to the program. The Commission believes a self-enforcing budget is appropriate to ensure the efficient use of limited funds. The Commission therefore proposes to replace the approach adopted in the *2016 Lifeline Order* and require an annual cap for Lifeline disbursements. The Commission intends for the program to automatically make adjustments in order to maintain the cap in the event the budget is exceeded.

55. The Commission seeks comment on the operation of such a self-enforcing budget. What is the appropriate period over which the Commission should measure and enforce the cap? Would a six-month period be appropriate? For example, under this proposal, for each upcoming six-month period, USAC would forecast expected Lifeline and Link Up disbursements, as well as administrative expenses attributable to the operation of these programs. If projected disbursements and expenses are expected to exceed one half of the annual cap, USAC would proportionately reduce support amounts during the upcoming six-month period to bring total disbursements under one half of the annual cap. If, however, total payments in the upcoming six-month period are projected to be less than one half the annual cap, USAC would provide the full support amounts as determined by the Commission and collect only what is necessary to fund the demand. The Commission seeks comment on this proposal. What administrative difficulties should USAC anticipate when forecasting disbursements? What steps should USAC take, if any, in the midst of a six-month period in the event forecast disbursements and expenses vary significantly from actual disbursements and expenses? The Commission notes that USAC currently projects quarterly requirements for the Lifeline program and submits those projections to the Commission. What can the Commission learn from the accuracy of USAC's past forecasts that would inform how this proposal would work? Alternatively, would another period of time be more appropriate? Would a one-year period be more suitable for the Lifeline market? In particular, the Commission seeks comment on the concept of measuring the budget over a 12-month period and whether that concept fully protects the ratepayer from excessive spending.

56. Alternatively, the Commission seeks comment on a different self-enforcing budget mechanism that would allow Lifeline spending in a given period to exceed the cap, but would result in Lifeline disbursements being reduced in the next period to accommodate the excessive spending. In this mechanism, disbursements would be reduced proportionally throughout the following period to ensure the disbursements and expenses do not exceed the budget less the amount by which the previous period's disbursements and expenses exceeded the budget. The Commission seeks comment on this approach, noting that it has the benefit of not requiring a forecast or handling the inevitable under- or over-shooting of the actual demand. Under this proposal, when should the cap for the second period of time be set? At the beginning of the first period, or the second one? The Commission also seeks comment on whether it is acceptable to allow disbursements to exceed the budget in a given period, even where adjustments made in the following period mean the program spends less than the total budgeted amount over the two periods. Would any of the proposed budget mechanisms result in a significant variance in the disbursement cap for consecutive funding years, and if so, what impact would that have on Lifeline consumers and providers?

57. The Commission also seeks comment on whether Lifeline spending should be prioritized in the event that the cap is reached or USAC projects will be reached in a funding year. If so, the Commission proposes that the Commission prioritize funding in the following order if disbursements are projected to exceed the cap: (1) Rural Tribal lands, (2) rural areas, and (3) all other areas. The Commission seeks comment on this prioritization scheme and whether any other factors should weigh in our analysis. For example, should the Commission prioritize Lifeline spending in low-income areas where the business case for deployment is harder to make? If the Commission adopts such funding prioritizations, how should it implement such a system? Should the Commission adjust all of the support amount categories to different extents, or should categories with less prioritization receive no support before the support of the category with the next-highest prioritization is adjusted? The Commission seeks comment on these issues.

58. The Commission also seeks comment on the appropriate initial amount for this cap. Would historical disbursement levels be instructive in determining the appropriate annual cap? In 2008, when the Commission first allowed a non-facilities-based ETC to receive Lifeline support, Lifeline expenditures totaled approximately $820 million. By 2012, that amount had grown to over $2.1 billion. The Commission's initial steps to eliminate waste, fraud, and abuse within the program have reduced Lifeline disbursements to just over $1.5 billion in 2015. If the Commission adopted a previous disbursement level as the annual disbursement cap, which disbursement level would be appropriate? The Commission seeks comment on these issues and other relevant matters, such as whether this cap should include USAC's expenses for administering the Lifeline program. If so, how should the Commission incorporate these administrative expenses?

59. The Commission also seeks comment on whether and how the program's cap should be adjusted in subsequent years. Should the cap remain the same, absent further action

by the Commission, or should the cap be automatically indexed to inflation? Should the cap be tied to other metrics, like the growth or decrease of poverty nationwide or participation in means-tested programs?

60. In this section, the Commission seeks comment on ways to focus Lifeline support toward encouraging broadband adoption among low-income consumers and minimizing wasteful spending in the program.

61. *Maximum Discount Level.* The Commission seeks comment on whether to apply a maximum discount level for Lifeline services above which the costs of the service must be borne by the qualifying household. Today, many service providers use the monthly Lifeline support amount to offer free-to-the-end-user Lifeline service, for which the Lifeline customer has no personal financial obligation. In 2016, certain wireless Lifeline service providers estimated that 11 million Lifeline participants (85 percent of all Lifeline program participants) subscribed to plans providing free-to-the-end-user Lifeline service. (*See* Letter from John Heitmann, Kelly Drye & Warren LLP, to Marlene Dortch, Secretary, FCC, WC Docket No. 11–42 et al., at 2 (Feb. 3, 2016)). In contrast, the Commission's other universal service support programs all require beneficiaries or support recipients to pay a portion of the costs of the supported service. For example, the E-rate program discount levels range from 20 percent to 90 percent of the costs of eligible goods and services, and E-rate beneficiaries are required to pay the remaining costs of the supported goods and services. (47 CFR 54.505(b) and 54.504(a)(1)(iii).) Should the approach that the Commission has taken in other universal service support programs be instructive in the Lifeline context? Do the users of the supported service value that service more if they contribute financially? Are such users more sensitive to the price and quality of the service? Is there any particular approach taken by another universal service support program that should inform the Commission's analysis for the Lifeline program? Under the Commission's rules, providers of video relay service (VRS) are compensated for the reasonable costs of providing VRS. (47 CFR 64.604(c)(5)(iii)(E)(1).) Do the policies underlying that approach apply in the Lifeline context? The concept of maximum discount levels and mandatory contributions is not limited to federal benefit programs administered by the Commission. For example, many participants in the U.S. Department of Housing and Urban Development's (HUD's) Public Housing and Housing Choice Voucher programs and the U.S. Department of Health and Human Services' (DHHS') Low-Income Home Energy Assistance Program (LIHEAP) are required to pay a portion of the costs of their utilities or rent. The Commission seeks comment on the utility of comparing these programs to the Lifeline program, and if the Commission should consider the approach undertaken in other benefit programs with capped support amounts. For those other benefit programs, has the efficacy of mandatory end user payments been evaluated? Did the requirement of end user payments impact services provided to the consumer, program enrollment, or competition in the relevant market? Importantly, did such a requirement reduce the waste, fraud, and abuse in those programs that would have occurred absent the cap?

62. The Commission also seeks comment on the impact a maximum discount level would have on the Lifeline program. What impact would a maximum discount level have on the affordability, availability, and quality of communications service for low-income consumers? Would a maximum discount level for the Lifeline program impact the types of services that consumers obtain through the program? Would it change the quality of broadband service that Lifeline providers offer, including speed and data allowances? Would this change affect the availability of certain types of service more than others, for example, mobile versus fixed service? Would a maximum discount level help ensure that Lifeline funds are targeted at high-quality broadband service offerings that truly help close the digital divide for low-income consumers? Would adopting a maximum discount level encourage consumers to more carefully investigate and evaluate the service to which they wish to apply their Lifeline benefit, thereby decreasing Lifeline subscriber churn or violations of the one-per-household rule and helping further reduce waste, fraud, and abuse in the Lifeline program?

63. One proposal is to adopt a maximum discount level to improve the Lifeline program's efficiency and further reduce waste, fraud, and abuse in the program. Under the current structure, service providers may engage in fraud or abuse by using no-cost Lifeline offerings to increase their Lifeline customer numbers when the customers do not value or may not even realize they are purportedly receiving a Lifeline-supported service. The Commission seeks comment on whether Lifeline's current benefit structure fails to ensure that the program supports services that consumers value. Would a maximum discount level curtail such practices and prevent universal service funds from being spent on services of little to no value for the Lifeline consumer?

64. What rule changes would be needed to implement a maximum discount level? If the Commission established a maximum discount level requirement for Lifeline, how should such a requirement operate? Are there specific pricing data or other data that would help the Commission determine an appropriate maximum discount level? Should the required end user payment be a flat amount or a percentage of the price of the service? Should the maximum discount level apply differently to enhanced Lifeline support than standard Lifeline support? Should the maximum level apply to Link Up support? How would a maximum discount level apply for prepaid services or consumer payment structures that otherwise do not require a monthly billing relationship between the provider and the consumer? Should Lifeline service providers have flexibility to determine the timing of the customer's payment (*e.g.,* upfront payments, monthly, post-paid)? What steps could the Commission take to ensure that Lifeline service providers actually collect the required customer share? How should the Commission treat partial payments by Lifeline subscribers? Should there be any exceptions to the maximum discount level and, if so, what is the justification for these exceptions? How could the Commission implement a maximum discount level with minimal increases in Lifeline service provider costs and administrative burdens? Are there specific data that would help the Commission evaluate the potential impact of a maximum discount level on the Lifeline participation rate of qualifying low-income consumers? Are there other alternatives the Commission should consider to ensure that the Lifeline program supports services that Lifeline customers value?

65. In the *2016 Lifeline Order,* the Commission adopted minimum service standards to make sure that Lifeline customers receive quality Lifeline-supported services. A maximum discount level may also achieve this goal because consumers who pay a portion of the costs may be more sensitive to the price and quality of the service. Would a maximum discount level therefore make minimum service standards unnecessary? Do the minimum service standards serve additional purposes that would not be

served by a maximum discount level? If the Lifeline program rules included both a maximum discount level and minimum service standards, should the Commission revise the formulas used to determine the minimum service standards or adjust the mechanisms by which the minimum service standards are updated? Similarly, would adopting a maximum discount level eliminate the need for the usage requirement in § 54.407(c)(2) of the Lifeline program rules and the related non-usage de-enrollment rule in § 54.405(e)(3)?

66. *Targeting Non-Adopters.* The Lifeline program was originally created to promote low-income consumers' access to affordable services. Some parties have suggested that the Commission should target Lifeline support to low-income consumers who have not yet adopted broadband service. The Commission seeks comment on changes the Commission could make to target consumers who have not yet adopted broadband, and to what extent the Commission should weigh efforts that facilitate reaching those consumers specifically? The Commission seeks comment on whether and how the Commission should adopt a support framework that encourages adoption of high quality communications service by low-income consumers. What rule changes would be necessary to implement these changes?

67. The Commission seeks comment on the need for regulatory action to address the problems identified here, as well as the costs and benefits of our proposals along with data and other information that can be used to quantify these. Specifically, the Commission seeks comment on the need for and costs and benefits of regulatory action of the following proposals, relative to the status quo: Encouraging cooperative federalism between state data sources and the National Verifier; directing Lifeline support to facilities-based providers; alternatives to a facilities requirement; adopting a maximum discount level; changes to encourage Lifeline consumers to adopt broadband services; adopting a self-enforcing budget; enhancing targeted audits of participating providers; and acting on the other interpretive and policy changes for which the Commission seeks comment above. Commenters proposing alternatives to our proposals should discuss the need for and costs and benefits of their proposal, including relative costs and benefits of their proposal as compared to those set forth here, and should provide supporting evidence. The Commission also seeks comment on options to achieve the most effective use of resources to achieve the purposes of the Lifeline program, and specifically to lower the cost of adoption to lower-income subscribers. The Commission seeks data and information commenters believe is necessary for these analyses and comment on specific methodologies commenters believe are best suited for this purpose. The Commission also seeks comment generally on how to evaluate the relative importance of public interest outcomes that are not readily susceptible to quantification, such as ''equity, human dignity, fairness, and distributive impacts.'' (*See* Executive Order 13563, 76 FR 3821, 3821–23 (Jan. 18, 2011)).

III. Notice of Inquiry

68. The Lifeline program is an important means of achieving universal service. In the *2016 Lifeline Order* the Commission took the step of allowing Lifeline to support broadband to help low-income Americans obtain access to quality, affordable service. However, the Commission remains concerned about the well-documented digital divide for low-income Americans, and in particular low-income Americans residing in rural Tribal, rural, and underserved areas.

69. To ensure that the Lifeline program achieves universal service for 21st Century services, it is necessary to evaluate the ultimate purposes of the Lifeline program and identify the policies that will best accomplish those purposes. Sharpening the focus of the Lifeline program would further promote digital opportunity for low-income individuals, and in particular for low-income Americans who have not adopted broadband, or who reside in rural Tribal or rural areas.

70. To focus the Lifeline program on supporting affordable communications service for the nation's low-income households and on improving the economic incentives of providers serving them, the Commission begins a proceeding to reexamine the Lifeline program's support structure to encourage affordable access to high quality services for low-income consumers while the Commission continues to discourage the practices leading to program waste, fraud, and abuse. Accordingly, the Commission seeks comment on potential changes to the Lifeline program funding paradigm that will help the Lifeline program more efficiently target funds to areas and households most in need of help obtaining digital opportunity.

71. Ensuring that service providers have appropriate incentives to deploy and provide services to these populations can further the Commission's efforts to bring digital opportunity to low-income Americans who have not yet adopted broadband and low-income Americans residing in rural or rural Tribal areas who typically experience difficulty obtaining access to affordable, quality broadband. The Commission seeks comment on actions the Commission could take to create better economic incentives for providers participating in the Lifeline program. The Commission also seeks comment on how those incentives would impact the program's effectiveness at reaching certain subsets of the low-income population.

72. The Commission also seeks comment on how the Commission could leverage the Lifeline program to encourage broadband deployment in areas that have found themselves on the wrong side of the digital divide. Where a provider has already invested in building a broadband-capable network, that provider often has incentives to create mutually beneficial offerings that make affordable connectivity options available to low-income households within the network's footprint. The Commission seeks comment on whether the Commission should shape its Lifeline support structure to provide enhanced support in areas where providers do not have sufficient incentive to make available affordable high-speed broadband service.

73. The Commission seeks comment on whether and how the Commission should adopt rule changes to target Lifeline support to bring digital opportunity to areas that offer less incentive for deployment of high-speed broadband service, such as rural areas and rural Tribal areas. Rural and rural Tribal areas have higher percentages of broadband non-adopters compared to other areas. It is also well documented that lower-income households have lower broadband adoption rates and lower in-home broadband connectivity rates compared to higher-income households. Some have suggested that the Commission should therefore target Lifeline support primarily to nonadopters to improve the effectiveness and efficiency of the Lifeline program. In light of these analyses, the Commission seeks comment on whether the Lifeline program could better reach nonadopters of broadband by focusing Lifeline support in areas where providers need additional incentive to offer high-speed broadband service.

74. *Rural and Rural Tribal Areas.* The Commission specifically seeks comment on whether and how the Commission should adjust the Lifeline support amount to encourage affordable

broadband access for low-income consumers in rural areas. Low-income consumers in rural or rural Tribal areas may have difficulty obtaining affordable, quality broadband service because service providers have less incentive to incur the costs to deploy advanced facilities or to provide a wide range of services at competitive prices in these areas. In rural areas, higher deployment costs can also lead to fewer service options and higher prices that disproportionately impact low-income consumers. The Commission also focuses on rural Tribal areas in which affected stakeholders have suggested that the current Lifeline Tribal enhanced subsidy amount is insufficient to incentivize broadband deployment in rural Tribal areas. Although broadband deployment in both rural and rural Tribal areas is lagging compared to other areas, the current Lifeline program rules only provide targeted enhanced monthly Lifeline support (up to an additional $25 per month) for Lifeline customers residing on Tribal lands. (47 CFR 54.403(a)(3).)

75. The Commission is also mindful about the need to establish the correct support amounts. If the Commission establishes enhanced Lifeline support for consumers living in rural and rural Tribal areas, how could the Commission provide targeted support while also promoting the interests of fiscal responsibility and minimizing the burden on the ratepayers who support the Fund? Are there specific pricing data or other data that the Commission should consider in determining the appropriate enhanced monthly support amounts for Lifeline subscribers in rural and rural Tribal areas? Should a single enhanced monthly support amount apply in all rural areas or should Lifeline consumers in rural areas on Tribal lands or another subset of rural residents receive a higher monthly support amount? How should the enhanced monthly support amounts compare to the monthly support amount for Lifeline subscribers who do not live in rural areas? What data or metrics should the Commission use to identify the rural areas that qualify for enhanced support? What geographic level (*e.g.,* county, Census tracts, Census block groups) should the Commission use to identify these rural areas? Is the E-rate program's definition of ''rural'' the best option for identifying rural areas in the Lifeline program, or should the Commission consider some other definition to identify rural areas? (47 CFR 54.505(b)(3)(i)–(ii))

76. *Underserved Areas.* The Commission next seeks comment on whether and how the Commission should also target Lifeline support to bring digital opportunity to low-income areas where service providers have less incentive to invest in facilities or offer robust broadband offerings compared to other areas. Recent reports argue that certain low-income areas experience less facilities deployment when compared to other areas, and that low-income consumers in those areas may experience increased difficulty obtaining affordable, robust communications services.

77. The Commission seeks comment on how the Commission can address this issue with the Lifeline program. If the Commission permits an enhanced subsidy amount for households in these areas, how should the Commission define underserved areas for the purpose of this enhanced support, and how should the Commission identify these underserved areas? What data could inform the Commission as to the prevalence of service providers electing not to invest as much in facilities or robust broadband offerings compared to other areas, and the areas where this has occurred? What types of broadband deployment, service offerings, adoption data or other measures could the Commission use to determine whether areas are underserved because service providers have less incentive to invest in facilities and broadband services in those areas compared to other areas? Are there certain income levels or other markers in a geographic area that could help the Commission reliably identify whether an area is likely to be underserved? For example, could the Commission address underserved areas by offering enhanced Lifeline support in areas where the median household income and/or broadband investment rates are significantly lower than the national average?

78. What changes should the Commission make to the Lifeline program support structure to target support to underserved areas? Are there specific pricing or other data the Commission could use to determine the appropriate support amount for underserved areas? How should the targeted support for underserved areas compare to and interact with the support amounts for rural or Tribal areas? What level of geographic granularity (*e.g.,* county, Census tracts, Census block groups) should the Commission use to identify areas that qualify for enhanced Lifeline support as underserved areas? How frequently should the Commission update the threshold for areas that qualify for enhanced support as underserved areas?

79. The Commission next seeks comment on whether the Commission should implement a benefit limit that restricts the amount of support a household may receive or the length of time a household may participate in the program. The objectives of such restrictions include encouraging broadband adoption without reliance on the Lifeline subsidy and controlling the disbursement of scarce program funds. Such a limit would provide low-income households incentives to not take the subsidy unless it is needed, since taking the subsidy in a given month will forfeit the opportunity to use it in a future month. The Commission seeks comment on whether the Commission should adopt a benefit limit for the Lifeline program.

80. What rule changes would be necessary to implement a benefit limit or time limit for consumer participation in the Lifeline program? If the Commission established a benefit limit or time limit for Lifeline, how should such a requirement operate and how should it be enforced? Are there specific data that would help the Commission determine an appropriate monetary or temporal limit in support? Currently in the Lifeline program, households remain enrolled for 1.75 years on average. How should this information affect our decision to impose this restriction? Should the limit be applied to households or individuals, and how would the Commission or USAC track benefits received if consumers transfer to different providers? Should there be any exceptions to the benefit limit or time limit and, if so, what is the justification for these exceptions? How could the Commission implement a benefit limit or time limit with minimal increases in the costs or administrative burdens for Lifeline service providers? Are there specific data that would help the Commission evaluate the potential impact of a benefit or time limit on the Lifeline participation rate of qualifying low-income consumers? Are there other alternatives to a benefit limit that the Commission should consider to better focus Lifeline funds on those households who need it most?

81. This Notice of Inquiry seeks comments on potential ways to sharpen the focus of the Lifeline program to further promote digital opportunity for all Americans. The Commission now seeks comment on the program's goals and metrics that would allow us to better determine if Lifeline support is truly achieving the purpose of closing the digital divide. In 2015, the GAO reported that ''outcome-based performance goals and measures will help illustrate to what extent, if any, the Lifeline program is fulfilling the guiding principles set forth by Congress.'' (GAO,

Telecommunications: FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program, GAO–15–335, at 13 (2015), *http://www.gao.gov/assets/670/669209.pdf.*) In 2016, the Commission revised its Lifeline program goals by including the affordability of voice and broadband service, as measured as the percentage of disposable household income spent on those services, to the goals established in the Commission's *2012 Lifeline Order,* 77 FR 12951, March 2, 2012. The Commission agrees outcome-based performance goals and measures have an important role ensuring Lifeline support is achieving Congress's universal service goals. The Commission seeks comment on how the Commission should determine and define the Lifeline program's goals and metrics and how those goals should inform the Commission's efforts to sharpen the focus of the Lifeline program, as discussed in this Notice of Inquiry.

IV. Procedural Matters

A. Paperwork Reduction Act

82. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

83. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on the first page of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

84. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. The Lifeline program is administered by the Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, under Commission direction, although many key attributes of the Lifeline program are currently implemented at the state level, including consumer eligibility, eligible telecommunication carrier (ETC) designations, outreach, and verification. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible households and receives reimbursement from the universal service fund (USF or Fund) for the provision of such discounts.

85. When the Commission overhauled the Lifeline program in its *2016 Lifeline Order,* it included broadband internet access service as a supported service; laid the groundwork for a National Verifier; strengthened protections against waste, fraud and abuse; improved program administration and accountability; and improved enrollment and consumer disclosures. In this NPRM, the Commission proposes steps to focus Lifeline program support to effectively and efficiently bridge the digital divide for low-income consumers while minimizing the contributions burden on ratepayers. The actions and proposals in this NPRM aim to facilitate the Lifeline program's goal of supporting affordable, high-speed internet access for low-income households.

86. In this NPRM, the Commission seeks comment on a number of significant reforms that will effectively and responsibly leverage the Lifeline program to bridge the digital divide for low-income consumers. The Commission seeks comment on respecting the states' primary role in eligible telecommunications carrier designation by eliminating Lifeline Broadband Provider designations. The Commission also seeks comment on proposals to enable consumer choice and proposed policies to focus Lifeline support to encourage investment in broadband-capable networks. Finally, the Commission proposes several program accountability improvements to reduce waste, fraud, and abuse and improve transparency in the program.

87. The legal basis for the NPRM is contained in sections 1 through 4, 201–205, 254, and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, and 403.

88. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

89. *Small Entities, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be directly affected herein. As of 2016, according to the SBA, there were 28.8 million small businesses in the U.S., which represented 99.9 percent of all businesses in the United States. Additionally, a ''small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field.'' Nationwide, as of 2014, there were approximately 2,131,200 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data published in 2012 indicates that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the

Commission estimates that most governmental jurisdictions are small.

90. In this NPRM, the Commission seeks public input on new and additional solutions for the Lifeline program, including reforms that would bring the program closer to its core purpose and promote the availability of modern services for low-income families. The issues the Commission seeks comment on in this NPRM are directed at enabling us to meet our goals and objectives for the Lifeline program, and reducing waste, fraud, and abuse. Specifically, the Commission seeks comment on a number of potential changes that would increase the economic burdens on small entities, and also seek comment on proposals that would decrease those burdens. The Commission has identified the applicable potential changes below that impact small entities.

91. *Focusing Lifeline Support to Encourage Investment in Broadband-Capable Networks.* The Commission seeks comment on several policy changes that would focus Lifeline support to encourage investment in broadband-capable networks, including limiting Lifeline support to facilities-based broadband service provided to Lifeline customers over the ETC's voice-and-broadband-capable network, discontinuing Lifeline support for non-facilities-based service, and continuing the phase down of Lifeline support for voice service in urban areas.

92. *Reforms to Increase Efficient Administration of the Lifeline Program.* The Commission seeks comment on a number of reforms to increase the efficient administration of the program, including requiring ETCs to supply documentation to USAC for National Lifeline Accountability Database (NLAD) dispute resolutions, ETCs to collect documentation for subscribers seeking to self-certify to continued eligibility, and limiting the use of independent economic household forms to only NLAD dispute resolutions.

93. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

94. The NPRM seeks comment on several policies that would bring the program closer to its core purpose and promote the availability of modern services for low-income families, and also reduce waste, fraud, and abuse in the program. As explained below, several of the policies would increase the economic burdens on small entities, and certain changes would lessen the economic impact on small entities. In those instances in which a policy would increase burdens on small entities, the Commission has determined that the benefits from such changes outweigh the increased burdens on small entities because those proposed changes would facilitate the Lifeline program's goal of supporting affordable, high-speed internet access for low-income Americans or would minimize waste, fraud, and abuse in the program. The Commission invites comments on ways in which the Commission can achieve its goals, but at the same time further reduce the burdens on small entities. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding.

95. *Eliminating Lifeline Device Requirements.* The Commission seeks comment on eliminating the Lifeline program's device requirements. This would decrease the burdens for small entities because they would no longer be required to meet criteria imposed by the rule, including the requirement that devices provided to consumers be Wi-Fi enabled and the requirement that mobile broadband providers offer devices that are ''capable of being used as a hotspot.'' Eliminating these requirements should reduce compliance costs for small entities because they will no longer be required to include these capabilities.

96. *Focusing Lifeline Support to Encourage Investment in Broadband-Capable Networks.* The Commission seeks comment on several potential policies that would focus Lifeline support to encourage investment in broadband-capable networks. The Commission also seeks comment on TracFone's suggested alternatives to the proposed facilities requirement. The Commission's proposed policies would change the services eligible for Lifeline support and would also change the type of providers that can receive Lifeline support. In particular, these policies would eliminate Lifeline support for ETCs that do not offer facilities-based broadband service over their own networks, or would continue the phase down of Lifeline support for voice-only service in urban areas. However, these policies would facilitate the Lifeline program goals of providing low-income consumers access to quality, affordable broadband services, in particular by encouraging service providers to invest in broadband networks in unserved and underserved areas. The Commission also notes that these policies may benefit small entities that operate facilities-based broadband-capable networks, whose services would be more affordable for low-income consumers through the application of the Lifeline discount. The benefits of these policies to Lifeline customers outweighs any impact of these changes on small entities. TracFone's suggested alternatives to the proposed facilities requirement would impact Lifeline service provider in-person hand-set distribution, operations practices concerning Lifeline solicitations and eligibility verifications, and application processes. These alternatives would increase service providers' administrative burdens. However, they would also minimize waste, fraud, and abuse in the program, which in turn benefits consumers and service providers that pay into the Universal Service Fund. Therefore, the benefits of these changes would outweigh and impact of these changes on small entities.

97. *Focusing Lifeline Support on Modern Communications Services.* The Commission seeks comment on adopting a maximum discount level for Lifeline subscribers, and potential changes to encourage Lifeline consumers to adopt broadband services. These changes could increase costs associated with ETCs' administrative processes, including billing. However, the Commission expects these burdens to be manageable for ETCs. Further, these proposed changes would help minimize waste, fraud, and abuse in the Lifeline program, and would also increase the effectiveness of Lifeline support by targeting support to Lifeline consumers who have not yet adopted broadband services. Therefore, the benefits of these proposed changes outweigh the impact of the proposed changes on small entities.

98. *Reforms to Increase Efficient Administration of the Lifeline Program.* The Commission seeks comment on a number of reforms to increase the efficient administration of the program, including requiring ETCs to supply documentation to USAC for National Lifeline Accountability Database (NLAD) dispute resolutions, ETCs to collect documentation for subscribers

seeking to self-certify to continued eligibility, and limiting the use of independent economic household forms to only NLAD dispute resolutions. These reforms could increase costs associated with ETCs' administrative processes. However, the Commission expects these burdens to be manageable for ETCs. In addition, in states where the National Verifier will be implemented, these burdens would be temporary because the National Verifier would take over eligibility verification and recertification in those states. Further, these proposed changes would help minimize waste, fraud, and abuse in the Lifeline program, which in turn would benefit consumers and providers that pay into the Universal Service Fund. Therefore, the benefits of these proposed changes outweigh the impact of these proposed changes on small entities.

99. *Compliance burdens.* Implementing any of our proposed rules (*e.g.,* requiring ETCs to supply documentation to USAC for National Lifeline Accountability Database (NLAD) dispute resolutions, ETCs to collect documentation for subscribers seeking to self-certify to continued eligibility, and limiting the use of independent economic household forms to only NLAD dispute resolutions) would impose some burden on small entities by requiring them to make such certifications and entries on FCC forms, and requiring them to become familiar with the new rules to comply with them. For many of proposed the rules, there is a minimal burden. Thus, these new requirements should not require small businesses to seek outside assistance to comply with the Commission's rule but rather are more routine in nature as part of normal business processes. The importance of bringing the Lifeline program closer to its core purpose and promoting the availability of modern services for low-income families, however, outweighs the minimal burden requiring small entities to comply with the new rules would impose.

100. The proceeding for this NPRM and NOI initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

Availability of Documents. Comments, reply comments, and ex parte submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CYA257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

V. Ordering Clauses

121. *Accordingly, it is ordered,* that pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 254, and 403, and section 1.2 of the Commission's rules, 47 CFR 1.2, this Notice of Proposed Rulemaking and Notice of Inquiry *is adopted.*

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

§ 54.201 [Amended]

■ 2. Amend § 54.201 by removing paragraph (j).

§ 54.202 [Amended]

■ 3. Amend § 54.202 by removing paragraphs (d) and (e).

§ 54.205 [Amended]

■ 4. Amend § 54.205 by removing paragraph (c).

■ 5. Amend § 54.404 by revising paragraph (b)(3) to read as follows:

§ 54.404 The National Lifeline Accountability Database.

* * * * *

(b) * * *

(3) If the Database indicates that another individual at the prospective subscriber's residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d) that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service. This certification may only be obtained after the eligible telecommunications carrier receives a notification from the Database or state administrator that another Lifeline subscriber resides at the same address as the prospective subscriber.

* * * * *

§ 54.408 [Amended]

■ 6. Amend § 54.408 by removing paragraph (f).

■ 7. Amend § 54.410 by revising paragraphs (f)(2)(iii) and (f)(3)(iii) and removing and reserving paragraph (g) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

* * * * *

(f) * * *

(2) * * *

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more state databases containing information regarding enrollment in qualifying assistance programs, then the eligible telecommunications carrier may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. The subscriber must present documentation meeting the requirements in paragraph (b)(1)(i)(B) or (c)(1)(i)(B) of this section to establish continued eligibility. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to re-certify a qualifying low-income consumer.

* * * * *

(3) * * *

(iii) If the subscriber's eligibility for Lifeline cannot be determined by accessing one or more databases containing information regarding enrollment in qualifying assistance programs, then the National Verifier, state Lifeline administrator, or state agency may obtain a signed certification from the subscriber on a form that meets the certification requirements in paragraph (d) of this section. The subscriber must present documentation meeting the requirements in paragraph (b)(1)(i)(B) or (c)(1)(i)(B) of this section to establish continued eligibility. If a Federal eligibility recertification form is available, entities enrolling subscribers must use such form to recertify a qualifying low-income consumer.

* * * * *

§ 54.418 [Removed and Reserved]

■ 8. Remove and reserve § 54.418.

[FR Doc. 2018–00153 Filed 1–12–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 17–317, 17–105; FCC 17–168]

Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses ways to modernize certain notice provisions in the Commission's rules governing multichannel video and cable television service.

DATES: Comments are due on or before February 15, 2018; reply comments are due on or before March 2, 2018.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 17–317, 17–105, by any of the following methods:

- *Federal Communications Commission's website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Maria Mullarkey of the Policy Division, Media Bureau at *Maria.Mullarkey@fcc.gov,* or (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 17–168, adopted and released on December 14, 2017. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-168A1.docx.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. 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

1. In this Notice of Proposed Rulemaking (NPRM), we address ways to modernize certain notice provisions in part 76 of the Federal Communications Commission's rules governing multichannel video and cable television service. First, we seek comment on proposals to modernize the rules in subpart T of part 76 (subpart T),[1] which sets forth notice requirements applicable to cable

[1] 47 CFR 76.1601 through 76.1630.

operators. In particular, we propose to allow various types of written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified email address and the cable operator complies with other consumer safeguards. We also tentatively conclude that subscriber privacy notifications required pursuant to sections 631, 338(i), and 653 of the Communications Act of 1934, as amended (the Act), may be delivered electronically to a verified email address, subject to consumer safeguards. In addition, we propose to permit cable operators to reply to consumer requests or complaints by email in certain circumstances. Second, we seek comment on how to update the requirement in §§ 76.64 and 76.66 of the Commission's rules that requires broadcast television stations to send carriage election notices via certified mail. With this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.[2]

I. Background

2. *Subpart T Cable Notices.* Subpart T regulates various aspects of cable operators' communications with subscribers as well as with other parties, including television broadcast stations and the Commission.[3] In 1999, the Commission revised and streamlined the cable television notice, public file, and recordkeeping requirements contained throughout part 76 of the Commission's rules, and as part of this reorganization, it created a new subpart T for notice requirements.[4] Among other requirements, subpart T requires cable operators to communicate specified information about various topics to their subscribers in writing, including the following:

- Deletion or repositioning of broadcast signals (47 CFR 76.1601): Requires cable operators to provide written notice to subscribers if they are deleting a broadcast television station from carriage or repositioning that station.
- Customer service—general information (47 CFR 76.1602): Requires cable operators to provide written information to subscribers at the time of installation, at least annually, and at any time upon request about: Products and services offered; prices and options for programming services and conditions of subscription to programming and other services; installation and service maintenance policies; instructions on how to use the cable service; channel positions of programming carried on the system; billing and complaint procedures; assessed fees for rental of navigation devices and single and additional CableCARDs; and the fees allocable to the rental of single and additional CableCARDs and the rental of operator-supplied navigation devices, if the provider includes equipment in the price of a bundled service offering.
- Customer service—rate and service changes (47 CFR 76.1603): Requires cable operators to notify customers of any changes in rates, programming services, or channel positions as soon as possible in writing; to notify subscribers a minimum of 30 days in advance of such changes, if the change is within the control of the cable operator; to notify subscribers 30 days in advance of any significant changes in the other information required by § 76.1602; to give 30 days written notice to subscribers before implementing any rate or service change, stating the precise amount of any rate change and a brief explanation in readily understandable fashion of the cause of the rate change; to provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective (or 60 days if the equipment is provided to the consumer without charge pursuant to § 76.630), including the price to be charged, the date that the new charge will be effective, and the name and address of the local franchising authority.[5]
- Charges for customer service changes (47 CFR 76.1604): Requires cable systems to notify all subscribers in writing that they may be subject to a charge for changing service tiers more than the specified number of times in any 12-month period, if the cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods.
- Basic tier availability (47 CFR 76.1618): Requires a cable operator to provide written notification of the availability of basic tier service to new subscribers at the time of installation, which should include that the basic tier is available, the cost per month for basic tier service, and a list of all services included in the basic service tier.
- Availability of signals (47 CFR 76.1620): Requires a cable operator to notify subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and to offer to sell or lease such a converter box to such subscribers, if a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections or with the equipment and materials for such connections.[6]
- Equipment compatibility offer (47 CFR 76.1621): Requires cable system operators that use scrambling, encryption, or similar technologies in conjunction with cable system terminal devices that may affect subscribers' reception of signals to offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals.[7]
- Consumer education program on compatibility (47 CFR 76.1622): Requires cable system operators to provide a consumer education program on compatibility matters to their subscribers in writing that includes certain information, such as notice that certain models of television receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the system, as well as an explanation of the types of channel compatibility problems that could occur if the device is connected directly to the system and suggestions to resolve such problems; notice that subscribers may not be able to use special features and functions of their television receivers and videocassette recorders where service is received through a cable system terminal device; and notice that remote control units compatible with cable system terminal

[2] *See Commission Launches Modernization of Media Regulation Initiative,* Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary, or unduly burdensome).

[3] Subpart T refers to ''subscribers,'' ''customers,'' and ''consumers'' interchangeably. *See, e.g.,* 47 CFR 76.1602(b), 76.1603(b), 76.1622. In the NPRM, we use the term ''subscribers'' for consistency, but it includes both ''customers'' and ''consumers'' as used in subpart T.

[4] *See 1998 Biennial Regulatory Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements,* Report and Order, 14 FCC Rcd 4653 (1999); Second Report and Order, 16 FCC Rcd 19773 (2001).

[5] To the extent the cable operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion. 47 CFR 76.1603(e).

[6] Such notification must be provided to each new subscriber upon initial installation and annually thereafter. *Id.* sec. 76.1620. The notice, which may be included in routine billing statements, must identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection, and instructions for installation. *Id.*

[7] The offer of special equipment must be made to new subscribers at the time they subscribe and to all subscribers at least once each year. *Id.* sec. 76.1621(a).

devices and other customer premises equipment provided to subscribers may be obtained from other sources, such as retail outlets, as well as a representative list of remote control models that are compatible with deployed customer premises equipment.[8]

3. In June 2017, the Commission issued a Declaratory Ruling (*2017 Declaratory Ruling*) that interpreted the written communications requirement of one section of subpart T to be satisfied by electronic delivery of written material to subscribers.[9] Specifically, the ruling clarified that the ''written information'' that cable operators provide to their subscribers annually pursuant to § 76.1602(b) of the Commission's rules may be provided via email to a verified email address if there is a mechanism for customers to opt out of email delivery and continue to receive paper notices.[10] The Commission found that section 632(b) of the Act grants the Commission authority to establish the means by which annual notices may be delivered to subscribers and to specify consumer protections with regard to the delivery of the notices.[11] It concluded that the statute does not impose any limitations on the Commission's authority under section 632(b) to specify the means by which cable operators may deliver notices to consumers.[12] The Commission determined that a verified email address is necessary to ensure that the written information is provided—*i.e.,* made available—to subscribers, as is required by § 76.1602(b).[13] The Commission also cited policy arguments that it found to be persuasive in support of interpreting the ''written information'' requirement of § 76.1602(b) to encompass electronic distribution to a verified email address, such as the positive environmental aspects of saving substantial amounts of paper annually, increased efficiency, and enabling customers to more readily access accurate information about their service options.[14] The Commission concluded that electronic delivery of annual notices would greatly ease the burden of complying with these notification requirements for all cable operators, including small cable operators.[15]

4. As discussed in more detail below, parties responding to the Commission's Modernization of Media Regulation Initiative ask the Commission to consider permitting electronic delivery of information required to be provided by cable operators to subscribers in writing pursuant to subpart T, consistent with the Commission's findings in the *2017 Declaratory Ruling,* and to consider other changes to the rules in subpart T.

5. *Carriage Election Notices.* When the Commission implemented the law establishing the must carry/retransmission consent regime,[16] it adopted a requirement that each commercial television broadcast station provide periodic notice to cable operators electing either to demand carriage or to withhold carriage absent express consent.[17] A similar requirement, applying to both commercial and noncommercial television broadcast stations, was adopted as part of the ''carry one, carry all'' regime for Direct Broadcast Satellite (DBS) carriers.[18] In both cases, the election notice must be sent via certified mail once every three years by each broadcaster to each cable system and DBS carrier serving the station's market. A number of broadcaster commenters in the Media Modernization proceeding propose changes to this process, as set forth below.

II. Discussion

A. Modernization of MVPD Notice Requirements

1. Electronic Distribution of Notices to Subscribers

6. We propose to adopt a rule that would allow various types of generic written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified email address and the cable operator complies with other consumer safeguards.[19] This includes generic written information provided to consumers about the deletion or repositioning of broadcast signals (§ 76.1601); general information about services offered (§ 76.1602); rate and service changes (§ 76.1603); charges for customer service changes (§ 76.1604); basic tier availability (§ 76.1618); availability of signals (§ 76.1620); equipment compatibility offer (§ 76.1621); and consumer education program on compatibility (§ 76.1622).[20] Consistent with the Commission's clarification in the *2017 Declaratory Ruling* that written information required under § 76.1602(b) can be sent via email

[8] This information must be provided to subscribers at the time they first subscribe and at least once a year thereafter. *Id.* sec. 76.1622(a). The rule specifies that this notification requirement may also be satisfied by an annual mailing to all subscribers and may be included in one of the system's regular subscriber billings. *Id.*

[9] *See National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling,* Declaratory Ruling, 32 FCC Rcd 5269 (2017) (*2017 Declaratory Ruling*). *See* 82 FR 35658. The Declaratory Ruling granted a petition for declaratory ruling filed by NCTA—The internet and Television Association (NCTA) and the American Cable Association (ACA). *See* Petition for Declaratory Ruling of National Cable & Telecommunications Association and American Cable Association, MB Docket No. 16–126 (filed Mar. 7, 2016) (requesting clarification that the written information that cable operators must provide to their subscribers pursuant to § 76.1602(b) of the Commission's rules may be provided via electronic distribution).

[10] *2017 Declaratory Ruling,* 32 FCC Rcd at 5269, paragraph 1.

[11] *Id.* at 5273, paragraph 7.

[12] *Id.* In the Cable Television Consumer Protection and Competition Act of 1992, Congress, in order to ''provide increased consumer protection,'' amended section 632 of the Act to require the Commission to adopt customer service standards for cable operators. Public Law 102–385, 106 Stat. 1460 (1992); 47 U.S.C. 552. In section 632(b), Congress directs the Commission to ''establish standards by which cable operators may fulfill their customer service requirements'' and specifies that ''[s]uch standards shall include, at a minimum, requirements governing . . . communications between the cable operator and the subscriber (including standards governing bills and refunds).'' 47 U.S.C. 552(b)(3).

[13] *2017 Declaratory Ruling,* 32 FCC Rcd at 5274, paragraph 9.

[14] *Id.* at 5272–73, paragraph 6.

[15] *Id.* at 5273, paragraph 8.

[16] ''The Communications Act prohibits cable operators and other multichannel video programming distributors from retransmitting commercial television, low power television and radio broadcast signals without first obtaining the broadcaster's consent. This permission is commonly referred to as 'retransmission consent' and may involve some compensation from the cable company to the broadcaster for the use of the signal. Alternately, local commercial and noncommercial television broadcast stations may require a cable operator that serves the same market as the broadcaster to carry its signal. A demand for carriage is commonly referred to as 'must-carry.' If the broadcast station asserts its must-carry rights, the broadcaster cannot demand compensation from the cable operator. While retransmission consent and must-carry are distinct and function separately, they are related in that commercial broadcasters are required to choose once every three years, on a system-by-system basis, whether to obtain carriage or continue carriage by choosing between must carry and retransmission consent.'' FCC Media Bureau, *Cable Carriage of Broadcast Stations, https://www.fcc.gov/media/cable-carriage-broadcast-stations* (last visited Oct. 4, 2017).

[17] 47 CFR 76.64(h) (adopted in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues,* Report and Order, 8 FCC Rcd 2965, 3003, paragraph 160 (1993)).

[18] 47 CFR 76.66(d) (adopted in *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues,* Report and Order, 16 FCC Rcd 1918, 1932, paragraph 30 (2000)). ''Carry one, carry all'' refers to the fact that DBS carriers are not required to carry any local broadcast stations in a market, but must carry all of them upon request if any are carried (with certain narrow exceptions). The DBS ''mandatory carriage/retransmission consent'' regime otherwise functions in a manner very similar to the cable ''must carry/retransmission consent'' regime described above.

[19] By ''generic'' or ''general,'' we mean information that applies to subscribers or groups of subscribers generally (*e.g.,* those residing in the same zip code; those subscribing to the same service, etc.) and is not specific to an individual subscriber. *See 2017 Declaratory Ruling,* 32 FCC Rcd at 5275, paragraph 10, note 40.

[20] 47 CFR 76.1601 through 76.1604, 76.1618, 76.1620 through 76.1622.

to a verified email address with inclusion of an opt-out mechanism, we tentatively conclude to adopt a rule reflecting these requirements with respect to § 76.1602(b) and some of the other subscriber notices required in the rules listed above. With respect to notices that pertain to rate and service changes, charges for customer service changes, basic tier availability, and subscriber privacy,[21] we tentatively conclude that these notices can be sent via email to a verified email address and seek comment on whether consumers should have to opt in to begin receiving these notices electronically. Alternatively, we seek comment on whether these notifications should be treated like the other ones in subpart T such that cable operators should be permitted to deliver these notices electronically, if they allow consumers to opt out of email delivery and continue to receive paper notices.

7. In comments filed in the Modernization of Media Regulation Initiative docket, some industry commenters request that the Commission take steps to ease the burden of complying with the cable notice requirements, such as by permitting electronic distribution of written notifications to subscribers. NCTA asks the Commission to adopt more efficient, less costly ways to provide required notices, and it contends that cable operators should expressly be permitted to correspond with customers via electronic means, if the customer has provided the cable operator with an email address or contacted the cable operator using such means.[22] ACA agrees with NCTA that, ''at a minimum, the Commission should clarify that the written notice requirement as it pertains to [customer notification] provisions can be satisfied via electronic notice.'' [23] ACA posits that ''electronic notification would provide welcomed relief to cable operators and other entities from paperwork burdens.'' [24] According to ACA, modifying subscriber notification rules can relieve cable operators from undue burdens and reduce subscriber ''notice fatigue.'' [25] Verizon agrees that ''electronic delivery should be available for required notices to subscribers.'' [26] Frontier Communications Corporation (Frontier) supports reform of ''outdated notice requirements that were created before companies had websites and before customers had email.'' [27]

8. We tentatively conclude that permitting cable operators to deliver the aforementioned subscriber notices by email would serve the public interest. We believe that the policy considerations that the Commission found persuasive in the *2017 Declaratory Ruling* clarifying that the annual notices required under § 76.1602(b) may be delivered electronically apply equally with respect to other subscriber notices required in subpart T of the rules, and we seek comment on our tentative conclusion that the public interest would be served by our proposal. We note that no party in the media modernization proceeding has opposed the cable industry's request to permit electronic distribution of notices to subscribers.

9. In the *2017 Declaratory Ruling,* the Commission concluded that it has authority to establish the means by which subpart T notices may be delivered to subscribers and to specify consumer protections with regard to the delivery of the notices.[28] As noted above, section 632(b) of the Act provides the Commission with broad authority to ''establish standards by which cable operators may fulfill their customer service requirements.'' [29] Moreover, the statute does not impose limitations on the Commission's authority to specify the means by which cable operators may deliver notices to or otherwise communicate with consumers (including communications about bills and refunds).[30] Because the Commission has authority to establish standards governing communications between cable operators and subscribers, and email is one such method of communication, we believe permitting cable operators to deliver subscriber notices by email is consistent with section 632(b).

10. A different statutory standard applies to notices of service and rate changes provided to subscribers pursuant to § 76.1603. Section 632(c) of the Act states that ''[a] cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion.'' [31] Section 76.1603, which implements section 632(c), also states that notice of rate or service changes can be made by any reasonable written means at the discretion of the cable operator.[32] We tentatively conclude that ''reasonable written means'' includes distribution via email to a verified email address. We tentatively find that permitting cable operators to deliver notices about service and rate changes via email satisfies the ''written means'' requirement of section 632(c). As we have found previously, emails, by their very nature, convey information in writing.[33] Section 632(c) further requires the written means chosen by the cable operator to be ''reasonable.'' [34] For the reasons described below, we tentatively find that to be ''reasonable,'' a cable operator must use a subscriber's verified email address. We seek comment on these tentative conclusions.

11. We believe that certain consumer safeguards must be put in place if cable operators are permitted to disseminate written notifications to subscribers electronically with respect to subpart T notification rules. First, we tentatively conclude that cable operators must have verified email contact information if they choose to deliver notifications to subscribers via email, and, if no verified email contact information is available for a particular subscriber, cable operators must continue to deliver notices via paper copies to that subscriber.[35] In the *2017 Declaratory Ruling,* the Commission determined that, for purposes of satisfying the requirements of § 76.1602(b), each of the following would be considered to be a verified email address: (1) An email address that the subscriber has provided to the cable operator (and not *vice versa*) for purposes of receiving communication, (2) an email address that the subscriber regularly uses to communicate with the cable operator, or (3) an email address that has been

[21] *Id.* secs. 76.1603 through 76.1604, 76.1618; 47 U.S.C. 551(a)(1), 338(i), 573(c)(1)(a).

[22] Comments of NCTA—The internet and Television Association, at 4–5 (NCTA Comments).

[23] Reply Comments of the American Cable Association, at 9 (ACA Reply). ACA asks the Commission to launch a rulemaking to update outdated subscriber notification requirements. *See* Comments of the American Cable Association, at 18–26 (ACA Comments).

[24] ACA Reply at 9.

[25] ACA Comments at 19.

[26] Reply Comments of Verizon, at 6 (Verizon Reply).

[27] Reply Comments of Frontier Communications Corp., at 6 (Frontier Reply).

[28] *2017 Declaratory Ruling,* 32 FCC Rcd at 5273, paragraph 7.

[29] 47 U.S.C. 552(b).

[30] *See id.*

[31] *See id.* sec. 552(c). *See also 2017 Declaratory Ruling,* 32 FCC Rcd at 5273, note 27; *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996,* Report and Order, 14 FCC Rcd 5296, 5363, paragraph 156 (1999) (''[N]otices of rate changes provided to subscribers through written announcements on the cable system or in the newspaper will be presumed sufficient.'').

[32] *See* 47 CFR 76.1603(e). *See also* NCTA Comments at 7–8 (requesting that the Commission clarify that a written notice for purposes of § 76.1603 includes an electronic notice); Frontier Reply at 8 (same).

[33] *2017 Declaratory Ruling,* 32 FCC Rcd at 5272, paragraph 6.

[34] *See* 47 U.S.C. 552(c).

[35] *2017 Declaratory Ruling,* 32 FCC Rcd at 5274, paragraph 9.

confirmed by the subscriber as an appropriate vehicle for the delivery of notices.[36] We see no reason to deviate from the criteria identified in the *2017 Declaratory Ruling,* and we propose to adopt this as a definition of the term ''verified email address'' as part of our rules. This definition was proposed by the cable industry, and we found that it set acceptable parameters for the email delivery of written material.[37] We seek comment on this proposal and tentative finding.

12. Second, we tentatively conclude that cable operators must provide a mechanism for subscribers to opt out of email delivery and continue to receive paper notices with respect to the following subpart T notification rules: Generic written information provided to consumers about the deletion or repositioning of broadcast signals (§ 76.1601); general information about services offered (§ 76.1602); availability of signals (§ 76.1620); equipment compatibility offer (§ 76.1621); and consumer education program on compatibility (§ 76.1622).[38] In the *2017 Declaratory Ruling,* the Commission determined that to satisfy § 76.1602(b), cable operators must include an opt-out telephone number that is clearly and prominently presented to subscribers in the body of the originating email that delivers the notices, so that it is readily identifiable as an opt-out option, to ensure that customers continue to be provided information in a way that they will actually accept and receive.[39] We tentatively find that it is necessary to allow subscribers to opt out of email delivery and to provide an opt-out mechanism that is clearly and prominently presented in the body of the originating email for purposes of the aforementioned notice rules in subpart T, and we seek comment on this tentative finding.[40] Should we require that cable operators provide a telephone opt-out method as a minimum requirement, consistent with the *2017 Declaratory Ruling*? Or, should we also permit cable operators to provide the opt-out mechanism via an electronic link that allows subscribers to identify their delivery preferences electronically, as an alternative to providing the opt out mechanism via a telephone number?[41] We recognize that subscribers are accustomed to having electronic opt-out links available in commercial emails,[42] and that, for many internet-savvy subscribers, an electronic link will be more efficient than a telephone number. However, in the *2017 Declaratory Ruling,* the Commission found that providing a telephone number ''would be the means most universally accessible to customers that prefer not to receive their notices electronically,'' and it specified this as the minimum requirement.[43] Is there reason to deviate from that approach for purposes of our rules? To the extent we adopt safeguards that differ from those specified in the *2017 Declaratory Ruling,* should we adopt such safeguards also with respect to the annual notices required under § 76.1602(b) of the rules, or is there a reason to treat § 76.1602(b) differently?

13. With respect to notices of rate and service changes pursuant to § 76.1603, charges for customer service changes pursuant to § 76.1604, and basic tier availability pursuant to § 76.1618, we seek comment on whether subscribers should have to opt in to begin receiving these notices electronically.[44] Does the nature of these notices in particular necessitate that cable operators have an opt-in safeguard in place with respect to these notices? If so, what specific opt-in procedures should be required? Or, alternatively, should these notifications be treated like the other ones in subpart T such that cable operators should be permitted to deliver these notices electronically, if they allow consumers to opt out of email delivery and continue to receive paper notices? Are there advantages to both consumers and cable operators in having various notices treated in a similar manner?

14. In the *2017 Declaratory Ruling,* the Commission found that inclusion of a website link to the notice itself would be considered reasonable when annual notices are delivered via email, provided the link remains active until superseded by a subsequent notice, and would give customers flexibility to choose when to review the annual notices.[45] We tentatively conclude that this finding should also apply with respect to any other subpart T subscriber notices that the Commission permits cable operators to send to subscribers via email, and we seek comment on this tentative finding.

15. We also seek comment on whether we should permit cable operators to provide to subscribers notices of general information at the time of installation and annually thereafter pursuant to § 76.1602 and information on basic tier availability pursuant to § 76.1618 by posting the written material on the cable operator's website, in lieu of providing such notice to subscribers via U.S. mail or electronic delivery to a verified email address.[46] NCTA, Frontier, and ACA identify these two requirements in particular as suitable for website posting.[47] We seek comment on whether it is appropriate for these types of generic notifications to be provided to subscribers via website posting. We seek input on the benefits, both to cable operators and to subscribers, of permitting notices via website posting to fulfill these written notice requirements as well as any potential burdens this may pose to subscribers. Would subscribers benefit from having an option that allows them to access written material via the cable operator's website at any time that is convenient to them, as opposed to either paper copies delivered to a physical address or email copies delivered to a verified email address? Would website posting lessen the burden on cable operators, and small operators in particular, to

[36] *Id.*

[37] *See id.* at 5274, paragraph 9 (''By requiring the use of a verified email address, we will ensure that the . . . notices have a high probability of being successfully delivered electronically to an email address that the customer actually uses, so that the written information is actually provided to the customer.'').

[38] 47 CFR 76.1601 through 76.1602, 76.1620 through 76.1622.

[39] *2017 Declaratory Ruling,* 32 FCC Rcd at 5275, paragraph 10.

[40] *See id.*

[41] *See id.* at 5276, paragraph 10 (agreeing with commenters that providing a link for customers to identify their delivery preference electronically ''could also be efficient and convenient for many customers'').

[42] Commercial emails must include an opt-out option under the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. 7701, *et seq.* (CAN–SPAM Act). Many commercial emails satisfy this requirement with an ''unsubscribe'' link.

[43] *See also 2017 Declaratory Ruling,* 32 FCC Rcd at 5276, paragraph 10. The Commission also noted that, while providing an opt-out telephone number is a minimum requirement, ''cable operators may choose to offer additional choices to their customers that are clearly and prominently presented in the body of the originating email.'' *Id.*

[44] 47 CFR 76.1603 through 76.1604, 76.1618.

[45] *2017 Declaratory Ruling,* 32 FCC Rcd at 5276, paragraph 11, note 46.

[46] 47 CFR 76.1602, 76.1618.

[47] With respect to initial and annual notices, NCTA notes that this detailed information ''appears to be of little utility to customers and can become frequently outdated,'' and that website posting would enable operators to provide more timely information in a less burdensome manner. NCTA Comments at 5–6. With respect to notice of the availability of the basic service tier, NCTA asserts that most customers would instinctively turn to the cable operator's website for information about programming packages and channel lineups. *Id.* at 8–9. *See also* ACA Comments at 23 (''[T]he Commission should consider modifying its rules to allow cable operators to decide how best to convey statutorily mandated information about the basic tier to customers.''). Frontier agrees that cable operators should be allowed to share any required annual information by posting the information on its website, giving subscribers the opportunity to opt in to email notification. Frontier Reply at 7. While acknowledging that, for the most part, the notices convey ''important information for consumers to have,'' ACA questions the benefit of delivering the information year after year. ACA Comments at 20.

communicate this information every year to each subscriber on an individual basis, while still fulfilling the objectives of section 632?

16. On the other hand, would a website posting of initial and annual notices required pursuant to § 76.1602 and information on basic tier availability required pursuant to § 76.1618 ensure that subscribers are adequately informed? The Commission recently observed that ''[t]he internet has become a major part of consumers' daily lives and now represents a widely used medium to obtain information.'' [48] However, in the *2017 Declaratory Ruling,* the Commission rejected the request of the petitioners in that proceeding to permit electronic delivery of annual notices via other means reasonably calculated to reach the individual customer, and instead limited permissible electronic delivery to email.[49] The Commission explained that allowing other means to deliver annual notices, such as placing a website link inside a bill, ''could create an undue risk that subscribers will not receive the required notices.'' [50] Can the Commission's concerns be mitigated by putting some consumer safeguards or additional requirements in place? Further, are there any requirements that the Commission can adopt to help ensure that subscribers without internet access receive the required notices? For example, if cable operators were permitted to include a website link to these notices inside a bill, should we also require them to include a telephone number that subscribers can use to request a paper copy of the notices?

17. To the extent that the Commission does decide to permit website posting of these two subpart T notices, we seek comment on what requirements should be adopted to ensure this information can be easily accessed by consumers. For example, should the Commission require that an electronic link to written material posted on a cable operator's website be clearly labeled ''Important Subscriber Notices'' and be prominently displayed on the initial screen of the cable operator's website? This would allow subscribers to easily locate the pertinent written material without having to search the website. Should any website link containing generic written material include an opt-out mechanism that allows subscribers to identify their delivery preferences? Should the Commission specify that the link must allow a subscriber to find the same information that would be included in the paper copies delivered to the subscriber's physical address or delivered by email to a verified email address? We seek comment on these or any other consumer protections that would be appropriate to impose in conjunction with website posting to ensure that consumers effectively receive the required notifications.

18. Finally, as suggested by NCTA,[51] we tentatively conclude that we should add a rule in subpart T that specifies that subscriber privacy notifications required pursuant to sections 631, 338(i), and 653 of the Act may be delivered electronically to a verified email address, subject to the consumer safeguards discussed above. Section 631 of the Act requires a cable operator to ''provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of'' certain privacy protections.[52] Section 338(i) of the Act imposes the same requirement on satellite providers and section 653(c)(1)(A) of the Act imposes this requirement on Open Video System (OVS) providers.[53] We tentatively conclude that the Commission should interpret the term ''separate, written statement'' in these statutory provisions to include notices delivered electronically to a verified email address and that the Commission should add a rule to subpart T codifying this interpretation. We seek comment on whether subscribers should have to opt in to begin receiving electronic privacy notices. Or, alternatively, should these notifications be treated like the other ones in subpart T such that MVPDs should be permitted to deliver them electronically, if they allow consumers to opt out of email delivery and continue to receive paper notices? We recognize the importance of privacy protections to video subscribers, which are reflected in sections 631, 338(i), and 653(c)(1)(A). Are there concerns underlying the privacy notification requirements that suggest those requirements should be treated differently from other subscriber notifications?

2. Responses to Consumer Requests and Complaints by E-Mail

19. We propose to allow cable operators to respond to consumer requests or billing dispute complaints by email, if the consumer used email to make the request or complaint or if the consumer specifies email as the preferred delivery method in the request or complaint, and we seek comment on this proposal.[54] Sections 76.1614 and 76.1619 of subpart T require written responses to requests or complaints.[55] Specifically, § 76.1614 requires cable operators to respond in writing within 30 days to any written request by any person for the identification of the signals carried on its system in fulfillment of the must-carry requirements of § 76.56.[56] Section 76.1619 requires cable operators to respond to a written complaint from a subscriber within 30 days if there is a billing dispute.[57] We seek comment on whether there are any other provisions in subpart T that would be affected by this proposal.

20. NCTA asks the Commission to clarify that cable providers may use email to respond to consumer complaints when the consumer ''has provided an email address on the complaint form and has not specifically requested a different format.'' [58] According to NCTA, ''[a]n electronic submission implicitly and reasonably calls for an electronic

[48] *Amendment of Section 73.624(g) of the Commission's Rules Regarding Submission of FCC Form 2100, Schedule G, Used to Report TV Stations' Ancillary or Supplementary Services; Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of Broadcast Applications; Modernization of Media Regulation Initiative; Revision of the Public Notice Requirements of Section 73.3580,* Notice of Proposed Rulemaking, 32 FCC Rcd 8203, 8208–09, paragraphs 8–9 (2017) (seeking comment on whether to update § 73.3580 of the Commission's rules to provide broadcast licensees with more flexibility as to how they inform the public about the filing of certain applications, including whether to allow posting of such notice on an internet website).

[49] *2017 Declaratory Ruling,* 32 FCC Rcd at 5276, paragraph 11.

[50] *Id.*

[51] *See* NCTA Comments at 9. Although NCTA's comments discuss only the privacy notifications applicable to cable operators pursuant to section 631, we find it appropriate to also address similar statutory provisions applicable to other types of MVPDs.

[52] 47 U.S.C. 551(a)(1). Specifically, section 631 requires annual notice of ''(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information; (B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made; (C) the period during which such information will be maintained by the cable operator; (D) the times and place at which the subscriber may have access to such information in accordance with subsection (d) [of this section]; and (E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) [of this section] to enforce such limitations.'' *Id.*

[53] *Id.* secs. 338(i), 573(c)(1)(a); 47 CFR 76.1510.

[54] Our proposal is limited to responses to consumer complaints or requests, and does not extend to communications between cable operators and other parties, such as broadcast stations.

[55] *See* 47 CFR 76.1614, 76.1619.

[56] *Id.* sec. 76.1614.

[57] *Id.* sec. 76.1619.

[58] NCTA Comments at 10.

response.'' [59] NCTA also points out that the Commission already permits common carriers and internet service providers to respond to formal complaints by email.[60] Likewise, Frontier calls on the Commission to allow cable providers to use email to respond to consumer complaints when the consumer has provided an email address on the complaint form or if the provider has an email address on record.[61] Frontier contends that this would ''cut down on unnecessary paper waste and postage and remove unnecessary costs.'' [62]

21. We believe that permitting cable operators to respond electronically using the same method as the consumer or the method chosen by the consumer gives both parties the opportunity to communicate via their method of choice and will allow cable operators to respond more efficiently to requests and complaints. We seek comment on this proposal.

3. Other Subpart T Requirements

22. *§ 76.1621 (Equipment Compatibility Offer).*[63] We propose to eliminate § 76.1621, which requires cable operators to offer and provide upon request to subscribers ''special equipment that will enable the simultaneous reception of multiple signals.'' [64] We seek comment on whether the requirements in § 76.1621 can be eliminated consistent with section 624A of the Act.[65] NCTA argues the Commission should eliminate this requirement because it is a ''relic[] of long-outdated technologies and policies.'' [66] When the Commission adopted the requirement for cable operators to offer subscribers special equipment with multiple tuners, it was intended to address ''cases where cable systems use scrambling technology and set-top boxes,'' such that subscribers need ''supplemental equipment to enable the operation of extended features and functions of TV receivers and VCRs that make simultaneous use of multiple signals,'' including ''picture-in-picture'' features or the ability to watch one program while recording another.[67] Today, consumers widely use digital video recorders (DVRs), rather than VCRs or television receivers, for recording features, and ''picture-in-picture'' features on television receivers are not prevalent. Given today's digital technologies, we tentatively conclude that it is no longer necessary to promote the ''special equipment that will enable the simultaneous reception of multiple signals'' referred to in the rules, and we seek comment on this tentative conclusion.

23. *§ 76.1622 (Consumer Education Program on Compatibility).* We seek comment on how to appropriately update references to technology in § 76.1622 of the Commission's rules, which requires cable operators to provide a consumer education program on equipment and signal compatibility matters to their subscribers in writing upon initial subscription and annually thereafter.[68] Among other types of technology, the rule refers to the compatibility of ''videocassette recorders.'' [69] Frontier asks the Commission to update § 76.1622, noting that a requirement to educate consumers on the interoperability of videocassette recorders no longer makes sense.[70] ACA emphasizes that ''[c]oncerns about TV receiver and VCR compatibility are, quite simply, no longer relevant to today's consumer.'' [71] We seek comment on how we can best modernize references to technology in § 76.1622.[72] We also seek comment on whether there are any parts of the rule that are no longer necessary given changes in technology and, therefore, should be eliminated.[73] We seek comment on whether the requirements in § 76.1622 can be modified consistent with section 624A of the Act, and, if so, how.[74]

24. Further, we seek comment on whether the Commission should consider any other changes to § 76.1622, such as scaling back the requirement to provide these types of notices annually. ACA asks the Commission to eliminate those parts of the rule that are not

[59] *Id.* at 11.

[60] *Id.* at 10–11 (citing 47 CFR 1.735(f) (permitting answers to formal complaints against common carriers to be delivered by email); and 8.13(c)(1) (permitting the same for formal complaints regarding open internet rules)). NCTA also notes that this would be consistent with prior guidance from the Consumer and Governmental Affairs Bureau allowing providers to submit responses to informal complaints against common carriers via email. *Id.* at 11, note 30.

[61] Frontier Reply at 15.

[62] *Id.* Frontier also notes that letter or email communication is frequently made in addition to communication via other means, including by phone for ''the most pressing and important complaints.'' *Id.* at 15–16.

[63] ACA and NCTA request that the Commission delete § 76.1630 of the Commission's rules, which requires cable operators and other multichannel video programming distributors (MVPDs) to provide subscribers with notices about the digital transition in monthly bills or bill notices received by subscribers beginning April 1, 2009 and concluding on June 30, 2009. *See* 47 CFR 76.1630; ACA Comments at 26; NCTA Comments at 9. We plan to address this in a subsequent order in the Modernization of Media Regulation Initiative proceeding. NCTA and Frontier also request that the Commission eliminate or revise the requirements for cable operators to provide subscribers with notice of certain rate changes in §§ 76.1603 and 76.1604 of the Commission's rules. *See* NCTA Comments at 6–8; Frontier Reply at 8–9. We plan to address these issues in a subsequent proceeding.

[64] *See* 47 CFR 76.1621.

[65] *See* 47 U.S.C. 544a(c)(2). Section 624A specifies that the Commission ''shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.'' *See id.* sec. 544a(d).

[66] NCTA Comments at 9.

[67] *See Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment,* First Report and Order, 9 FCC Rcd 1981, 1989–90, paragraphs 43–48 (1994). *See also* 47 U.S.C. 544a(c)(2); *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment,* Memorandum Opinion and Order, 11 FCC Rcd 4121 (1996).

[68] 47 CFR 76.1622.

[69] *See id.*

[70] Frontier Reply at 7–8.

[71] ACA Comments at 25.

[72] ACA asserts that section 624A of the Act references outdated technology, specifically requiring the Commission to prescribe regulations with respect to the compatibility of ''videocassette recorders.'' *Id.* at 23–24; 47 U.S.C. 544a(c)(2). However, as ACA notes, the statute also directs the Commission to periodically review and, if necessary, modify its regulations with regard to consumer education about equipment compatibility ''to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.'' *See* 47 U.S.C. 544a(d); ACA Comments at 24, note 93.

[73] *See* NCTA Comments at 9 (arguing that the Commission should eliminate § 76.1622 because it is a ''relic[] of long-outdated technologies and policies'' and addresses ''equipment that no longer is routinely used by consumers''). Section 624A directs the Commission to ''include such regulations *as are necessary*'' to notify subscribers of certain consumer electronics equipment compatibility issues. *See* 47 U.S.C. 544a(c)(2) (emphasis added).

[74] *See* 47 U.S.C. 544a(c)(2). Section 624A(c)(2) states that ''[t]he regulations prescribed by the Commission . . . shall include such regulations as are necessary . . . to require cable operators offering channels whose reception requires a converter box—(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers . . . to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel; . . . to use a video cassette recorder to tape two consecutive programs that appear on different channels; and . . . to use advanced television picture generation and display features; and . . . (ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box.'' *Id.* sec. 544a(c)(2)(B). In addition, the statute requires the regulations ''to require a cable operator who offers subscribers the option of renting a remote control unit . . . to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and . . . to specify the types of remote control units that are compatible with the converter box supplied by the cable operator.'' *Id.* sec. 544a(c)(2)(E).

mandated by statute, such as the requirement to provide this information to subscribers at the time of subscription and then annually thereafter, and to give cable operators greater flexibility in determining when and how to notify subscribers about equipment compatibility issues.[75] ACA argues that the redundancy of annual notices ''is no longer necessary, especially now that technology has moved far beyond what was considered cutting edge at the time the statute was enacted, and the equipment compatibility problems the requirement was designed to solve are no longer pervasive.'' [76] We seek comment on whether the Commission should grant cable operators more flexibility with respect to these notices, as suggested by ACA.

B. Carriage Election Notices

25. We seek comment on how to revise §§ 76.64(h) and 76.66(d) of our rules to permit television broadcast stations to use alternative means of notifying MVPDs about their carriage elections. Currently, the rules direct each television broadcast station to provide notice every three years, via certified mail, to each cable system or DBS carrier serving its market regarding whether it is electing to demand carriage (''must carry'' or ''mandatory carriage''), or to withhold carriage pending negotiation (''retransmission consent''). The DBS rule also states that the certified mail letter be ''return receipt requested.'' [77] The Commission ''believe[d] that certified mail, return receipt requested [was] the preferred method to ensure that broadcast stations [were] able to demonstrate that they submitted their elections by the required deadline, and that they were received by the satellite carrier.'' [78] A number of commenters have proposed changes to this process.[79]

26. We seek comment on what alternative means of serving triennial election notices would satisfy the needs of broadcasters and MVPDs, such as express delivery service or email. Nexstar, among others, suggests that notices could be delivered via email, and AT&T proposes allowing broadcasters to use express delivery services instead of certified U.S. mail.[80] How would these or other approaches work in practice? As discussed above, we have in another context allowed delivery of certain customer notices to a ''verified'' email address, noting that such a notice will ''have a high probability of being successfully delivered electronically to an email address that the customer actually uses, so that the written information is actually provided to the customer.'' We seek comment on whether this approach would be sufficient in the context of carriage election notices, where significant legal and financial consequences arise from the failure to make a timely election notice.[81] Is there an electronic equivalent to certified mail? Would the use of express delivery services, as proposed by AT&T, meaningfully reduce burdens on broadcasters? More generally, can we modernize our rules in a way that would minimize the burden on broadcasters, ensure that MVPDs receive the elections in a timely way, and still provide a mechanism by which broadcasters can demonstrate that they met the election deadline with respect to specific cable operators and DBS carriers?

27. Some commenters request that we eliminate the requirement to send election notices to MVPDs by certified mail, and replace it with a mechanism for providing notice of carriage election online.[82] For example, in their joint filing, CBS, Disney, and Univision argue that ''[t]he system-by-system election requirement creates inefficiencies, both for broadcasters and cable operators,'' incentivizes broadcasters to send duplicative notices, and is time-consuming and costly.[83] They contend that allowing stations to provide notice of elections online ''not only would make it easier for broadcasters and cable operators to keep track of elections but also would be consistent with rules applicable in other contexts and in line with the Commission's recent shift toward internet-based solutions.'' [84] We seek comment on the pros and cons of this approach. In particular, what are the specific benefits to and burdens for both broadcasters and MVPDs of such an approach? Further, what rule changes would the Commission need to make to effectuate online notice of elections? For example, should all broadcasters be required to make carriage elections online or would this be one of their options in addition to the existing mechanism? Under an online election approach, how would broadcasters differentiate their elections to the extent they wish to make different elections vis-à-vis different MVPDs? Finally, would these online carriage elections be placed in the broadcasters' online public file or on another (existing or new) website that is publicly accessible?

Initial Paperwork Reduction Act Analysis

28. This document may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 through 3520). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 through 3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ex Parte Rules

29. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[85] Persons making *ex parte* presentations

[75] ACA Comments at 23–25.

[76] *Id.* at 25.

[77] 47 CFR 76.66(d)(1)(ii).

[78] *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Order on Reconsideration, 16 FCC Rcd 16544, 16576, paragraph 65 (2001).

[79] *See* Comments of the National Association of Broadcasters, at 22–23 (NAB Comments); Comments of CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc., and Univision Communications Inc., at 10–12 (CBS, Disney, Fox, and Univision Comments); Comments of Nexstar Broadcasting, Inc., at 16–17 (Nexstar Comments); Comments of America's Public Television Stations et al., at 15 (APTS Comments); Comments of Meredith Corporation, at 2; Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, and FBC Television Affiliates Association, at 10–11; Joint Reply Comments of the Named State Broadcasters Associations, at 7–8; Reply Comments of AT&T, at 5–6 (AT&T Reply). Although some of these commenters proposed even broader changes to the must carry/retransmission consent system, in this docket we are focused exclusively on notice issues.

[80] Nexstar Comments at 16–17; AT&T Reply at 5–6.

[81] A failure to deliver a timely carriage election notice to a cable operator means that station defaults to must carry with respect to that operator, and loses the ability to negotiate for compensation for carriage of the station during that three-year election cycle. 47 CFR 76.64(f)(3). *See also* ACA Reply at 13 (arguing that continued reliance on certified mail is essential). On the DBS side, a failure to deliver a timely carriage election notice has the opposite effect, meaning the station defaults to retransmission consent and loses the ability to demand carriage during that three-year election cycle. 47 CFR 76.66(d)(1)(v). *See also* APTS Comments at 14–15.

[82] *See, e.g.,* NAB Comments at 22–23; CBS, Disney, Fox, and Univision Comments at 11–12.

[83] CBS, Disney, Fox, and Univision Comments at 11.

[84] *Id.* at 11–12. *But see* AT&T Reply at 4–5 (arguing that this approach does not minimize burdens—it simply shifts them).

[85] 47 CFR 1.1200 *et seq.*

must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements

30. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

31. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

32. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Additional Information

33. For additional information on this proceeding, contact Maria Mullarkey of the Policy Division, Media Bureau, at *Maria.Mullarkey@fcc.gov, or* (202) 418–2120.

Initial Regulatory Flexibility Act Analysis

34. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[86] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[87] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[88]

A. Need for, and Objectives of, the Proposed Rules

35. This NPRM addresses ways to modernize certain notice provisions in part 76 of the Federal Communications Commission's rules governing multichannel video and cable television service. First, the NPRM seeks comment on proposals to modernize the rules in subpart T of part 76,[89] which sets forth notice requirements applicable to cable operators. In particular, the NPRM proposes to allow various types of written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified email address and the cable operator complies with other consumer safeguards. The NPRM also tentatively concludes that subscriber privacy notifications required pursuant to sections 631, 338(i), and 653 of the Communications Act of 1934, as amended (the Act), may be delivered electronically to a verified email address, subject to consumer safeguards. In addition, the NPRM proposes to permit cable operators to reply to consumer requests or complaints by email in certain circumstances. Second, the NPRM seeks comment on how to update the requirement in §§ 76.64 and 76.66 of the Commission's rules that requires broadcast television stations to send carriage election notices via certified mail.

B. Legal Basis

36. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 325, 338, 624A, 631, 632, and 653 of the Communications Act of 1934, as

[86] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

[87] *See* 5 U.S.C. 603(a).

[88] *See id.*

[89] 47 CFR 76.1601 through 76.1630.

amended, 47 U.S.C. 151, 154(i), 154(j), 325, 338, 544a, 551, 552, and 573.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

37. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[90] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [91] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[92] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[93] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

38. *Cable Companies and Systems (Rate Regulation Standard).* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but 11 are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, the Commission believes that most cable systems are small.

39. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

40. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The open video system framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2012. According to that source, there were 3,117 firms that in 2012 were Wired Telecommunications Carriers. Of these, 3,059 operated with less than 1,000 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 116 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

41. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2012 indicate that in that year there were 3,117 firms operating businesses as wired telecommunications carriers. Of that 3,117, 3,059 operated with 999 or fewer employees. Based on this data, we estimate that a majority of operators of SMATV/PCO companies were small under the applicable SBA size standard.

42. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities

[90] 5 U.S.C. 603(b)(3).

[91] *Id.* sec. 601(6).

[92] *Id.* sec. 601(3) (incorporating by reference the definition of ''small-business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[93] 15 U.S.C. 632.

that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1500 employees. Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

43. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999, and 70 had annual receipts of $50 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

44. The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394. The Commission, however, does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

45. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

46. There are also 417 Class A stations. Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations thus restricting their ability to generate similar levels of revenue, we will presume that these licensees qualify as small entities under the SBA definition. In addition, there are 1,968 LPTV stations and 3,776 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

47. As indicated above, this NPRM addresses ways to modernize certain notice provisions in part 76 of the FCC's rules governing multichannel video and cable television service. First, the NPRM seeks comment on proposals to modernize the rules in subpart T of part 76,[94] which sets forth notice requirements applicable to cable operators. In particular, the NPRM proposes to allow various types of written communications from cable operators to subscribers to be delivered electronically, if they are sent to a verified email address and the cable operator complies with other consumer safeguards. The NPRM also tentatively concludes that subscriber privacy notifications required pursuant to sections 631, 338(i), and 653 of the Communications Act may be delivered electronically to a verified email address, subject to consumer safeguards. In addition, the NPRM proposes to permit cable operators to reply to consumer requests or complaints by email in certain circumstances. Second, the NPRM seeks comment on how to update the requirement in §§ 76.64 and 76.66 of the Commission's rules that requires broadcast television stations to send carriage election notices via certified mail. Through this NPRM, the Commission seeks to minimize the administrative burden on cable television operators, including smaller cable operators, by allowing electronic delivery of certain notices to subscribers, which will reduce the costs and burdens of providing such notices. We anticipate that this will lead to a long-term reduction in reporting, recordkeeping, or other compliance requirements on all cable operators, including small entities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

48. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' [95]

49. The Commission expects to more fully consider the economic impact on small entities following its review of comments filed in response to the NPRM and this IRFA. Generally, the NPRM seeks comment on: A proposal to adopt a rule allowing generic written communications from cable operators to subscribers required by subpart T to be delivered to a verified email address; a proposal to require an opt-out mechanism enabling customers to continue receiving paper notices for

[94] 47 CFR 76.1601 through 76.1630.

[95] 5 U.S.C. 603(c)(1) through (c)(4).

certain notices, and on whether to require consumers to opt in to electronic delivery for other notices; whether to permit cable operators to provide certain written notices to subscribers by posting the written material on the cable operator's website; a proposal to adopt a rule specifying that cable, satellite, and open video system subscriber privacy notifications required pursuant to sections 631, 338(i), and 653 of the Communications Act may be delivered via email, subject to consumer safeguards; a proposal to allow cable operators to respond to consumer requests or billing dispute complaints by email, if the consumer used email to make the request or complaint or if the consumer specifies email as the preferred delivery method in the request or complaint; whether to adopt other proposals to update subpart T in light of technological advances and market changes in the cable industry; and how to update the requirements that broadcast stations send carriage election notices via certified mail. The Commission has found that electronic delivery of notices would greatly ease the burden of complying with notification requirements for cable operators, including small cable operators, and it is considering alternatives that may further reduce burdens on small entities, such as allowing website posting of certain notices. The Commission's evaluation of the comments filed on these topics as well as on other questions in the NPRM that seek to reduce the burdens placed on small cable operators and other MVPDs will shape the final conclusions it reaches, the final significant alternatives it considers, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

50. None.

51. Accordingly, it is ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 325, 338, 624A, 631, 632, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 325, 338, 544a, 551, 552, and 573, this Notice of Proposed Rulemaking is adopted.

52. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 79

Cable television operators, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

47 CFR part 76 of the Commission's rules is proposed to be amended as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Add § 76.1600 to read as follows:

§ 76.1600 Electronic delivery of notices.

(a) Written information, notices, advisements or offers that are generic in nature and provided in writing by cable operators to subscribers or customers pursuant to this subpart, as well as subscriber privacy notifications required by cable operators, satellite providers, and open video systems pursuant to sections 631, 338(i), and 653 of the Communications Act, may be delivered electronically by email if the entity:

(1) Sends the written material to the subscriber's verified email address; and

(2) Provides a mechanism to allow subscribers to continue to receive paper copies of the written material.

(b) For purposes of this section, a verified email address is defined as:

(1) An email address that the subscriber has provided to the cable operator (and not vice versa) for purposes of receiving communication;

(2) An email address that the subscriber regularly uses to communicate with the cable operator; or

(3) An email address that has been confirmed by the subscriber as an appropriate vehicle for the delivery of notices.

(c) The term ''generic'' means information that applies to subscribers or groups of subscribers generally (*e.g.,* those residing in the same zip code; those subscribing to the same service, etc.) and is not specific to an individual subscriber.

(d) For notices that require an opt-out mechanism, the entity must include, in the body of the originating email that delivers the written material, a mechanism for the subscriber to opt out of email delivery that is clearly and prominently presented to subscribers so that it is readily identifiable as an opt-out mechanism. The mechanism may be either:

(1) An opt-out telephone number; or

(2) An electronic link that allows subscribers to identify their delivery preferences electronically.

(e) If the conditions for electronic delivery in paragraphs (a) through (d) of this section are not met, or if a subscriber opts out of electronic delivery, the written material must be delivered by paper copy to the subscriber's physical address.

(f) In this subpart, any required written response to a subscriber or customer may be delivered by email, if the consumer used email to make the request or complaint or if the consumer specifies email as the preferred delivery method in the request or complaint.

(g) This section applies only to written information, notices, advisements, offers or responses provided to subscribers or customers and does not affect communications between cable operators and other parties addressed in this subpart.

§ 76.1621 [Removed]

■ 3. Remove § 76.1621.

[FR Doc. 2018–00151 Filed 1–12–18; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 83, No. 10
Tuesday, January 16, 2018

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0038]

Notice of Determination of the Classical Swine Fever Status of Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that Mexico is free of classical swine fever (CSF). Based on our evaluation of the animal health status of Mexico, which we made available to the public for review and comment through a previous notice, the Administrator has determined that CSF is not present in Mexico and that live swine, pork, and pork products may safely be imported into the United States from Mexico subject to conditions in the regulations.

DATES: This change in disease status will be recognized on January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, VS, APHIS, USDA, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; *Chip.J.Wells@aphis.usda.gov*; (301) 851–3317.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including classical swine fever (CSF), foot-and-mouth disease, swine vesicular disease, and rinderpest. These are dangerous and communicable diseases of ruminants and swine.

The regulations in § 94.32 specify conditions for the importation of live swine, pork, and pork products from certain regions that APHIS currently recognizes as CSF-free but whose products may be at risk of commingling with products from CSF-affected regions due to common land borders or other factors. The conditions for such imports include, among others, a requirement for certification by a full-time salaried veterinary officer of the national government of the region of export that the pork or pork products originated in a CSF-free region, requirements that the pork or pork products be derived only from swine that were born and raised in such a region and never lived in a CSF-affected region, a prohibition against the comingling of the pork or pork products with pork or pork products that have been in an affected region, and a requirement that any processing of the pork or pork products be done in a federally inspected processing plant in a CSF-free region.

The regulations in 9 CFR part 92 contain requirements for requesting the recognition of the animal health status of a region or for the approval of the export of a particular type of animal or animal product to the United States from a foreign region. If, after review and evaluation of the information submitted in support of the request APHIS believes the request can be safely granted, APHIS will make its evaluation available for public comment through a notice published in the **Federal Register**. Following the close of the comment period, APHIS will review all comments received and will make a final determination regarding the request that will be detailed in another notice published in the **Federal Register**.

In response to a series of requests submitted by the Government of Mexico between 2007 and 2009, we conducted a qualitative risk evaluation to evaluate the CSF status of Mexican States other than the nine States already recognized at that time as CSF-free. The resulting risk evaluation document, ''APHIS Evaluation of the CSF Status of a Region in Mexico'' (referred to below as the ''2013 risk evaluation''), did not support CSF-free recognition of all of Mexico; however, it did support access to the U.S. domestic market under certain risk-mitigating conditions. Based on the findings of the 2013 risk evaluation, on July 29, 2014, we published in the **Federal Register** (79 FR 43974–43980, Docket No. APHIS–2013–0061) a proposal [1] to amend the regulations by recognizing a new APHIS-defined low-risk CSF region consisting of all Mexican States except the nine CSF-free States and the State of Chiapas, which we did not recognize as CSF-free.

In February 2015, Mexico received notice that the World Organization for Animal Health (OIE) recognized the country as CSF-free. Citing the OIE decision, the Government of Mexico then requested that APHIS suspend its rulemaking and instead continue evaluating Mexico for CSF-free status.

In response to this request, APHIS reopened its evaluation of the CSF status of Mexico. This reevaluation incorporated findings from a 2015 APHIS site visit report, along with updated surveillance data and other information submitted by Mexico. These findings are documented in an April 2016 addendum to the 2013 risk evaluation.

On August 8, 2017, we published in the **Federal Register** (82 FR 37043–37044, Docket No. APHIS–2016–0038) a notice [2] in which we announced the availability for review and comment of the April 2016 addendum to the 2013 risk evaluation. In the addendum, we presented the results of our updated evaluation of the risk of introducing CSF into the United States via the importation of live swine, pork, and pork products from Mexico.

We solicited comments on the notice for 60 days ending on October 10, 2017. We received one comment by that date, from a domestic pork industry group.

The commenter supported our conclusion, as stated in the addendum, that the risk of introduction of CSF into the United States via the importation of live swine, pork, and pork products from Mexico is very low. Referencing a recommendation by our site visit team

[1] To view the 2013 risk evaluation, the proposed rule, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0061.*

[2] To view the notice, the addendum, and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0038.*

that certain improvements should be made to slaughterhouse surveillance in Mexico, however, the commenter urged APHIS to ensure that those improvements were implemented before authorizing pork imports from Mexico.

In the April 2016 risk evaluation addendum, we indicated that our recommended improvements notwithstanding, the design of Mexico's active surveillance system for CSF is adequate. We made no statement suggesting that recognition of Mexico as CSF-free or trade with Mexico would be contingent upon any action by the Mexican Government to improve slaughter surveillance.

Based on the addendum and the reasons given in this document in response to comments, we are recognizing Mexico as free of CSF and adding it to the list of regions found on the APHIS website at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml* that are considered to be free of CSF but from which live swine, pork, and pork products may only be imported into the United States under certain conditions. Copies of the list are also available via postal mail, fax, or email from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, on January 10, 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–00576 Filed 1–12–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0035]

Notice of Affirmation of Addition of Treatments for Aircraft for Certain Hitchhiking Pests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are affirming our earlier determination that is was necessary to immediately add two new treatment schedules for aircraft for regulated pests to the Plant Protection and Quarantine (PPQ) Treatment Manual. In a previous notice, we made available to the public for review and comment a treatment evaluation document that discussed the existing treatment schedules, described the new treatment schedules, and explained why these changes were immediately added to the PPQ Treatment Manual. Based on the treatment evaluation document and the comments we received, we are affirming the addition of those new treatments to the PPQ Treatment Manual.

DATES: The addition of the treatments is affirmed as of January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2240.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III (referred to below as the regulations) set out standards for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual.[1] Section 305.3 sets out the processes for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (b) sets out the process for adding, revising, or removing treatment schedules when there is an immediate need to make a change. The circumstances in which an immediate need exists are described in § 305.3(b)(1). They are:

- PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s).
- PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used.
- PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in a commodity or commodities may be adversely impacted unless the new treatment schedule is approved for use.
- The use of a treatment schedule is no longer authorized by the U.S. Environmental Protection Agency or by any other Federal entity.

In accordance with § 305.3(b)(2), we published a notice[2] in the **Federal Register** on August 8, 2017 (82 FR 37042–37043, Docket No. APHIS–2016–0035), in which we announced the availability, for review and comment, of a treatment evaluation document (TED) we prepared to discuss the existing treatment schedules, describe the new treatment schedules, and explain why certain changes were immediately necessary.

We solicited comments on the notice for 60 days ending on October 10, 2017. We received two comments by that date, from private citizens. Both commenters supported the addition of the treatment schedules.

Therefore, in accordance with the regulations in § 305.3(b)(3), we are affirming our addition of the two new treatment schedules (T409–a and T409–b–3) for aircraft for regulated pests to the PPQ Treatment Manual. The treatment schedules will be listed in the PPQ Treatment Manual, which is available as described in footnote 1.

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

Done in Washington, DC, on January 10, 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–00569 Filed 1–12–18; 8:45 am]

BILLING CODE 3410–34–P

[1] The PPQ Treatment Manual is available at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

[2] To view the notice, the TED, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0035.*

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alabama Advisory Committee To Discuss Proposed Panelists for a Hearing on Access To Voting in the State of Alabama

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting on Tuesday, January 16, 2018, at 11:00 a.m. (Central) for the purpose of a discussion

of proposed panelists for a hearing on Access to Voting in Alabama.

DATES: The meeting will be held on Tuesday, January 16, 2017, at 11:00 a.m. (Central).

Public Call Information: Dial: 888–471–3840, Conference ID: 4589358.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–471–3840, conference ID: 4589358. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link (*http://www.facadatabase.gov/committee/committee.aspx?cid=233&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Proposed Panelists for a hearing on Access to Voting in Alabama
Discussion on a venue for the hearing
Next Steps
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee doing work on the FY 2018 statutory enforcement report.

Dated: January 10, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–00564 Filed 1–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–862]

Certain Uncoated Groundwood Paper From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain uncoated groundwood paper (UGW paper) from Canada. The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Applicable January 16, 2018.

FOR FURTHER INFORMATION CONTACT: David Crespo or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on September 1, 2017.[1] On October 19, 2017, Commerce postponed the preliminary determination of this investigation and the revised deadline is now January 8, 2018.[2] For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is UGW paper from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.* , scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the Initiation Notice.

Commerce intends to issue its preliminary decision regarding comments concerning the scope of the antidumping (AD) and countervailing duty (CVD) investigations in the preliminary determination of the companion AD investigation.

[1] *See Certain Uncoated Groundwood Paper from Canada: Initiation of Countervailing Duty Investigation*, 82 FR 41603 (September 1, 2017) (*Initiation Notice*).

[2] *See Certain Uncoated Groundwood Paper from Canada: Postponement of Preliminary Determination of Countervailing Duty Investigation*, 82 FR 48681 (October 19, 2017).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.* , a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[7] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of UGW paper from Canada based on a request made by the petitioner.[8] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than May 22, 2018, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individually estimated countervailable subsidy rates for Catalyst Paper Corporation (Catalyst), Kruger Trois-Rivieres L.P. (Kruger), and Resolute FP Canada Inc. (Resolute), that are not zero, *de minimis* , or based entirely on facts otherwise available.[9] Commerce calculated the all-others rate using a weighted-average of the individually estimated subsidy rates calculated for the examined respondents using each company's business proprietary data for the merchandise under consideration.[10]

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	*Ad Valorem*, subsidy rate (percent)
Catalyst Paper Corporation [11] ..	6.09
Kruger Trois-Rivieres L.P [12]	9.93
Resolute FP Canada Inc [13]	4.42
White Birch Paper Canada Company NSULC [14]	* 0.65
All-Others	6.53

* *de minimis*.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** . Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above. Because the subsidy rate for White Birch is *de minimis* , Commerce is directing CBP not to suspend liquidation of entries of the merchandise from this company.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* sections 776(a) and (b) of the Act.

[8] *See* Letter from the petitioner, ''Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: Request for Alignment,'' dated December 18, 2017.

[9] *See MacLean-Fogg Co.* v. *United States*, 753 F.3d 1237 (Fed. Cir. 2014) (holding that voluntary respondents are considered ''individually investigated'' for purposes of calculating the all-others rate). Commerce accepted White Birch Paper Canada Company NSULC (White Birch) as a voluntary respondent in this investigation. However, we have preliminarily calculated a *de minimis* subsidy rate for White Birch; thus, in accordance with Sections 703(d) and 705(c)(5)(A) of the Act, we have not included White Birch's *de minimis* subsidy rate in the calculation of the all-others rate for this preliminary determination.

[10] *See* Memorandum, ''Countervailing Duty Investigation of Certain Uncoated Groundwood Paper from Canada: All Others Rate Calculation for Preliminary Determination,'' dated January 8, 2018.

[11] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Catalyst Paper Corporation: Catalyst Paper, Catalyst Pulp Operations Limited, and Catalyst Pulp and Paper Sales Inc.

[12] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Kruger Trois-Rivieres L.P.: Kruger Publication Papers Inc., Corner Brook Pulp and Paper Limited, Kruger Energy Bromptonville LP, Kruger Holdings L.P., Kruger Holdings GP Inc., and Kruger Inc.

[13] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Resolute FP Canada Inc.: Resolute FP Canada, Fibrek General Partnership (Fibrek), and Resolute Growth.

[14] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with White Birch Paper Canada Company NSULC: Papier Masson WB (White Birch) LP, FF Soucy WB LP, and Stadacona WB LP.

[15] See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the 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 the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: January 8, 2018.

Gary Taverman,

Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive function and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation includes certain paper that has not been coated on either side and with 50 percent or more of the cellulose fiber content consisting of groundwood pulp, including groundwood pulp made from recycled paper, weighing not more than 90 grams per square meter. Groundwood pulp includes all forms of pulp produced from a mechanical pulping process, such as thermo-mechanical process (TMP), chemi-thermo mechanical process (CTMP), bleached chemi-thermo mechanical process (BCTMP) or any other mechanical pulping process. The scope includes paper shipped in any form, including but not limited to both rolls and sheets.

Certain uncoated groundwood paper includes but is not limited to standard newsprint, high bright newsprint, book publishing, directory, and printing and writing papers. The scope includes paper that is white, off-white, cream, or colored.

Specifically excluded from the scope are imports of certain uncoated groundwood paper printed with final content of printed text or graphic. Also excluded are papers that otherwise meet this definition, but which have undergone a supercalendering process.[16]

Certain uncoated groundwood paper is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) in several subheadings, including 4801.00.0120, 4801.00.0140, 4802.61.1000, 4802.61.2000, 4802.61.3110, 4802.61.3191, 4802.61.6040, 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.6140, 4802.69.1000, 4802.69.2000, and 4802.69.3000. Subject merchandise may also be imported under several additional subheadings including 4805.91.5000, 4805.91.7000, and 4805.91.9000.[17] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Injury Test
V. Subsidies Valuation
VI. Application of Facts Otherwise Available and Facts Otherwise Available With an Adverse Inference
VII. Analysis of Programs
VIII. Conclusion
Appendix I: Not-Used and Not-Measurable Programs, by Company

[FR Doc. 2018–00570 Filed 1–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–816]

Carbon and Alloy Steel Wire Rod From Ukraine: Affirmative Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Department) determines that imports of carbon and alloy steel wire rod (wire rod) from Ukraine are being, or are likely to be, sold in the United States at less than fair value (LTFV). The final estimated weighted-average dumping margins of sales at LTFV are listed below in the section entitled ''Final Determination.'' The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Applicable January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Courtney Canales, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1394, or (202) 482–4997, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2017, the Department published the *Preliminary Determination* in the **Federal Register**.[1] The petitioners in this investigation are Gerdau Ameristeel US Inc., Nucor Corporation, Keystone Consolidated Industries, Inc., and Charter Steel (collectively, the petitioners). The mandatory respondents in this investigation are ArcelorMittal Steel Kryvyi Rih OJSC (AMKR) and Public Joint Stock Company (PJSC) Yenakiieve Steel (Yenakiieve).[2] In the *Preliminary Determination,* the Department determined that the application of facts available with an adverse inference (AFA) was warranted as a result of AMKR's and Yenakiieve's failure to cooperate and provide complete, useable data in this investigation.

A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document, and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are generally described as

[16] Supercalendering imparts a glossy finish produced by the movement of the paper web through a supercalender which is a stack of alternating rollers of metal and cotton (or other softer material). The supercalender runs at high speed and applies pressure, heat, and friction which glazes the surface of the paper, imparting gloss to the surface and increasing the paper's smoothness and density.

[17] The following HTSUS numbers are no longer active as of January 1, 2017: 4801.00.0020, 4801.00.0040, 4802.61.3010, 4802.61.3091, and 4802.62.6040.

[1] *See Carbon and Alloy Steel Wire Rod from Ukraine: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 50375 (October 31, 2017) (Preliminary Determination) and accompanying Preliminary Decision Memorandum.

[2] The Department preliminarily determined not to further examine Duferco S.A. (Duferco) as part of this investigation because the evidence does not show that Duferco made any sales of subject merchandise in the United States during the POI. For the final determination, we continue to find that Duferco had no sales of subject merchandise during the POI. As such, any entries of subject merchandise exported by Duferco will be subject to the All-Others Rate.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from Ukraine,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

wire rod from Ukraine. For a complete description of the scope of the investigation, *see* Appendix I of this notice.

Scope Comments

During the course of this investigation, the Department received numerous scope comments from interested parties. Prior to the *Preliminary Determination,* the Department issued a Preliminary Scope Decision Memorandum to address these comments. As a result of these comments, the Department made no changes to the scope of this investigation as it appeared in the *Initiation Notice.*[4]

In November 2017, we received scope case and rebuttal briefs. On November 20, 2017, we issued the Final Scope Decision Memorandum in response to the comments received.[5] We did not change the scope of this investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice at Appendix II.

Verification

Because the mandatory respondents in this investigation did not provide the information requested, the Department did not conduct verification.

Changes Since the Preliminary Determination and Use of Adverse Facts Available

The Department has made no changes to the *Preliminary Determination.* As explained in the *Preliminary Determination,* we found that the application of facts available with an adverse inference with respect to both mandatory respondents in this investigation, AMKR and Yenakiieve, was warranted, in accordance with sections 776(a)(1), 776(a)(2), and 776(b) of the Act.[6]

All-Others Rate

As discussed in the *Preliminary Determination,* the Department based the selection of the all-others rate on the simple average of the six dumping margins calculated for subject merchandise from Ukraine alleged in the petition,[7] in accordance with section 735(c)(5)(B) of the Act, and determined a rate of 34.98 percent. We made no changes to the all-others rate for this final determination.[8]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Producer or exporter	Weighted-average dumping margins (percent)
ArcelorMittal Steel Kryvyi Rih	44.03
Public Joint Stock Company Yenakiieve Iron and Steel Works	44.03
All-Others	34.98

Disclosure

The estimated weighted-average dumping margin assigned to AMKR and Yenakiieve in this investigation in the *Preliminary Determination* were based on adverse facts available and the Department described the method it used to determine the AFA rate in the *Preliminary Determination.* As we made no changes to this margin since the *Preliminary Determination,* no disclosure of calculations is necessary for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all appropriate entries of wire rod from Ukraine, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 31, 2017, the date of publication of the *Preliminary Determination.*

Furthermore, the Department will instruct CBP to require a cash deposit for such entries of merchandise. Pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) For AMKR and Yenakiieve, the cash deposit rates will be equal to the estimated weighted-average dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, then the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the producer of the subject merchandise; (3) the cash deposit rate for all other producers and exporters will be 34.98 percent, as discussed in the ''All-Others Rate'' section and as listed in the chart, above.

The instructions suspending liquidation will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination. Because the final determination in this proceeding is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wire rod from Ukraine no later than 45 days after this final determination, in accordance with section 735(b)(2) of the Act. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP

[4] For discussion of these comments, *see* Memorandum, ''Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations'' (Preliminary Scope Decision Memorandum), dated August 7, 2017; *see also Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

[5] For discussion of these comments, *see* Memorandum, ''Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Final Scope Memorandum'' (Final Scope Decision Memorandum), dated November 20, 2017.

[6] *See Preliminary Determination,* 82 FR at 50375; *see also* PDM at 7–24.

[7] *See* Letter to the Secretary of Commerce and the Secretary of the U.S. International Trade Commission, ''Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom—Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated March 28, 2017; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[8] *See Preliminary Determination,* 82 FR at 50375.

to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: January 8, 2018.

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—Scope of the Investigation

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent of more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS may also be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these proceedings is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Determination of No Sales
VI. Discussion of the Issues:
Comment 1: Application of Total AFA to AMKR
Comment 2: Application of Total AFA to Yenakiieve
VII. Recommendation

[FR Doc. 2018–00571 Filed 1–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on multilayered wood flooring (MLWF) from the People's Republic of China (China). The period of review (POR) is December 1, 2015, through November 30, 2016. The review covers two mandatory respondents, Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Jiangsu Senmao) and Jilin Forest Industry Jinqiao Flooring Group Co., Ltd. (Jinqiao Flooring).

We preliminarily determine that sales of subject merchandise by Jiangsu Senmao have not been made at prices below normal value (NV) and that Jinqiao Flooring is not eligible for a separate rate and, therefore, remains part of the China-wide entity. In addition, we are preliminarily granting separate rates to 70 producers/exporters, including Jiangsu Senmao, and determine that 16 producer/exporters made no shipments of subject merchandise during the POR. Finally, we are rescinding the review with respect to Dalian Penghong Floor Products Co., Ltd. (Dalian Penghong). We invite interested parties to comment on these preliminary results.

DATES: Applicable January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Michael Bowen, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478 and (202) 482–0768, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by the Order is wood flooring from China. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.[1]

Partial Rescission of Review

Commerce initiated a review of 116 companies in this administrative review. [2] The requests for review of Dalian Penghong were timely withdrawn.[3] Accordingly, we are rescinding the administrative review with respect to this company.[4]

Preliminary Determination of No Shipments

Sixteen companies submitted timely-filed certifications that they had no exports, sales, or entries of subject merchandise during the POR. Accordingly, Commerce, consistent with its practice, requested that U.S. Customs and Border Protection (CBP)

[1] *See* Memorandum to 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, from James P. Maeder Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review; Multilayered Wood Flooring from the People's Republic of China; 2015–2016,'' (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 10457 (February 13, 2017) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 57705 (December 7, 2017) (*Second Initiation Notice*). Commerce notes that the *Second Initiation Notice* contained a typographical error in the spelling of ''Dun Hua Sen Tai Wood Co., Ltd.'' This determination corrects the second notice of initiation and reflects the accurate spelling.

[3] *See* Letters from the Coalition for American Hardwood Parity, ''Partial Withdrawal of Request for Administrative Review: Multilayered Wood Flooring from the People's Republic of China,'' and Dalian Penghong, ''Multilayered Wood Flooring from the People's Republic of China; Withdrawal of Request for Review,'' both dated March 27, 2017.

[4] *See* 19 CFR 351.213(d)(1).

conduct a query of potential shipments made by these companies. Based on an analysis of the CBP information and the no shipment certifications, Commerce preliminarily determines that these 16 companies had no shipments during the POR.[5] For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in non-market economy (NME) cases, Commerce is not rescinding this administrative review with respect to these companies but, rather, intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.[6]

Separate Rates

Commerce preliminarily determines that 70 respondents are eligible for separate rates in this review.[7]

Separate Rates for Eligible Non-Selected Respondents

In accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle Corp.* v. *United States,*[8] we assigned to eligible non-selected respondents the separate rate we assigned to Jiangsu Senmao [9] for the preliminary results of this review.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[10] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate is not subject to change. Aside from the no shipments companies discussed above, and the company for which the review is being rescinded, Commerce considers all other companies for which a review was requested and which did not preliminarily qualify for a separate rate, to be part of the China-wide entity.[11] For additional information, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) (1) (B) of the Tariff Act of 1930, as amended (the Act). We calculated export price for Jiangsu Senmao in accordance with section 772 of the Act. Because China is a NME within the meaning of section 771(18) of the Act, we calculated 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. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Preliminary Results of Review

In this administrative review, we preliminarily calculated a weighted-average dumping margin for Jiangsu Senmao of zero.[12] We assigned this rate to the companies subject to this review who established their eligibility for a separate rate.

Commerce preliminarily finds that Jinqiao Flooring did not establish eligibility for a separate rate, and is therefore considered to be part of the China-wide entity.[13] Because no party requested a review of the China-wide entity, the entity is not under review, and the China-wide entity's rate of 25.62 percent from the investigation is not subject to change. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

For companies subject to this review that have established their eligibility for a separate rate, Commerce preliminarily determines that the following weighted-average dumping margins exist for the period December 1, 2015, through November 30, 2016:

Exporters	Weighted-average dumping margin (percent)
A&W (Shanghai) Woods Co., Ltd	0.0
Anhui Longhua Bamboo Product Co., Ltd	0.0
Baishan Huafeng Wooden Product Co., Ltd	0.0
Benxi Wood Company	0.0
Changzhou Hawd Flooring Co., Ltd	0.0
Dalian Dajen Wood Co., Ltd	0.0
Dalian Guhua Wood Product Co., Ltd	0.0
Dalian Huade Wood Product Co., Ltd	0.0
Dalian Huilong Wooden Products Co., Ltd	0.0
Dalian Jaenmaken Wood Industry Co., Ltd	0.0
Dalian Kemian Wood Industry Co., Ltd	0.0
Dalian Xinjinghua Wood Co., Ltd	0.0

[5] *See* Appendix II for a list of these companies.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME AD Assessment*) and the ''Assessment Rates'' section, below.

[7] *See* Preliminary Decision Memorandum at 8–14, for more details.

[8] *See Albemarle Corp. & Subsidiaries* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[9] *See* Memorandum, ''Preliminary Results Margin Calculation for Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.,'' dated concurrently with this notice (Preliminary Results Memorandum).

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[11] *See Initiation Notice* (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'') Companies that are subject to this administrative review that are considered to be part of the China-wide entity are listed in Appendix II.

[12] *See* Preliminary Results Memorandum.

[13] *See* Preliminary Decision Memorandum and ''Preliminary Separate Rate Analysis Memorandum for Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.,'' dated concurrently with this notice.

Exporters	Weighted-average dumping margin (percent)
Dongtai Fuan Universal Dynamics, LLC	0.0
Dunhua City Jisen Wood Industry Co., Ltd	0.0
Dunhua City Dexin Wood Industry Co., Ltd	0.0
Dunhua City Hongyuan Wood Industry Co., Ltd	0.0
Dunhua City Wanrong Wood Industry Co., Ltd	0.0
Dunhua Shengda Wood Industry Co., Ltd	0.0
Dun Hua Sen Tai Wood Co., Ltd	0.0
Fine Furniture (Shanghai) Limited	0.0
Fusong Jinlong Wooden Group Co., Ltd	0.0
Fusong Jinqiu Wooden Product Co., Ltd	0.0
Fusong Qianqiu Wooden Product Co., Ltd	0.0
Guangzhou Panyu Kangda Board Co., Ltd	0.0
Guangzhou Panyu Southern Star Co., Ltd	0.0
HaiLin LinJing Wooden Products, Ltd	0.0
Hangzhou Hanje Tec Co., Ltd	0.0
Hunchun Forest Wolf Wooden Industry Co., Ltd	0.0
Hunchun Xingjia Wooden Flooring Inc	0.0
Huzhou Chenghang Wood Co., Ltd	0.0
Huzhou Fulinmen Imp. & Exp. Co., Ltd	0.0
Huzhou Jesonwood Co., Ltd	0.0
Huzhou Sunergy World Trade Co., Ltd	0.0
Jiangsu Guyu International Trading Co., Ltd	0.0
Jiangsu Kentier Wood Co., Ltd	0.0
Jiangsu Mingle Flooring Co	0.0
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	0.0
Jiangsu Simba Flooring Co., Ltd	0.0
Jiashan Huijiale Decoration Material Co., Ltd	0.0
Jiaxing Hengtong Wood Co., Ltd	0.0
Jilin Xinyuan Wooden Industry Co., Ltd	0.0
Karly Wood Product Limited	0.0
Kember Flooring, Inc	0.0
Kemian Wood Industry (Kunshan) Co., Ltd	0.0
Linyi Anying Wood Co., Ltd	0.0
Linyi Youyou Wood Co., Ltd	0.0
Metropolitan Hardwood Floors, Inc	0.0
Mudanjiang Bosen Wood Industry Co., Ltd	0.0
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	0.0
Pinge Timber Manufacturing (Zhejiang) Co., Ltd	0.0
Scholar Home (Shanghai) New Material Co. Ltd	0.0
Shanghai Lairunde Wood Co., Ltd	0.0
Shenyang Haobainian Wooden Co., Ltd	0.0
Shenzhenshi Huanwei Woods Co., Ltd	0.0
Sino-Maple (Jiangsu) Co., Ltd	0.0
Suzhou Dongda Wood Co., Ltd	0.0
Tongxiang Jisheng Import and Export Co., Ltd	0.0
Xiamen Yung De Ornament Co., Ltd	0.0
Xuzhou Antop International Trade Co., Ltd	0.0
Xuzhou Shenghe Wood Co., Ltd	0.0
Yekalon Industry, Inc	0.0
Yihua Lifestyle Technology Co., Ltd	0.0
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd	0.0
Zhejiang Biyork Wood Co., Ltd	0.0
Zhejiang Dadongwu Green Home Wood Co., Ltd	0.0
Zhejiang Fudeli Timber Industry Co., Ltd	0.0
Zhejiang Fuerjia Wooden Co., Ltd	0.0
Zhejiang Fuma Warm Technology Co., Ltd	0.0
Zhejiang Longsen Lumbering Co., Ltd	0.0
Zhejiang Shiyou Timber Co., Ltd	0.0

Disclosure and Public Comment

Commerce intends to disclose to the parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[14] Rebuttals to case briefs may be filed no later than five days after the written comments are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[15]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each

[14] *See* 19 CFR 351.309(c).

[15] *See* 19 CFR 351.309(d).

argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). For the company for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions with respect to the companies for which this review is rescinded to CBP 15 days after the publication of this notice.

For the remaining companies subject to review, and for which we do not make a final determination of no shipments, Commerce will direct CBP to assess rates based on the per-unit (*i.e.,* per square meter) amount on each entry of the subject merchandise during the POR. For the respondents that were not selected for individual examination in this administrative review but qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin assigned to Jiangsu Senmao in the final results of this review.[16] If Jiangsu Senmao's weighted-average dumping margin is zero or *de minimus* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of review. For entries that were not reported in the U.S. sales databases submitted by the companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide rate. In addition, if we continue to find no shipments of subject merchandise for the 16 companies that reported no such shipments during the POR,[17] any suspended entries of subject merchandise from those companies will be liquidated at the China-wide rate.[18]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 25.62 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.221(b)(4).

Dated: January 2, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the Order
V. Selection of Respondents
VI. Partial Rescission of Review
VII. Preliminary Determination of No Shipments
VIII. Discussion of the Methodology
A. Non-Market Economy Country Status
B. Separate Rate Determinations
1. Wholly Foreign-Owned Applicants
2. Mandatory Respondents and the Remaining Separate Rate Applicants
a. Absence of *De Jure* Control
b. Absence of *De Facto* Control
3. China-Wide Entity
C. Weighted-Average Dumping Margin for Non-Examined Separate-Rate Companies
D. Surrogate Country and Surrogate Value Data
1. Surrogate Country Selection
2. Economic Comparability
3. Significant Producer of Comparable Merchandise
4. Data Availability
E. Date of Sale
F. Comparisons to Normal Value
1. Determination of Comparison Method
2. Results of the Differential Pricing Analysis
G. U.S. Price
1. Export Price
2. Value-Added Tax
H. Normal Value
1. Factor Valuation Methodology
a. Direct and Packing Materials
b. Labor
c. Financial Ratios
d. By-Products
I. Adjustment Under Section 777A(f) of the Act

[16] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying Preliminary Decision Memorandum at 10–11; unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

[17] *See* Appendix II for a list of these companies.

[18] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

J. Currency Conversion
IX. Recommendation

Appendix II

No-Shipment Certifications

Anhui Boya Bamboo & Wood Products Co., Ltd.
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.
Chinafloors Timber (China) Co, Ltd.
Dalian Jiahong Wood Industry Co., Ltd.
Guangzhou Homebon Timber Manufacturing Co., Ltd.
Huzhou Muyun Wood Co., Ltd.
Jiangsu Keri Wood Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Kingman Floors Co., Ltd.
Les Planchers Mercier, Inc.
Linyi Bonn Flooring Manufacturing Co., Ltd.
Power Dekor Group Co., Ltd.
Shanghai Lizhong Wood Products Co., Ltd.
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.
Zhejiang Simite Wooden Co., Ltd.

China-Wide Entity Companies

Anhui Suzhou Dongda Wood Co., Ltd.
Baishan Huafeng Wood Product Co., Ltd.
Baiying Furniture Manufacturer Co., Ltd.
Cheng Hang Wood Co., Ltd.
Dalian Jiuyuan Wood Industry Co., Ltd.
Dalian Qinqui Wooden Product Co., Ltd.
Dongtai Zhangshi Wood Industry Co., Ltd.
Fu Lik Timber (HK) Co., Ltd.
GTP International Ltd.
Guangdong Yihua Timber Industry Co., Ltd.
HaiLin Xincheng Wooden Products, Ltd.
Hangzhou Dazhuang Floor Co., Ltd. (dba Dasso Industrial Group Co., Ltd.)
Hangzhou Huahi Wood Industry Co., Ltd.
Huber Engineering Wood Corp.
Huzhou City Nanxun Guangda Wood Co., Ltd.
Huzhou Fuma Wood Co., Ltd.
Jiafeng Wood (Suzhou) Co., Ltd.
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.
Qingdao Barry Flooring Co., Ltd.
Shandong Kaiyuan Wood Industry Co., Ltd.
Shanghai Anxin (Weiguang) Timber Co., Ltd.
Shanghai Eswell Timber Co., Ltd.
Shanghai New Sihe Wood Co., Ltd.
Shanghai Shenlin Corporation
Vicwood Industry (Suzhou) Co., Ltd.
Yixing Lion-King Timber Industry
Zhejiang AnJi Xinfeng Bamboo and Wood Industry Co., Ltd.
Zhejiang Desheng Wood Industry Co., Ltd.
Zhejiang Haoyun Wooden Co., Ltd.

[FR Doc. 2018–00573 Filed 1–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–823]

Carbon and Alloy Steel Wire Rod From the Republic of South Africa: Affirmative Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of carbon and alloy steel wire rod (wire rod) from the Republic of South Africa (South Africa) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The final estimated weighted-average dumping margins of sales at LTFV are listed below in the section entitled ''Final Determination.'' The period of investigation (POI) is January 1, 2016, through December 31, 2016.

DATES: Applicable January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Moses Song or John McGowan, AD/CVD Operations, Office VI, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2017, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] The petitioners in this investigation are Gerdau Ameristeel US Inc., Nucor Corporation, Keystone Consolidated Industries, Inc., and Charter Steel (collectively, the petitioners). The three mandatory respondents in this investigation are: (1) ArcelorMittal South Africa Limited (AMSA); (2) Scaw South Africa (Pty) Ltd. (also known as Scaw Metals Group) (Scaw); and (3) Davsteel Division of Cape Gate (Pty) Ltd. (Cape Gate). At the *Preliminary Determination,* Commerce determined that AMSA, Scaw, and Consolidated Wire Industries (CWI) are affiliated and constituted a single entity, *i.e.,* AMSA/Scaw/CWI. Furthermore, we preliminarily found that the application of facts available with an adverse inference (AFA) to the collapsed entity, due to Scaw's failure to participate in this investigation, was warranted. Commerce also preliminarily determined that critical circumstances existed for AMSA/Scaw/CWI and for all-other exporters/producers of wire rod. Concerning Cape Gate, Commerce preliminarily determined not to further examine Cape Gate as part of this investigation because Cape Gate timely certified that it did not make any sales of subject merchandise in the United States during the POI and there is no record evidence to the contrary.

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document, and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is wire rod from South Africa. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the course of this investigation, Commerce received numerous scope comments from interested parties. Prior to the *Preliminary Determination,* Commerce issued a Preliminary Scope Decision Memorandum to address these comments. As a result of these comments, Commerce made no changes

[1] *See Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Preliminary Determination of No Shipments,* 82 FR at 50383 (October 31, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from the Republic of South Africa,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum or IDM).

to the scope of this investigation as it appeared in the *Initiation Notice*.[3]

In September 2017, we received scope case and rebuttal briefs. On November 20, 2017, we issued the Final Scope Decision Memorandum in response to these comments in which we did not change the scope of this investigation.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice at Appendix II.

Verification

As explained in the Issues and Decision Memorandum, Commerce did not conduct verification of AMSA/Scaw/CWI.

Changes Since the Preliminary Determination and Use of Adverse Facts Available

Commerce has made no changes to the *Preliminary Determination.* As stated in the *Preliminary Determination,* we found that the application of facts available with an adverse inference with respect to the collapsed entity, *i.e.,* AMSA/Scaw/CWI, in this investigation, was warranted, in accordance with sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act.[5]

Final Affirmative Determination of No Sales

As stated above in the ''Background'' section, at the *Preliminary Determination,* we found that Cape Gate had no sales of subject merchandise during the POI, and, therefore, we determined not to further examine Cape Gate as part of this investigation. Commerce received no comments regarding this issue after the *Preliminary Determination.* Thus, for this final determination, we continue to find that Cape Gate had no sales of subject merchandise during the POI. As such, any entries of subject merchandise exported by Cape Gate will be subject to the All-Others Rate.

Final Affirmative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily found that critical circumstances exist with respect to AMSA/Scaw/CWI, and all other producers and exporters of wire rod from South Africa (All Others).[6] Commerce received no comments regarding this issue after the *Preliminary Determination.* Thus, for this final determination, we continue to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist for imports from all producers and exporters of wire rod from South Africa.

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the selection of the all-others rate on the simple average of the two dumping margins calculated for subject merchandise from South Africa alleged in the petition,[7] in accordance with section 735(c)(5)(B) of the Act, and determined a rate of 135.46 percent. No parties commented on this issue and we made no changes to the all-others rate for this final determination.[8]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)
ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd. (also known as Scaw Metals Group), and Consolidated Wire Industries	142.26
All-Others	135.46

Disclosure

The estimated weighted-average dumping margin assigned to the collapsed entity (*i.e.,* AMSA/Scaw/CWI) in this investigation in the *Preliminary Determination* were based on adverse facts available and Commerce described the method it used to determine the adverse facts available rate in the *Preliminary Determination.* As we made no changes to this margin since the *Preliminary Determination,* no disclosure of calculations is necessary for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, for this final determination, we will direct U. S. Customs and Border Protection (CBP) to suspend liquidation of all entries of wire rod from South Africa, as described in Appendix I to this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 2, 2017 (90 days prior to the date of publication of the *Preliminary Determination*), because we continue to find that critical circumstances exist with regard to imports from all producers and exporters of wire rod from South Africa.

Furthermore, Commerce will instruct CBP to require a cash deposit for such entries of merchandise. Pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) For AMSA/Scaw/CWI, the cash deposit rate will be equal to the estimated weighted-average dumping margin which Commerce determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, then the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the producer of the subject merchandise; (3) the cash deposit rate for all other producers or exporters will be 135.46 percent, as discussed in the ''All-Others Rate'' section, above.

The instructions suspending liquidation will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination of sales at LTFV and final affirmative determination of critical circumstances for South Africa. Because the final determination in this proceeding is affirmative, the ITC will

[3] For discussion of these comments, *see* Memorandum, ''Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determination'' (Preliminary Scope Decision Memorandum), dated August 7, 2017; *see also Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 19207 (April 20, 2017) (*Initiation Notice*).

[4] For discussion of these comments, *see* Memorandum, ''Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Final Scope Memorandum'' (Final Scope Decision Memorandum), dated November 20, 2017.

[5] *See Preliminary Determination,* 82 FR at 50383; *see also* PDM at 6–9.

[6] *See Preliminary Determination,* 82 FR at 50383, 50384; *see also* PDM at 11–16.

[7] *See* the Petitions for the Imposition of Antidumping Duties on Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom, dated March 28, 2017 (the petition).

[8] *See Preliminary Determination,* 82 FR at 50383, 50384–50385.

make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wire rod from South Africa no later than 45 days after this final determination, in accordance with section 735(b)(2) of the Act. If the ITC determines that such injury does not exist, the proceeding will be terminated and all cash deposits posted will be refunded or cancelled. If the ITC determines that such injury exists, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These determinations are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: January 8, 2018.

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

Scope of the Investigation

The products covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent of more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS may also be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these proceedings is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Discussion of the Issues:
  Comment 1: Affiliation and Collapsing of AMSA/Scaw/CWI
  Comment 2: Application of Total AFA to AMSA/Scaw/CWI
  Comment 3: Commerce's Statutory Obligations Under 782(d) of the Act
  Comment 4: Verification
  Comment 5: Adjustment to AMSA's General and Administrative (G&A) Expense Ratio
  Comment 6: Adjustment to AMSA's Warranty Expenses
  Comment 7: Adjustment to AMSA's Direct Selling Expenses
  Comment 8: Denial of AMSA's CEP Offset
VI. Recommendation

[FR Doc. 2018–00572 Filed 1–12–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT or Committee), National Institute of Standards and Technology (NIST), will meet in Wednesday, February 7, 2018, from 8:30 a.m. to 4:00 p.m. Eastern Time. The VCAT is composed of not fewer than 9 members appointed by the NIST Director who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Wednesday, February 7, 2018, from 8:30 a.m. to 4:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 301–975–2667. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278, as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

The purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major programs at NIST. In addition, the meeting will include presentations and discussions on NIST's role in cybersecurity and technology transfer from federal laboratories. The Committee also will present its initial observations, findings, and recommendations for the 2017 VCAT Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. Approximately one-half hour will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be

considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to VCAT, NIST, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by email to *stephanie.shaw@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Stephanie Shaw by 5:00 p.m. Eastern Time, Monday, January 29, 2018. Non-U.S. citizens must submit additional information; please contact Ms. Shaw. Ms. Shaw's email address is *stephanie.shaw@nist.gov* and her phone number is 301–975–2667. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Shaw at 301–975–2667 or visit: *http://nist.gov/public_affairs/visitor/.*

Kevin Kimball,

Chief of Staff.

[FR Doc. 2018–00566 Filed 1–12–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF946

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a two-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, January 30, and Wednesday, January 31, 2018, beginning at 10 a.m. on January 30 and 9 a.m. on January 31.

ADDRESSES: The meeting will be held at the Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; online at *www.sheratonportsmouth.com.*

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, January 30, 2018

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Fisheries Office (GARFO), liaisons from the Northeast Fisheries Science Center (NEFSC) and Mid-Atlantic Fishery Management Council, representatives from NOAA General Counsel and the Office of Law Enforcement, and staff from the Atlantic States Marine Fisheries Commission (ASMFC) and U.S. Coast Guard. Next, the Council will receive an industry-funded monitoring briefing from GARFO that includes: (1) An update with preliminary results on the agency's electronic monitoring project aboard midwater trawl vessels participating in the Atlantic herring and mackerel fisheries; and (2) information on industry-funded monitoring service providers. The Skate Committee will report next. The Council is expected to initiate Framework Adjustment 6 to the Northeast Skate Complex Fishery Management Plan (FMP) to consider adjustments to the skate wing possession limit.

After a lunch break, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. The Habitat Committee will report after the public comment period. The Council is scheduled to take final action on coral protection measures for the continental slope and canyons south of Georges Bank in its Omnibus Deep-Sea Coral Amendment. The Council took final action on coral protection measures for the Gulf of Maine in June of 2017. In other habitat-related business, the Council will: (1) Review NMFS's decision on Omnibus Habitat Amendment 2 and discuss how it relates to the Council's 2018 habitat priorities; and (2) review comments on offshore wind projects. The Council then will hear from its Research Steering Committee and first review and possibly approve the committee's recommendations for potential improvements to the Council's research priority-setting process. The Council also will receive an update on issues related to the Northeast Cooperative Research Program and be briefed on management reviews of completed research projects. Following these actions, the Council will adjourn for the day.

Wednesday, January 31, 2018

The second day of the meeting will begin with a closed session in order for the Council to consult on Scientific and Statistical Committee appointments for 2018–20. The first item of business in the open session will be an update on the ongoing external review of Council operations, known as the Council Program Review. Next, the Council will receive a report on the latest meeting of the Northeast Trawl Advisory Panel and discuss several issues related to the workings of the panel, including NEFSC engagement and previous/future studies and projects. This discussion will be followed by a National Fish and Wildlife Foundation-funded report on implementing electronic monitoring in New England's groundfish fishery. The Council then will receive a presentation on the NEFSC's ''2007–2015 Final Report on the Performance of the Northeast Multispecies Fishery,'' followed by the Scientific and Statistical Committee's report, which is centered on providing overfishing limit and acceptable biological catch recommendations for Atlantic halibut to the Council.

Following a lunch break, the Council will begin its Groundfish Committee report, which will cover recreational fishery measures and the Council's Groundfish Monitoring Amendment 23. On the recreational end, the Council will: (1) Provide recommendations to GARFO on fishing year 2018 recreational measures for Gulf of Maine cod and haddock; (2) possibly consult with GARFO on fishing year 2018 recreational measures for Georges Bank cod; and (3) consider recommending a new control date for the party/charter fishery. Regarding Amendment 23 to the Northeast Multispecies Fishery Management Plan, which is focused on monitoring in the groundfish fishery, the Council will: (1) Receive a progress report on the amendment's development; and (2) discuss the

possibility of holding a groundfish workshop or establishing a working group dedicated to monitoring issues. Finally, the Council will close out the meeting with ''other business.''

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 10, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–00567 Filed 1–12–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF945

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; applications for one new scientific research permit and five scientific research permit renewals.

SUMMARY: Notice is hereby given that NMFS has received six scientific research permit application requests relating to Pacific salmon and steelhead. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on February 15, 2018.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to *nmfs.nwr.apps@noaa.gov* (include the permit number in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: 503–231–2314), Fax: 503–230–5441, email: *Robert.Clapp@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (Oncorhynchus tshawytscha): Endangered upper Columbia River (UCR); threatened Snake River (SR) spring/summer (spr/sum), threatened SR fall-run.

Steelhead (O. mykiss): Threatened UCR; threatened SR; threatened middle Columbia River (MCR).

Sockeye salmon (O. nerka): Endangered SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1124–6R

The IDFG is seeking to renew for five years a permit under which they have been conducting six research projects in the Snake River basin for nearly 20 years. The permit would continue to cover the following actions: One general fish population inventory; one project designed to monitor fish health throughout the state; two projects looking at natural and hatchery Chinook salmon production (in which sockeye may rarely be captured); one project monitoring natural steelhead; and one project centering on monitoring sockeye salmon recovery in Idaho. Much of the work being conducted under these projects is covered by other ESA authorizations; the work contemplated here is only the work that portion of the research that may affect sockeye salmon. The purposes of the research are therefore to monitor listed salmonid health, help guide sockeye salmon recovery operations, and to rescue sockeye salmon in need imperiled by circumstances such as being trapped by low flows. The benefits to the salmon would come in the form of information to help guide resource managers in restoring the listed fish and, as stated, in directly rescuing them from peril. The fish would be captured by various methods—screw traps, electrofishing, hook-and-line-angling, mid-water trawl—and most captured fish would immediately be released. The researchers do not intend to kill any of the captured fish, but a few may die as an inadvertent result of the research.

Permit 1134–7R

The Columbia River Inter-Tribal Fish Commission (CRITFC) is seeking to renew for five years a permit under which they have been conducting research for nearly 20 years. The permit would continue covering five study projects that, among them, would annually take adult and juvenile threatened SR spring/summer Chinook salmon and adult and juvenile threatened SR steelhead in the Snake River basin. There have been some changes in the research over the last ten years; nonetheless, the projects proposed are largely continuations of ongoing research. They are: Project 1—Adult Spring/summer and Fall Chinook Salmon and Summer Steelhead Ground and Aerial Spawning Ground Surveys; Project 2—Cryopreservation of Spring/summer Chinook Salmon and Summer Steelhead Gametes; Project 3—Adult Chinook Salmon Abundance Monitoring Using Video Weirs, Acoustic Imaging, and passive integrated transponder (PIT) tag Detectors in the South Fork Salmon River; Project 4—Snorkel, Seine, fyke net, Minnow Trap, and Electrofishing Surveys and Collection of Juvenile Chinook Salmon and Steelhead; and Project 5—Juvenile Anadromous

Salmonid Emigration Studies Using Rotary Screw Traps. Under these tasks, listed adult and juvenile salmon would be variously (1) observed/harassed during fish population and production monitoring surveys; (2) captured (using seines, trawls, traps, hook-and-line angling equipment, and electrofishing equipment) and anesthetized; (3) sampled for biological information and tissue samples, (4) PIT-tagged or tagged with other identifiers, (5) and released.

The research has many purposes and would benefit listed salmon and steelhead in different ways. However, in general, the studies are part of ongoing efforts to monitor the status of listed species in the Snake River basin and to use those data to inform decisions about land- and fisheries management actions and to help prioritize and plan recovery measures for the listed species. Under the proposal, the studies would continue to benefit listed species by generating population abundance estimates, allowing comparisons to be made between naturally reproducing populations and those being supplemented with hatchery fish, and helping preserve listed salmon and steelhead genetic diversity. The CRITFC researchers do not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

Permit 13380–3R

The NWFSC is seeking to renew for five years a permit that currently allows them to annually take natural juvenile SR spring/summer Chinook salmon and SR steelhead in the Salmon River subbasin in Idaho. This research has been in progress for over ten years and is designed to assess three alternative methods of nutrient enhancement (Salmon carcasses, carcass analogues, and nutrient pellets) on biological communities in Columbia River tributaries. In general, the purpose of the research is to learn how salmonids acquire nutrients from the carcasses of dead spawners and test three methods of using those nutrients to increase growth and survival among naturally produced salmonids. The research would benefit the fish by helping managers use nutrient enhancement techniques to recover listed salmonid populations. Moreover, managers would gain a broader understanding of the role marine-derived nutrients play in ecosystem health as a whole. This, in turn, would help inform management decisions and actions intended to help salmon recovery in the future.

Under the proposed research, the fish would variously be (1) captured (using seines, nets, traps, and possibly, electrofishing equipment) and anesthetized; (2) measured, weighed and fin-clipped; (3) held for a time in enclosures in the stream from which they are captured; and (4) released. A number of the captured fish would also be intentionally killed so the researchers may conduct stable isotope, otolith, and diet analyses with the purpose of linking growth and survival to habitat conditions. It is also likely that a small percentage of the fish being captured would unintentionally be killed during the process; in such instances, any unintentional mortalities would be used in place of any fish that would otherwise be lethally taken. In addition, tissue samples would be taken from adult carcasses.

Permit 14283–3R

Environmental Assessment Services (EAS) is seeking to renew for five years a permit that currently allows them to annually take listed fish in the mid- and upper Columbia River in support of the U.S. Department of Energy's Hanford Site Cleanup Mission and regulatory drivers under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The research would take place in four areas the Columbia River waters extending from McNary Dam to a point upstream of Wanapum Dam. The researchers are targeting non-listed resident fish but may also capture UCR steelhead and Chinook, MCR steelhead, SR fall Chinook, SR spr/sum Chinook, and SR Steelhead. The research would benefit listed fish by helping monitor and reduce contamination from the Hanford Nuclear Reservation. The researchers would capture the fish using electrofishing, hook and line, and long-line techniques. Any captured listed fish would immediately be released. The researchers do not propose to kill any listed fish but a small number may inadvertently be killed by the activities.

Permit 16979–2R

The Washington Department of Fish and Wildlife (WDFW) is seeking a five-year permit to collect data on UCR Chinook and steelhead abundance, status, distribution, diversity, species/ecological interactions, and behavior in the Columbia River from its confluence with the Yakima River upstream to Chief Joseph Dam. The research would benefit fish by helping managers (1) understand the distribution and proportion of hatchery and natural origin steelhead, and Chinook in UCR tributaries, (2) understand the influences of other biotic and abiotic factors with respect to recovering listed species, (3) understand the potential effects of proposed land use practices, (4) determine appropriate regulatory and habitat protection measures in the areas where land use actions are planned, (5) project the impacts of potential hydraulic projects, and (6) evaluate the effectiveness of local forest practices and instream habitat improvement projects in terms of their ability to protect and enhance listed salmonid populations.

The researchers would capture fish via a wide variety of means (snorkeling, dip netting, seining, using electrofishing equipment, traps and weirs, and barbless hook-and-line sampling). The captured fish would be variously tissue sampled, measured, tagged, allowed to recover, and released. The researchers do not intend to kill any of the fish being captured, but a small percentage of them may inadvertently be killed as a result of the proposed activities.

Permit 21571

The United States Geological Survey (USGS) is seeking a five-year permit to conduct research on migration survival among middle Columbia River steelhead in the Yakima River system in Washington State. The research would look at how well the listed fish are surviving passage through various reaches of the Yakima River. The research would benefit the listed fish by helping managers understand what survival risks the young salmonids face when migrating downriver in the Yakima system. The managers would then be able to use that information to take actions designed to increase fish survival. The USGS researchers would capture juvenile MCR steelhead and tag them with acoustic and PIT tags. They would then use PIT tag detectors and acoustic receivers to follow the fish as they move downstream. The researchers would also use boat electrofishing equipment to count predators in several reaches, but they would not use that equipment to capture any listed animals for handling an adult steelhead would be avoided in all cases. The researchers do not intend to kill any listed animals, but a small number may die as an inadvertent result of the planned activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: January 10, 2018.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–00602 Filed 1–12–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States (U.S.) Government as represented by the Secretary of the Army and are available for licensing by the Department of the Army (DoA):

• U.S. Patent Number 7,812,366 entitled ''Ultraviolet Light Emitting AlGaN Composition, and Ultraviolet Light Emitting Device Containing Same'', Inventors Sampath et al., Issue date October 12, 2010.

• U.S. Patent Number 8,564,014 entitled ''Ultraviolet Light Emitting AlGaN Composition and Ultraviolet Light Emitting Device Containing Same'', Inventors Sampath et al., Issue date October 22, 2013.

• U.S. Patent 7,498,182 entitled ''Method of Manufacturing an AlGaN Composition and Ultraviolet Light Emitting Device Containing Same'', Inventors Sampath et al., Issue Date March 3, 2009.

The novel claims of these patents are not specific to the growth method used in the production of Ultraviolet (UV) Light Emitting Diodes (LEDs) and apply to any Aluminum Gallium Nitride (AlGaN) composition containing self-assembled nanometer-scale compositional inhomogeneities that are localized in more than one dimension, and includes wells, dots, and wires. These patents are relevant to a large portion of semiconductor UV LED industry, which employ some degree of nanoscale compositional inhomogeneity to enhance ultraviolet light emission, regardless of growth method. Further, a semiconductor UV light emitting device having an active region layer comprised of the AlGaN composition is provided, as well as a method of producing the AlGaN composition and semiconductor UV light emitting device, involving molecular beam epitaxy.

DATES: Request for supplemental information should be made prior to March 31, 2018.

ADDRESSES: Request for supplemental information, including licensing application packages and procedures should be directed to John Millemaci, 301–645–6637, *jmillemaci@etcmd.com,* Energetics Technology Center (ETC), 4185 Indian Head Highway, Indian Head, MD 20640.

FOR FURTHER INFORMATION CONTACT: U.S. Army Research Laboratory Technology Transfer Office, RDRL–DPP/Thomas Mulkern, Building 321 Room 110, Aberdeen Proving Ground, MD 21005–5425. Phone: (410) 278–0889, Email: *ORTA@arl.army.mil*.

SUPPLEMENTARY INFORMATION: The U.S. Army intends to move expeditiously to license these inventions. Licensing application packages are available from ETC and all applications and commercialization plans must be returned to ETC by May 1, 2018. ETC is an authorized Department of Defense Partnership Intermediary per Authority 15 U.S.C. 3715. ETC will turn over all completed applications to the U.S. Army for evaluation by May 28, 2017, with final negotiations and awards occurring during the months of June and July, 2018. The U.S. Army will consider requests for nonexclusive, partially exclusive, and fully exclusive licenses in the U.S. and may prefer to grant an exclusive license to a company capable of broad commercialization as well as patent maintenance and enforcement within the U.S.

The DoA intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–00609 Filed 1–12–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery, Honor Subcommittee; Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory subcommittee meeting of the Honor subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). This meeting is open to the public. For more information about the Committee and the Subcommittees, please visit: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/ACANC-Meetings*.

DATES: The Honor subcommittee will meet on Tuesday, January 30, 2018 from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The Honor Subcommittee will meet in the Stars Conference Room, Sheraton Pentagon City Hotel, 900 S. Orme St., Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Keating; Alternate Designated Federal Officer for the subcommittees, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *timothy.p.keating.civ@mail.mil*, or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meetings: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Honor subcommittee is to accomplish an independent assessment of methods to address the long-term future of the Army national cemeteries, including how best to extend the active burials and what ANC should focus on once all available space is used.

Agenda: The Honor subcommittee will receive an update on the results of a national dialogue public survey conducted as a result of Public Law 114–158. The subcommittee will subsequently conduct a roundtable discussion with visiting guests and study suggestions in consideration of a second survey. The subcommittee will then report its deliberations and findings to the full committee.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Stars Conference room

at the Sheraton Pentagon City is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Timothy Keating, the Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Mr. Timothy Keating, the subcommittee's Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the respective subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the subcommittee is not obligated to allow the public to speak or otherwise address the subcommittee during the meeting. However, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–00608 Filed 1–12–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Federal Advisory Committee Meeting

AGENCY: Deputy Chief Management Officer, 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 Defense Innovation Board (DIB) will take place.

DATES: Closed to the public Wednesday, January 17, 2018 from 9:00 a.m. to 12:00 p.m. Open to the public Wednesday, January 17, 2018 from 2:00 p.m. to 4:30 p.m.

ADDRESSES: The closed portion of the meeting will be held in the Pentagon. The open portion of the meeting will be held at 1776 Crystal City, 2231 Crystal Drive, Arlington, VA 22202. Additionally, the meeting will be live streamed for those who are unable to physically attend the meeting.

FOR FURTHER INFORMATION CONTACT: Michael L. Gable, (571) 372–0933 (Voice), *michael.l.gable.civ@mail.mil* (Email). Mailing address is Defense Innovation Board, 9010 Defense Pentagon, Room 5E572, Washington, DC 20301–9010. Website: *http://innovation.defense.gov.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Defense Innovation Board was unable to provide public notification concerning its meeting on January 17, 2018, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

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: The mission of the DIB is to examine and provide the Secretary of Defense and the Deputy Secretary of Defense independent advice and recommendations on innovative means to address future challenges in terms of integrated change to organizational structure and processes, business and functional concepts, and technology applications. The DIB focuses on (a) technology and capabilities, (b) practices and operations, and (c) people and culture.

Agenda: During the closed portion of the meeting, the DIB will receive classified informational briefings from the Deputy Chief Management Officer related to innovation priorities and DoD business reforms and modernization efforts; from the Chief of Staff of the U.S. Army related to innovation priorities and establishment of the Army Modernization Command; and from senior military representatives from the Army, Navy, Marine Corps, and the Air Force on innovation activities within the Services to build workforce innovation capacity, promote and optimize operational practices for speed and agility, and leverage advances in technology.

During the open portion of the meeting, the DIB will invite selected experts to provide analysis and inputs related to innovation, innovation cells, and innovation activities within DoD related to workforce innovation initiatives. Potential experts include: From the United States Army, Chief of Staff, General Mark Milley; from the Defense Digital Service, Tim Van Name; from the Navy Digital Warfare Office, Margaret Palmieri; from the Office of the Assistant Secretary of Defense for Special Operations and Irregular Warfare, Lt Col Dave Blair, USAF; from the Military District 5 office within the office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, Morgan Plummer; and from the Chief Data Officer for the U.S. Air Force, Maj Gen Kim Crider. The DIB will deliberate and potentially vote on recommendations to (1) Design a DoD Fast-Track for Major Technology Initiatives, (2) Incubate and Execute New Ideas from the Field, (3) Create a New Innovation, Science, Technology, Engineering, and Mathematics (I–STEM) Career Field, and (4) Establish a Technology and Innovation Training Program for DoD Senior Leaders. The DIB will discuss the initial research and plan for the Software Acquisition Reform (SWAR) study directed in the 2018 National Defense Authorization Act. The DIB's Executive Director will brief the DIB on DoD's latest implementation activities

related to DIB recommendations. Members of the public will have an opportunity to provide oral comments to the DIB regarding the DIB's deliberations and potential recommendations. See below for additional information on how to sign up to provide public comments.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b(c)(1), the DoD has determined that the portion of the meeting from 9:00 a.m. to 12:00 p.m. shall be closed to the public. The Assistant Deputy Chief Management Officer, in consultation with the Office of the DoD General Counsel, has determined in writing that this portion of the DIB's meeting will be closed as the discussions will involve classified matters of national security. Such classified material is so inextricably intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without disclosing matters that are classified SECRET or higher. Pursuant to Federal statutes and regulations (FACA, the Government in the Sunshine Act, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 2:00 p.m. to 4:30 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting or wanting to receive a link to the live stream webcast should contact the Executive Director to register no later than January 16, 2018, by email at *osd.innovation@mail.mil.* Members of the media should RSVP to Cmdr. Patrick Evans, Public Affairs Officer, at *Patrick.L.Evans.mil@mail.mil.*

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the Executive Director at least five business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the DIB about its approved agenda pertaining to this meeting or at any time regarding the DIB's mission. Individuals submitting a written statement must submit their statement at *osd.innovation@mail.mil.* The Designated Federal Officer will compile all written submissions and provide them to Board Members for consideration.

Oral Presentations: Individuals wishing to make an oral statement to the DIB at the public meeting may be permitted to speak for up to three minutes. Anyone wishing to speak to the DIB should submit a request by email at *osd.innovation@mail.mil* not later than January 16, 2018 for planning. Requests for oral comments should include a copy or summary of planned remarks for archival purposes. Individuals may also be permitted to submit a comment request at the public meeting; however, depending on the number of individuals requesting to speak, the schedule may limit participation. Webcast attendees will be provided instructions with the live stream link if they wish to submit comments during the open meeting.

Dated: January 10, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–00620 Filed 1–12–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0134]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Evaluation of the Investing in Innovation (i3) Program

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 15, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0134. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tracy Rimdzius, 202–245–7283.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Evaluation of the Investing in Innovation (i3) Program.

OMB Control Number: 1850–0913.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 23.

Total Estimated Number of Annual Burden Hours: 343.

Abstract: This submission requests approval to collect data in support of the Investing in Innovation (i3) Program Technical Assistance and Evaluation Project. The i3 Program is designed to support school districts and nonprofit organizations in expanding, developing, and evaluating evidence-based practices and promising efforts to improve outcomes for the nations' students, teachers, and schools. Each i3 grantee is required to fund an independent evaluation. The Technical Assistance and Evaluation Project requires data collection to assess the strength of the evidence produced under the grantees independent evaluations as well as provide a cross-site summary of the

findings. Specifically, the data collected will be used to support reviews and reports to ED that: Describe the intervention implemented by each i3 grantee; assess the strength of the evidence produced by each i3 evaluation; present the evidence produced by each i3 evaluation; identify effective and promising interventions; and, assess the results of the i3 Program. We will collect data from the universe of all 172 i3 projects funded under the i3 Program.

Dated: January 10, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–00554 Filed 1–12–18; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–EPA–HQ–OA–2010–0757; FRL–9972–93–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (Renewal)'' (EPA ICR No. 2260.06, OMB Control No. 2090–0029) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 28, 2018. Public comments were previously requested via the **Federal Register** on August 21, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 15, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OA–2010–0757, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Megan Moreau, Office of Resources, Operations and Management, Federal Advisory Committee Management Division, Mail Code 1601M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5320; fax number: 202–564–8129; email address: *moreau.megan@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: The purpose of this information collection request is to assist the EPA in selecting federal advisory committee members who will be appointed as Special Government Employees (SGEs), mostly to the EPA's scientific and technical committees. To select SGE members as efficiently and cost effectively as possible, the Agency needs to evaluate potential conflicts of interest before a candidate is hired as an SGE and appointed as a member to a committee. Agency officials developed the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency,'' also referred to as Form 3110–48, for greater inclusion of information to discover any potential conflicts of interest as recommended by the Government Accountability Office.

Form numbers: EPA Form 3110–48.

Respondents/affected entities: Candidates for appointment to serve as SGEs on EPA federal advisory committees.

Respondent's obligation to respond: Mandatory in order to serve as a SGE on an EPA federal advisory committee (5 CFR 2634.903).

Estimated number of respondents: 500 (total).

Frequency of response: Once, Annually, On occasion.

Total estimated burden: 500 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $56,000 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 250 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This change is due to an increase in the estimated number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–00574 Filed 1–12–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0885; FRL–9973–01–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Implementation of the 2008 Ozone National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR)—Implementation of the 2008 Ozone National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements (Renewal), OMB Control Number 2060–0695, EPA ICR No. 2347.03—to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through January, 31, 2018. Public comments were previously requested via a **Federal**

Register notice published on October 2, 2017 and November 8, 2017. This notice allows an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 15, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–0885, to (1) the EPA online using *http://www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA. The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mr. Butch Stackhouse, Air Quality Policy Division, Office of Air Quality Planning and Standards, C539–01, U.S. Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541–5208; fax number: (919) 541–5509; email address: *stackhouse.butch@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center Reading Room, WJC West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20229. The telephone number for the Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: The EPA requires the information requested in this ICR to perform its proper function to ensure the implementation of the 2008 ozone National Ambient Air Quality Standards (NAAQS) in areas of the country that are designated nonattainment for the standards. This ICR pertains to attainment planning efforts by states for areas designated nonattainment for the ozone NAAQS revised on March 12, 2008 (73 FR 16436). Those planning efforts must meet the statutory requirements of CAA sections 172, 182 and 184, and the regulatory requirements established in the ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan (SIP) Requirements; Final Rule'' (80 FR 12264). The EPA has since revised the ozone NAAQS on October 1, 2015 (80 FR 65292), and any burden associated with attainment planning for areas designated nonattainment for the 2015 ozone NAAQS will be covered through a separate ICR process. The information covered by this ICR includes, but is not limited to, state submissions of attainment demonstrations, reasonable further progress plans, and reasonably available control technology determinations.

Form Numbers: None.

Respondents/Affected Entities: State and local governments.

Respondent's Obligation To Respond: Mandatory (*see* Clean Air Act sections 172, 182 and 184).

Estimated Number of Respondents: 17 (total).

Frequency of Response: Annual.

Total Estimated Burden: 34,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total Estimated Cost: $2,311,000 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in Estimates: There is a decrease of 6,000 annual labor hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to the activities expected to occur during the period from February 1, 2018, to January 31, 2021, which are similar in nature, but not identical, to the SIP planning and submission activities in the original ICR period. Factors contributing to the variation include the stage of implementation that various nonattainment areas are in for the 2008 ozone NAAQS, and states' relative success in attaining the 2008 ozone NAAQS during the original ICR period. More specifically, the reasons the total estimated burden in this ICR renewal is different than the total estimated burden hours currently approved by OMB, include:

- Many areas that have successfully attained the 2008 ozone NAAQS are now eligible to request redesignation to attainment.
- As many as 13 nonattainment areas are potentially subject to the additional air quality planning and emissions control requirements of the ''Serious'' classification because they may not attain the 2008 NAAQS by the Moderate area attainment deadline of July 20, 2018. For these areas, states will need to take further steps to ensure air quality standards are achieved by the next attainment deadline.
- The estimates have been calculated using 2017 dollars. The adjustments to the cost assumptions are summarized in sections 6(b) and 6(c) of the supporting statement, and fully detailed in a background spreadsheet titled, ''Estimate of Burden for 2008 O3 SIP Rule 1st Renewal ICR Worksheet, 2017.'' This spreadsheet is available in the docket.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–00575 Filed 1–12–18; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2017–6010]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The collection provides EXIM staff with the information necessary to monitor the borrower's payments for exported goods covered under its short and medium-term export credit insurance policies. It also alerts EXIM staff of defaults, so they can manage the portfolio in an informed manner.

DATES: Comments must be received on or before February 15, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* (EIB 92–27) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–0027 Form can be viewed at *http://www.exim.gov/pub/pending/eib92-27.pdf*

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–27 Report of Overdue Accounts Under Short-Term Policies.

OMB Number: 3048–0027.

Type of Review: Regular.

Need and Use: The collection provides EXIM staff with the information necessary to monitor the borrower's payments for exported goods covered under its short- and medium term export credit insurance policies. It also alerts EXIM staff of defaults, so they can manage the portfolio in an informed manner.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 745.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours for Respondents: 186.25 hours.

Frequency of Reporting or Use: Monthly, until completed.

Government Expenses:

Reviewing Time per Year: 186.25 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $7,915.63 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $9,498.75.

Bassam Doughman,

IT, Specialist.

[FR Doc. 2018–00510 Filed 1–12–18; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2017–6014]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

Pursuant to the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635, *et seq.*), the Export-Import Bank of the United States (EXIM), facilitates the finance of the export of U.S. goods and services by providing insurance or guarantees to U.S. exporters or lenders financing U.S. exports. By neutralizing the effect of export credit insurance or guarantees offered by foreign governments and by absorbing credit risks that the private sector will not accept, EXIM enables U.S. exporters to compete fairly in foreign markets on the basis of price and product. In the event that a borrower defaults on a transaction insured or guaranteed by EXIM, the insured or guaranteed exporter or lender may seek payment from EXIM by the submission of a claim. This collection of information is necessary, pursuant to12 U.S.C. 635(a)(1), to determine if such claim complies with the terms and conditions of the relevant insurance policy or guarantee, as the case may be.

DATES: Comments must be received on or before February 15, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 10–05) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–10–05 The information collection tool can be reviewed at: *http://www.exim.gov/pub/pending/eib10-05.pdf.*

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 10–05 Notice of Claim and Proof of Loss, Medium Term Guarantee.

OMB Number: 3048–0035.

Type of Review: Regular.

Need and Use: This collection of information is necessary, pursuant to 12 U.S.C. Sec. 635(a)(1), to determine eligibility of the applicant for EXIM assistance. The information collected enables EXIM to determine the eligibility of the shipment(s) for insurance and to calculate the premium due to EXIM for its support of the shipment(s) under its insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 65.

Estimated Time per Respondent: 1 hour.

Annual Burden Hours: 65 hours.

Frequency of Reporting of Use: As needed to request a claim payment.

Government Expenses:

Reviewing Time per Year: 65 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $2,762.

(time * wages)

Benefits and Overhead: 20%.

Total Government Cost: $3,315.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–00513 Filed 1–12–18; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2017–6013]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary to determine eligibility of the export sales for insurance coverage. The Report of Premiums Payable for Financial Institutions Only is used to determine the eligibility of the shipment(s) and to calculate the premium due to EXIM for its support of the shipment(s) under its insurance program. EXIM customers will be able to submit this form on paper or electronically.

By neutralizing the effect of export credit support offered by foreign governments and by absorbing credit risks that the private sector will not accept, EXIM enables U.S. exporters to compete fairly in foreign markets on the basis of price and product. Under the Working Capital Guarantee Program, EXIM provides repayment guarantees to lenders on secured, short-term working capital loans made to qualified exporters. The guarantee may be approved for a single loan or a revolving line of credit.

In the event that a buyer defaults on a transaction insured by EXIM the insured exporter or lender may seek payment by the submission of a claim.

DATES: Comments must be received on or before February 15, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048–10–03.

The information collection tool can be reviewed at: *http://www.exim.gov/pub/pending/eib10-03.pdf* (EIB 10–03).

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 10–03 Notice of Claim and Proof of Loss, Export Credit Insurance Policies.

OMB Number: 3048–0033.

Type of Review: Regular.

Need and Use: This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine if such claim complies with the terms and conditions of the relevant insurance policy.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 300.

Estimated Time per Respondent: 45 minutes.

Annual Burden Hours: 225 hours.

Frequency of Reporting of Use: As needed to request claim payment.

Government Expenses:

Reviewing Time per Year: 300 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $12,750 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $15,300.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–00512 Filed 1–12–18; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2017–6011]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form on paper or electronically.

This form is used by insurance brokers to register with Export-Import Bank. It provides EXIM staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export-Import Bank's credit insurance programs.

DATES: Comments must be received on or before February 15, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 92–79) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–0024 Form can be viewed at *http://www.exim.gov/pub/pending/eib92-79.pdf*

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–79 Broker Registration Form.

OMB Number: 3048–0024.

Type of Review: Regular.

Need and Use: This form is used by insurance brokers to register with Export Import Bank. The form provides EXIM staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export Import Bank's credit insurance programs.

Affected Public: This form affects entities engaged in brokering export credit insurance policies.

Annual Number of Respondents: 17.

Estimated Time per Respondent: 15 minutes.

Frequency of Reporting or Use: Once every three years.

Annual Public Burden: 4.25 hours.

Government Expenses:

Reviewing Time/Hours: 2.

Responses per Year: 17.

Review Time per Year: 34 hours.

Average Wages per Hour: $42.5.

Wages per Year: $1,445.

Benefits & Overhead: 20%.

Total Government Cost: $1,734.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–00511 Filed 1–12–18; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2017–6009]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB Review and Comments Request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the paperwork Reduction Act of 1995.

By neutralizing the effect of export credit insurance and guarantees offered by foreign governments and by absorbing credit risks that the private section will not accept, EXIM enables U.S. exporters to compete fairly in foreign markets on the basis of price and product. This collection of information is necessary to determine eligibility of the applicant for EXIM support.

This form is used by a financial institution (or broker acting on its behalf) in order to obtain approval for non-honoring coverage of short-term letters of credit. The information received provides EXIM staff with the information necessary to make a determination of the eligibility of the applicant and transaction for EXIM assistance under its programs.

The application can be viewed at *http://www.exim.gov/sites/default/files/pub/pending/eib92-34.pdf.*

DATES: Comments should be received on or before February 15, 2018 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 92–34) or by mail to Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB–3048–0009.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–34 Application for Short-Term Letter of Credit Insurance Policy.

OMB Number: 3048–0009.

Type of Review: Regular.

Need and Use: The information collected, pursuant to 12 U.S.C. Sec. 635(a)(1), will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 11.

Estimated Time per Respondent: 1 hours.

Annual Burden Hours: 48 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 11 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $468 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $561.

Bassam Doughman,

IT Specialist.

[FR Doc. 2018–00509 Filed 1–12–18; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2018–N–1]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adjusted the cap on average total assets that is used in determining whether a Federal Home Loan Bank (Bank) member qualifies as a ''community financial institution'' (CFI) to $1,173,000,000, based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL). These changes took effect on January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Kaitlin Hildner, Division of Federal Home Loan Bank Regulation, (202) 649–3329, *Kaitlin.Hildner@fhfa.gov;* or Eric M. Raudenbush, Associate General Counsel, (202) 649–3084, *Eric.Raudenbush@fhfa.gov,* (not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the statutory definition of a CFI certain advantages over non-CFI insured depository institutions in qualifying for Bank membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.[1] Section 2(10)(A) of the Bank Act and § 1263.1 of FHFA's regulations define a CFI as any Bank member the deposits of which are insured by the Federal Deposit Insurance Corporation and that has average total assets below the statutory cap.[2] The Bank Act was amended in 2008 to set the statutory cap at $1 billion and to require FHFA to adjust the cap annually to reflect the percentage increase in the CPI–U, as published by the DOL.[3] For 2017, FHFA set the CFI asset cap at $1,148,000,000, which reflected a 1.7 percent increase over 2016, based upon the increase in the CPI–U between 2015 and 2016.[4]

II. The CFI Asset Cap for 2018

As of January 1, 2018, FHFA has increased the CFI asset cap to $1,173,000,000, which reflects a 2.2 percent increase in the unadjusted CPI–U from November 2016 to November 2017. Consistent with the practice of other Federal agencies, FHFA bases the annual adjustment to the CFI asset cap on the percentage increase in the CPI–U from November of the year prior to the preceding calendar year to November of the preceding calendar year, because the November figures represent the most recent available data as of January 1st of the current calendar year. The new CFI asset cap was obtained by applying the percentage increase in the CPI–U to the unrounded amount for the preceding year and rounding to the nearest million, as has been FHFA's practice for all previous adjustments.

In calculating the CFI asset cap, FHFA uses CPI–U data that have not been seasonally adjusted (*i.e.,* the data have not been adjusted to remove the estimated effect of price changes that normally occur at the same time and in about the same magnitude every year). The DOL encourages use of unadjusted CPI–U data in applying ''escalation'' provisions such as that governing the CFI asset cap, because the factors that are used to seasonally adjust the data are amended annually, and seasonally adjusted data that are published earlier are subject to revision for up to five years following their original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered.

Dated: January 8, 2018.

Andre D. Galeano,

Deputy Director, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency.

[FR Doc. 2018–00618 Filed 1–12–18; 8:45 am]

BILLING CODE 8070–01–P

[1] *See* 12 U.S.C. 1424(a), 1430(a).

[2] *See* 12 U.S.C. 1422(10)(A); 12 CFR 1263.1.

[3] *See* 12 U.S.C. 1422(10)(B); 12 CFR 1263.1 (defining the term *CFI asset cap*).

[4] *See* 82 FR 6551 (Jan. 19, 2017).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

January 12, 2018, 3:30 p.m.

Agenda

Federal Retirement Thrift Investment Board Member Meeting, Telephonic.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED: Information covered under 5 U.S.C. 552b (c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: January 11, 2018.

Dharmesh Vashee,

Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2018–00706 Filed 1–11–18; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend for three years the current PRA clearances for information collection requirements contained in the Commission's rules and regulations under the Wool Products Labeling Act of 1939 (Wool Rules). The clearance expires on April 30, 2018.

DATES: Comments must be received on or before March 19, 2018.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Wool Rules: FTC File No. P072108'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/woolrulespra1* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Jock K. Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–9528, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–2984.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require.

''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's rules and regulations under the Wool Products Labeling Act of 1939 (''Wool Rules''), 16 CFR part 300 (OMB Control Number 3084–0100).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before March 19, 2018.

Burden Estimates

Staff's burden estimates for the Wool Rules are based on data from the Department of Commerce's Bureau of the Census, the International Trade Commission, the Department of Labor's Bureau of Labor Statistics (BLS), and data or other input from the main industry association, the American Apparel and Footwear Association (AAFA), and from *SICCode.com*, which specializes in the business classification of SIC (Standard Industrial Classification) and NAICS (North American Industry Classification System) codes for business identification, verification, and targeting. The AAFA, a national trade association which represents U.S. apparel, footwear and other sewn products companies and their suppliers, has stated that ''[t]he use of labels on textiles and apparels is beneficial to consumers, manufacturers, and business in general as it allows for the necessary flow of information along the supply chain.'' [1] The relevant information collection requirements in these rules and staff's corresponding burden estimates follow. The estimates address the number of hours needed and the labor costs incurred to comply with the requirements. Staff believes that a significant portion of hours and labor costs currently attributable to burden below are time and financial resources usually and customarily incurred by persons in the course of their regular activity (*e.g.,* industry participants already have and/or would have care labels regardless of the rule(s)) and could be excluded from PRA-related burden.[2]

The Wool Products Labeling Act of 1939 (''Wool Act'') [3] prohibits the misbranding of wool products. The Wool Rules establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Rules.

Estimated Annual Hours Burden: 1,880,000 hours (160,000 recordkeeping hours + 1,720,000 disclosure hours).

Recordkeeping: Staff estimates that approximately 4,000 wool firms are subject to the Wool Rules' recordkeeping requirements. Based on an average annual burden of 40 hours per firm, the total recordkeeping burden is 160,000 hours.

Disclosure: Approximately 8,000 wool firms, producing or importing about 600,000,000 wool products annually, are subject to the Wool Rules' disclosure requirements. Staff estimates the burden of determining label content to be 30 hours per year per firm, or a total of 240,000 hours, and the burden of drafting and ordering labels to be 60 hours per firm per year, or a total of 480,000 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 40 percent of all affected products. For the remaining 360,000,000 items (60 percent of 600,000,000), the process is semi-automated and requires an average of approximately ten seconds per item, for a total of 1,000,000 hours per year. Thus, the total estimated annual burden for all firms is 1,720,000 hours (240,000 hours for determining label content + 480,000 hours to draft and order labels + 1,000,000 hours to attach labels). Staff believes that any additional burden associated with advertising disclosure requirements would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated Annual Cost Burden: $16,380,000, rounded to the nearest thousand (solely relating to labor costs). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$ 28.00	240,000	$6,720,000
Draft and order labels	18.00	480,000	8,640,000
Attach labels	[4] 5.50	1,000,000	5,500,000
Recordkeeping	18.00	160,000	2,880,000
Total	.....	.....	23,740,000

Staff believes that there are no current start-up costs or other capital costs associated with the Wool Rules. Because the labeling of wool products has been an integral part of the manufacturing process for decades, manufacturers have

[1] Page one from comment by Kevin M. Burke, President and CEO, American Apparel & Footwear Association, March 26, 2012, *Advance Notice of Proposed Rulemaking; Request for Public Comment; Rules and Regulations under the Wool Products Labeling Act of 1939;* 77 FR 4498 (Jan. 30, 2012).

[2] 5 CFR 1320.3(b)(2).

[3] 15 U.S.C. 68 *et seq.*

[4] For imported products, the labels generally are attached in the country where the products are manufactured. According to information compiled by an industry trade association using data from the U.S. Department of Commerce, International Trade Administration and the U.S. Census Bureau, approximately 97.5% of apparel used in the United States is imported. With the remaining 2.5% attributable to U.S. production at an approximate domestic hourly wage of $11 to attach labels, staff has calculated a weighted average hourly wage of $5.50 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for the year ending in September 2014 compiled by the Office of Textiles and Apparel, International Trade Administration. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on 2012 data from the U.S. Department of Labor, Bureau of Labor Statistics. *See* Table 1.1 Indexes of hourly compensation costs in manufacturing, U.S. dollar basis, 1996–2012 (Index, U.S. = 100) available at: *http://www.bls.gov/fls/#compensation.*

in place the capital equipment necessary to comply with the Rules. Based on knowledge of the industry, staff believes that much of the information required by the Wool Act and Rules would be included on the product label even absent their requirements. Similarly, recordkeeping and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Rules.

Request for Comments

You can file a comment online or on paper. March 19, 2018. Write ''Wool Rules: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.* Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/woolrulespra1* by following the instructions on the web based form. If this Notice appears at *https://www.regulations.gov,* you also may file a comment through that website.

If you file your comment on paper, write ''Wool Rules: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission website at *https://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 19, 2018. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *https://www.ftc.gov/site-information/privacy-policy.*

David C. Shonka,

Acting General Counsel.

[FR Doc. 2018–00539 Filed 1–12–18; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend for three years the current PRA clearances for information collection requirements contained in the Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended (Care Labeling Rule). The clearance expires on April 30, 2018.

DATES: Comments must be received on or before March 19, 2018.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Care Labeling Rule: FTC File No. P072108'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/carelabelingrulepra1* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–9528, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means

agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended (Care Labeling Rule), 16 CFR 423 (OMB Control Number 3084–0103).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before March 19, 2018.

Burden Estimates

Staff's burden estimates are based on data from the Department of Commerce's Bureau of the Census, the International Trade Commission, the Department of Labor's Bureau of Labor Statistics (BLS), and data or other input from the main industry association, the American Apparel and Footwear Association (AAFA), and from *SICCode.com,* which specializes in the business classification of SIC (Standard Industrial Classification) and NAICS (North American Industry Classification System) codes for business identification, verification, and targeting. The AAFA, a national trade association which represents U.S. apparel, footwear and other sewn products companies and their suppliers, has stated that ''[t]he use of labels on textiles and apparels is beneficial to consumers, manufacturers, and business in general as it allows for the necessary flow of information along the supply chain.'' [1] The relevant information collection requirements and staff's corresponding burden estimates follow. The estimates address the number of hours needed and the labor costs incurred to comply with the requirements. Staff believes that a significant portion of hours and labor costs currently attributable to burden below are time and financial resources usually and customarily incurred by persons in the course of their regular activity (*e.g.,* industry participants already have and/or would have care labels regardless of the rule) and could be excluded from PRA-related burden.[2]

The Care Labeling Rule requires manufacturers and importers to attach a permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

Estimated annual hours burden: 32,600,587 hours (solely relating to disclosure [3]).

Staff estimates that approximately 10,744 manufacturers or importers of textile apparel, producing about 18.4 billion textile garments annually, are subject to the Rule's disclosure requirements. The burden of developing proper care instructions may vary greatly among firms, primarily based on the number of different lines of textile garments introduced per year that require new or revised care instructions. Staff estimates the burden of determining care instructions to be 100 hours each year per firm, for a cumulative total of 1,074,400 hours. Staff further estimates that the burden of drafting and ordering labels is 80 hours each year per firm, for a total of 859,520 hours. Staff believes that the process of attaching labels is fully automated and integrated into other production steps for about 40 percent of the approximately 18.4 billion garments that are required to have care instructions on permanent labels.[4] For the remaining 11.04 billion items (60 percent of 18.4 billion), the process is semi-automated and requires an average of approximately ten seconds per item, for a total of 30,666,667 hours per year. Thus, the total estimated annual burden for all firms is 32,600,587 hours (1,074,400 hours to determine care instructions + 859,520 hours to draft and order labels + 30,666,666 hours to attach labels).

Estimated annual cost burden: $214,221,229 (solely relating to labor costs). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine care instructions	$28.00	1,074,400	$30,083,200
Draft and order labels	18.00	859,520	15,471,360
Attach labels	[5] 5.50	30,666,667	168,666,669
Total	.....	.....	214,221,229

Staff believes that there are no current start-up costs or other capital costs associated with the Care Labeling Rule. Because the labeling of textile products has been an integral part of the manufacturing process for decades,

[1] Page one from comment by Kevin M. Burke, President and CEO, American Apparel & Footwear Association, March 26, 2012, *Advance Notice of Proposed Rulemaking; Request for Public Comment; Rules and Regulations under the Wool Products Labeling Act of 1939*; 77 FR 4498 (Jan. 30, 2012).

[2] 5 CFR 1320.3(b)(2).

[3] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies rely on current technical literature or past experience.

[4] About 1 billion of the 19.4 billion garments produced annually are either not covered by the Care Labeling Rule (gloves, hats, caps, and leather, fur, plastic, or leather garments) or are subject to an exemption that allows care instructions to appear on packaging (hosiery).

[5] For imported products, the labels generally are attached in the country where the products are manufactured. According to information compiled by an industry trade association using data from the U.S. Department of Commerce, International Trade Administration and the U.S. Census Bureau, approximately 97.5% of apparel used in the United States is imported. With the remaining 2.5% attributable to U.S. production at an approximate domestic hourly wage of $11 to attach labels, staff has calculated a weighted average hourly wage of $5.50 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for the year ending in September 2014 compiled by the Office of Textiles and Apparel, International Trade Administration. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on 2012 data from the U.S. Department of Labor, Bureau of Labor Statistics. See Table 1.1 Indexes of hourly compensation costs in manufacturing, U.S. dollar basis, 1996–2012 (Index, U.S. = 100) available at: *http://www.bls.gov/fls/#compensation.*

manufacturers have in place the capital equipment necessary to comply with the Rule's labeling requirements. Based on knowledge of the industry, staff believes that much of the information required by the Rule would be included on the product label even absent those requirements.

Request for Comments

You can file a comment online or on paper. March 19, 2018. Write ''Care Labeling Rule: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.* Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/carelabelingrulepra1* by following the instructions on the web based form. If this Notice appears at *https://www.regulations.gov,* you also may file a comment through that website.

If you file your comment on paper, write ''Care Labeling Rule: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 19, 2018. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *https://www.ftc.gov/site-information/privacy-policy.*

David C. Shonka,

Acting General Counsel.

[FR Doc. 2018–00538 Filed 1–12–18; 8:45 am]

BILLING CODE 6750–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Medicaid and CHIP Payment and Access Commission Nominations

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) established the Medicaid and CHIP Payment and Access Commission (MACPAC) to review Medicaid and CHIP access and payment policies and to advise Congress on issues affecting Medicaid and CHIP. CHIPRA gave the Comptroller General of the United States responsibility for appointing MACPAC's members. GAO is now accepting nominations for MACPAC appointments that will be effective May 1, 2018. Letters of nomination and resumes should be submitted no later than February 5, 2018 to ensure adequate opportunity for review and consideration of nominees prior to the appointment of new members. Nominations should be sent to the email or mailing address listed below. Acknowledgement of submissions will be provided within a week of submission. Please contact Will Black at (202) 512–6482 if you do not receive an acknowledgement.

ADDRESSES:

Email: MACPACappointments@gao.gov.

Mail: U.S. GAO, Attn: MACPAC Appointments, 441 G Street NW, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT:

GAO: Will Black, (202) 512–6482, *BlackW@gao.gov,* Office of Public Affairs, (202) 512–4800.

Public Law 111–3, Section 506; 42 U.S.C. 1396.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2018–00117 Filed 1–12–18; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR). This meeting is open to the public. The public is welcome to listen to the meeting via Adobe Connect. Pre-registration is required by clicking the links below. WEB ID: (100 seats) *https://*

adobeconnect.cdc.gov/e9qxcduyr42/event/registration.html; Dial in number: 866–817–6648; Participant code: 48225449 (100 seats).

DATES: The meeting will be held on February 13, 2018, 2:00 p.m. to 5:00 p.m., EST.

ADDRESSES: Centers for Disease Control and Prevention (CDC), Global Communications Center, Building 21, Room 6116, 1600 Clifton Road NE, Atlanta, Georgia 30329.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop D–44, Atlanta, Georgia 30329, Telephone: (404) 639–7450; Facsimile: (404) 471–8772; Email: *OPHPR.BSC.Questions@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review for OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters to be Considered: The agenda will include briefings and BSC deliberation on the following topics: interval updates from OPHPR Divisions and Offices, including responses to issues raised by the Board during the October 2017 in-person BSC, OPHPR meeting; updates from the Biological Agent Containment working group; and proposed agenda items for the May 9–10, 2018, in-person BSC meeting. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–00540 Filed 1–12–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act), the CDC, announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number at 1–866–659–0537; the pass code is 9933701. The conference line has 150 ports for callers.

DATES: The meeting will be held on February 21, 2018, 11:00 a.m. to 1:00 p.m. EST.

ADDRESSES: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Theodore Katz, MPA, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513)533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2016, pursuant to Executive Order 13708, and will expire on March 22, 2018.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; Plans for the April 2018 Advisory Board Meeting; and Advisory Board Correspondence. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–00541 Filed 1–12–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Interagency Committee on Smoking and Health (ICSH)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the ICSH. The ICSH consists of 5 experts in fields that represent private entities involved in informing the public about the health effects of smoking. Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of the health effects of smoking. Additionally, desirable qualifications include: (1) Knowledge of the intersection of behavioral health conditions (mental and/or substance use disorders) and tobacco use/tobacco control; and/or (2) familiarity and expertise in developing or contributing to the development of policies and/or programs for reducing health disparities in tobacco use in the United States; and/or (3) knowledge of emerging tobacco control policies and experience in analyzing, evaluating, and interpreting Federal, State and/or local health or regulatory policy. Federal employees will not be considered for membership. Members may be invited to serve for four-year terms.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of ICSH objectives *https://www.cdc.gov/tobacco/about/icsh/index.htm.*

DATES: Nominations for membership on the ICSH must be received no later than February 28, 2018. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Monica Swann, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), CDC, 395 E. Street SW, Room 9167, Washington, DC 20024, emailed (recommended) to *mswann@cdc.gov,* or faxed to (202) 245–0554.

FOR FURTHER INFORMATION CONTACT: Simon McNabb, Designated Federal Official (DFO), ICSH, Office on Smoking and Health, NCCDPHP, CDC, 395 E. Street SW, Room 9167, Washington, DC 20024, telephone (202) 245–0550; *GMcNabb@cdc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ICSH membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July 2018, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–00542 Filed 1–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP) PAR 13–129, National Institute for Occupational Safety and Health (NIOSH) Member Conflict Review.

Date: March 1, 2018.

Time: 1:00 p.m.–4:00 p.m., EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

FOR FURTHER INFORMATION CONTACT: Nina Turner, Ph.D., Scientific Review Officer, Office of Extramural Programs, NIOSH, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, Telephone (304) 285–5976; *nxt2@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2018–00543 Filed 1–12–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10054]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. 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 or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by February 15, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* New Technology Payments for APCs Under the Outpatient Prospective Payment System; *Use:* CMS needs to keep pace with emerging new technologies and make them accessible to Medicare beneficiaries in a timely manner. It is necessary that we continue to collect appropriate information from interested parties such as hospitals, medical device manufacturers, pharmaceutical companies and others that bring to our attention specific services that they wish us to evaluate for New Technology APC payment. We are making no changes to the information that we collect. The information that we seek to continue to collect is necessary to determine whether certain new services are eligible for payment in New Technology APCs, to determine appropriate coding and to set an appropriate 4 payment rate for the new technology service. The intent of these provisions is to ensure timely beneficiary access to new and appropriate technologies. *Form Number:* CMS–10054 (OMB control number: 0938–0860); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other For-profits); *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 160. (For policy questions regarding this collection contact Joshua McFeeters at 410–786–9732.)

Dated: January 10, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–00621 Filed 1–12–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10106]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. 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 or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by February 15, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Authorization to Disclose Personal Health Information; *Use:* Unless permitted or required by law, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (§ 164.508) prohibits Medicare (a HIPAA covered entity) from disclosing an individual's protected health information without a valid authorization. In order to be valid, an authorization must include specified core elements and statements. Medicare will make available to Medicare beneficiaries a standard, valid authorization to enable beneficiaries to request the disclosure of their protected health information. This standard authorization will simplify the process of requesting information disclosure for beneficiaries and minimize the response time for Medicare. Form CMS–10106, the Medicare Authorization to Disclose Personal Health Information, will be used by Medicare beneficiaries to authorize Medicare to disclose their protected health information to a third party. *Form Number:* CMS–10106 (OMB control number: 0938–0930); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 2,200,000; *Total Annual Responses:* 2,200,000; *Total Annual Hours:* 550,000. (For policy questions regarding this collection contact Sam Jenkins at 410–786–3261.)

Dated: January 9, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–00486 Filed 1–12–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB NO.: 0970–0440]

Proposed Information Collection Activity; Comment Request; Job Search Assistance (JSA) Strategies Evaluation—Extension

Description: The Administration for Children and Families (ACF), is proposing the extension without changes to an existing data collection activity as part of the Job Search Assistance (JSA) Strategies Evaluation. The JSA evaluation will aim to determine which JSA strategies are most effective in moving TANF applicants and recipients into work and will produce impact and implementation findings. To date, the study has randomly assigned individuals to contrasting JSA approaches. The study will next compare participant employment and earnings to determine the relative effectiveness of these strategies. The project will also report on the implementation of these strategies, including measures of services participants receive under each approach, as well as provide operational lessons gathered directly from practitioners.

Data collection efforts previously approved for JSA, include: Data collection activities to document program implementation, a staff survey, a baseline information form for program participants, and a follow-up survey for JSA participants approximately 6 months after program enrollment. Approval for these activities expires on February 28, 2018.

This **Federal Register** Notice provides the opportunity to comment on the extension of the 6-month follow-up survey to allow follow-up data to be collected for all study participants. Although the enrollment period was originally estimated to span 12 months, it took 18 months to complete enrollment, leaving insufficient time to complete the 6-month follow-up survey. A four-month extension is requested in order to allow individuals randomly assigned between June and August 2017 to complete the follow-up survey in the same timeframe as earlier enrollees. The purpose of the survey is to follow-up with study participants and document their job search assistance services and experiences including their receipt of job search assistance services, their knowledge and skills for conducting a job search, the nature of their job search process, including tools and services used to locate employment, and their search outputs and outcomes, such as the number of applications submitted, interviews attended, offers received and jobs obtained. In addition, the survey will provide an opportunity for respondents to provide contact data for possible longer-term follow-up. There are no changes to the currently approved instruments.

Respondents: JSA study participants.

Annual Burden Estimates

This extension is specific to the 6-month survey and covers the remaining 766 participants that may be completing the six-month follow up survey during the four-month extension period. All other information collection under 0970–0440 will be complete by the original OMB expiration date of February 28, 2018.

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Extension of Previously Approved Information Collection				
6-Month Follow-Up Survey	766	1	.333	255

Estimated Total Annual Burden Hours: 255.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2018–00612 Filed 1–12–18; 8:45 am]

BILLING CODE 4184–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5569]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 15, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0442. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Device Tracking—21 CFR Part 821

OMB Control Number 0910–0442—Extension

Section 211 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) became effective on February 19, 1998. FDAMA amended the previous medical device tracking provisions under section 519(e)(1) and (2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360i(e)(1) and (2)) that were added by the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629). Unlike the tracking provisions under SMDA, which required tracking of any medical device meeting certain criteria, FDAMA allows FDA discretion in applying tracking provisions to medical devices meeting certain criteria and provides that tracking requirements for medical devices can be imposed only after FDA issues an order. In the **Federal Register** of February 8, 2002 (67 FR 5943), FDA issued a final rule that conformed existing tracking regulations to changes in tracking provisions effected by FDAMA under part 821 (21 CFR part 821).

Section 519(e)(1) of the FD&C Act, as amended by FDAMA, provides that FDA may require by order that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''), or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility.

Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary) use the data to: (1) Expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, the regulations include provisions for: (1) Exemptions and variances; (2) system and content requirements for tracking; (3)

obligations of persons other than device manufacturers, *e.g.,* distributors; (4) records and inspection requirements; (5) confidentiality; and (6) record retention requirements.

Respondents for this collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

The annual hourly burden for respondents involved with medical device tracking is estimated to be 615,380 hours per year. The burden estimates cited in tables 1 through 3 are based on the number of device tracking orders issued in the last 3 years, an average of 12 tracking orders annually. FDA estimates that approximately 22,000 respondents may be subject to tracking reporting requirements.

Under § 821.25(a), device manufacturers subject to FDA tracking orders must adopt a tracking method that can provide certain device, patient, and distributor information to FDA within 3 to 10 working days. Assuming one occurrence per year, FDA estimates it would take a firm 20 hours to provide FDA with location data for all tracked devices and 56 hours to identify all patients and/or multiple distributors possessing tracked devices.

Under § 821.25(d) manufacturers must notify FDA of distributor noncompliance with reporting requirements. Based on the number of audits manufacturers conduct annually, FDA estimates it would receive no more than one notice in any year, and that it would take 1 hour per incident.

Under § 821.30(c)(2), multiple distributors must provide data on current users of tracked devices, current device locations, and other information, upon request from a manufacturer or FDA. FDA has not made such a request and is not aware of any manufacturer making a request. Assuming one multiple distributor receives one request in a year from either a manufacturer or FDA, and that lists may be generated electronically, the Agency estimates a burden of 1 hour to comply.

Under § 821.30(d) distributors must verify data or make required records available for auditing, if a manufacturer provides a written request. FDA's estimate of the burden for distributor audit responses assumes that manufacturers audit database entries for 5 percent of tracked devices distributed. Each audited database entry prompts one distributor audit response. Because lists may be generated electronically, FDA estimates a burden of 1 hour to comply.

In the **Federal Register** of October 18, 2017 (82 FR 48516), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Discontinuation of business—821.1(d)	1	1	1	1	1
Exemption or variance—821.2 and 821.30(e)	1	1	1	1	1
Notification of failure to comply—821.25(d)	1	1	1	1	1
Multiple distributor data—821.30(c)(2)	1	1	1	1	1
Total					4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Tracking information—821.25(a)	12	1	12	76	912
Record of tracking data—821.25(b)	12	46,260	555,120	1	555,120
Standard operating procedures—821.25(c) [2]	12	1	12	63	756
Manufacturer data audit—821.25(c)(3)	12	1,124	13,488	1	13,488
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	22,000	1	22,000	1	22,000
Total					592,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One-time burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Acquisition of tracked devices and final distributor data—821.30(a) and (b)	22,000	1	22,000	1	22,000
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	1,100	1	1,100	1	1,100

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Total	.....	.....	.....	.....	23,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this information collection has not changed since the last OMB approval.

This document also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The collections of information found in §§ 821.2(b), 821.25(e), and 821.30(e) have been approved under OMB control number 0910–0191.

Dated: January 9, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–00568 Filed 1–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6877]

Accreditation Scheme for Conformity Assessment of Medical Devices to Food and Drug Administration-Recognized Standards; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''Accreditation Scheme for Conformity Assessment of Medical Devices to FDA-Recognized Standards.'' The purpose of the workshop is to present a draft design of the Accreditation Scheme for Conformity Assessment (ASCA) pilot program. The workshop is intended to discuss and obtain input and recommendations from stakeholders on the draft accreditation scheme, including its goals and scope, a suitable framework and procedures, and requirements to facilitate implementation of an eventual pilot program. The overarching objectives of the ASCA pilot program are to streamline the standards conformity assessment of medical devices and to improve consistency and predictability in the premarket review process where certain FDA recognized standards are used.

DATES: The public workshop will be held on May 22 and 23, 2018, from 9 a.m. to 5 p.m. Submit either electronic or written comments on this public workshop by June 29, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 29, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of June 29, 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–6877 for ''Accreditation Scheme for Conformity Assessment of Medical Devices to FDA-Recognized Standards; Public Workshop; 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: Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5514, Silver Spring, MD 20993–0002, 301–796–6287, *CDRHStandardsStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Medical Device User Fee Amendments of 2017 (MDUFA IV), FDA and industry agreed to establish a Pilot Accreditation Scheme for Conformity Assessment (ASCA) Program for recognizing accredited testing laboratories that evaluate medical devices per certain FDA-recognized standards. Section 514 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d) was amended by adding a new subsection (d) with the title ''Pilot Accreditation Scheme for Conformity Assessment,'' under the FDA Reauthorization Act of 2017 (FDARA). The new section 514(d) authorizes FDA to establish a pilot program under which FDA may select accreditation bodies that can accredit testing laboratories meeting FDA-specified criteria to assess conformance of medical devices to certain FDA-recognized consensus standards under the ASCA pilot program. The goal of this pilot program is to streamline the standards conformity assessment of medical devices during the premarket review process. The objectives of the ASCA pilot include improved consistency and predictability in the premarket review process where certain FDA recognized standards are used.

Traditionally, under section 514(c) of the FD&C Act, FDA has been accepting a manufacturer's self-declaration of conformity to an FDA-recognized consensus standard as part of its premarket submission. Since medical devices are increasingly complex and involve high risks to the patients, such self-declaration of conformity is not always sufficient to guarantee safety and performance, especially when deviations from the standard have been introduced. In addition, testing performed by the independent laboratories or the manufacturers themselves to support the self-declaration of conformity varies depending on the standard being used. As a result, reviewers sometimes need to request and review test reports to ensure requirements of the standard have been met. The ASCA pilot program is designed to address such issues through improved quality and increased confidence in the testing labs to achieve a least burdensome and streamlined regulatory process.

The purpose of this public workshop is to present a draft design of the ASCA scheme. FDA intends to discuss and obtain input and recommendations from stakeholders on the draft scheme, including its goals and scope, its framework and procedures, and requirements as required per FDARA. Public input and feedback gained through this workshop are also intended to aid in the development of a draft ASCA guidance, which is another MDUFA IV commitment.

II. Topics for Discussion at the Public Workshop

This public workshop will consist of both plenary presentations and breakout sessions. A keynote presentation is planned to provide high-level background information about standards use and standards conformity assessment (CA) in medical device regulatory processes, major existing CA programs, and significance of and challenges to national and international harmonization in CA. FDA will present background information about the proposed ASCA pilot program, its objectives and plans, what issues it aims to resolve and how. Following the plenary presentations, multiple breakout sessions will be convened. Each breakout session is designed to focus on a major ASCA-related topic. The topics to be discussed include:

- Performance metrics to measure the success and impact of the ASCA
- Additional requirements for accrediting bodies beyond the standard (ISO/IEC 17011:2017 Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies, available at *https://www.iso.org/standard/67198.html*) and for testing organizations beyond the standard (ISO/IEC 17025:2017 General requirements for the competence of testing and calibration laboratories, available at *https://www.iso.org/standard/66912.html*)
- Criteria for selection of pilot standards for ASCA
- Roles that testing organizations can play for ASCA

A detailed agenda will be posted on the following website in advance of the workshop: *https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm;* select this event from the list of items provided. The overarching objectives of the ASCA pilot program are to streamline the standards conformity assessment of medical devices, and improve consistency and predictability in the premarket review process where certain FDA recognized standards are used.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar (*https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*) and select this event from the list of items provided. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by May 14, 2018, 4 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5231, Silver Spring, MD 20993–0002, 301–796–5661, or email: *Susan.Monahan@fda.hhs.gov,* no later than May 8, 2018.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during a public comment session or participate in a specific session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by May 16, 2018, midnight Eastern Time. All requests to make oral presentations must be received by the close of registration on May 14, 2018, 4 p.m. Eastern Time. If selected for presentation, any presentation materials must be emailed to Scott Colburn (see **FOR FURTHER INFORMATION CONTACT**) no later than May 18, 2018, midnight Eastern Time. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast. The webcast link will be available on the registration web page after May 14, 2018. Please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar (*https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*) and select this event from the list of items provided. Organizations are requested to register all participants, but to view using one connection per location.

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 website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.*

Dated: January 9, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–00551 Filed 1–12–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the January meeting, the Research Subcommittee will be taking charge of the theme, focusing on the process from targets to treatments. The Council will hear speakers on the preclinical pipeline, the clinical trial pipeline, and the industry perspective. The meeting will also include discussion of a driver diagram to guide the Council's future work, updates and a report from the October Care Summit, and federal workgroup updates.

DATES: The meeting will be held on January 26, 2018 from 9:00 a.m. to 5:00 p.m. EDT.

ADDRESSES: The meeting will be held in Room 800 in the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Comments: Time is allocated in the afternoon on the agenda to hear public comments. The time for oral comments will be limited to two (2) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Rohini Khillan, OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT:

Rohini Khillan (202) 690–5932, *rohini.khillan@hhs.gov.* Note: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''January 26 Meeting Attendance'' in the Subject line by Tuesday, January 16, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: During the January meeting, the Research Subcommittee will be taking charge of the theme, focusing on the process from targets to treatments. The Council will hear speakers on the preclinical pipeline, the clinical trial pipeline, and the industry perspective. The meeting will also include discussion of a driver diagram to guide the Council's future work, updates and a report from the October Care Summit, and federal workgroup updates.

Procedure and Agenda: This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live.*

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: January 9, 2018.

John R. Graham,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2018–00480 Filed 1–12–18; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP–2018–0001]

Notice of Domestic Interested Party Petitioner's Notice of Desire To Contest the Tariff Classification Determination of Certain Steel Tube Fittings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of petitioner's notice of desire to contest classification determination.

SUMMARY: This document provides notice that a domestic interested party has filed a timely notice of its desire to contest a U.S. Customs and Border Protection decision regarding the classification of certain imported steel tube fittings.

DATES: January 16, 2018.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection at (202) 325–0092.

SUPPLEMENTARY INFORMATION:

Background

This document concerns the tariff classification of certain steel tube fittings by U.S. Customs and Border Protection (CBP) and the desire of a domestic interested party to contest CBP's classification decision.

Classification of Steel Tube Fittings

Merchandise imported into the customs territory of the United States is classified under the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification of merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. *See* Section 1204 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 (August 23, 1988); 19 U.S.C. 3004(c).

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, provided such headings or notes do not otherwise require, then according to the other GRIs. *See* GRI 1, HTSUS (2017).

GRI 6 prescribes that, for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis,* according to GRIs 1 to 5, on the understanding that only subheadings at the same level are comparable. *See* GRI 6, HTSUS (2017).

The Explanatory Notes to the Harmonized Commodity Description and Coding System (''Harmonized System'') represent the official interpretation of the World Customs Organization (established in 1952 as the ''Customs Cooperation Council'') on the scope of each heading. *See* H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. 549 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1582; Treasury Decision (T.D.) 89–80, 54 FR 35127, 35128 (August 23, 1989). Although not binding on the contracting parties to the Harmonized System Convention or considered to be dispositive in the interpretation of the Harmonized System, it is CBP's position that the Explanatory Notes should be consulted on the proper scope of the Harmonized System. T.D. 89–80, 54 FR at 35128.

In New York ruling letter (NY) E83408, dated July 8, 1999, a steel tube fitting from Taiwan is described as ''. . . a cold forged nonalloy steel male threaded connector body having a center hex nut, one flare tube end and one male pipe end. These tube fittings connect a piece of rigid tubing to a valve, manifold or another piece of rigid tubing in a hydraulic system.'' The U.S. Customs Service (U.S. Customs and Border Protection's predecessor agency) classified the steel tube fitting in subheading 7307.99.50, HTSUS (1999), which provides for ''Tube or pipe fittings (for example couplings, elbows, sleeves), of iron or steel: Other: Other: Other.'' In 1999, the column one, general rate of duty for subheading 7307.99.50, HTSUS, was 4.3 percent *ad valorem.*

Filing of Domestic Interested Party Petition

On October 29, 2014, counsel filed a petition on behalf of Brennan Industries, Inc. (''Petitioner''), under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that CBP reclassify the articles under consideration (and as described in NY E83408) in subheading 8412.90.90, HTSUS (2014), which provides for ''Other engines and motors, and parts thereof: Parts: Other.'' The column one, general rate of duty for subheading 8412.90.90, HTSUS, in 1999, 2014 and today is free.

On February 9, 2016, CBP published a Notice of Receipt of a Domestic Interested Party Petition in the **Federal Register** (81 FR 6880). The notice invited written comments on the petition from interested parties. The comment period closed on April 11, 2016. One comment was timely received in response to this notice, which was submitted by the Petitioner. The comment reiterated the Petitioner's position that the merchandise is classified in subheading 8412.90.90, HTSUS, as other parts of other engines and motors.

Decision on Petition and Notice of Petitioner's Desire To Contest

In HQ ruling letter H259349, dated October 5, 2016 (a copy of this ruling can be found online at *https://www.regulations.gov* under Docket No. USCBP–2016–0007), CBP denied the domestic party petition and affirmed the classification determination set forth in the previously issued ruling letter (*i.e.,* NY E83408). Consistent with the determination in NY E83408, CBP determined in H259349 that the articles at issue are parts of general use of heading 7307, HTSUS, as defined by Note 2 to Section XV. Accordingly, these parts are excluded from Section XVI of the HTSUS because, by operation of Note 1(g) to Section XVI, a good cannot be a part of general use of Section XV and also be prima facie classifiable as a part in Section XVI.

In HQ H259349, CBP also notified the Petitioner of its right to contest the decision by filing a notice with CBP indicating its desire to contest the decision, and that the notice must be filed not later than thirty days from the date of issuance of the ruling letter, pursuant to 19 U.S.C. 1516(c) and § 175.23, CBP Regulations (19 CFR 175.23).

By letter dated November 2, 2016, the Petitioner filed a timely notice under 19 U.S.C. 1516(c) and 19 CFR 175.23 of its desire to contest CBP's decision in HQ H259349 regarding the classification of the steel tube fittings under consideration. The Petitioner has designated, under 19 U.S.C. 1516(c) and 19 CFR 175.23, eight (8) ports of entry where Petitioner believes that merchandise of the kind covered by the petition is being imported into the United States, and at which the Petitioner desires to protest. The ports of entry are as follows:

- Seattle, WA
- Tacoma, WA
- Long Beach, CA

- Los Angeles, CA
- New York, NY
- Savannah, GA
- Houston, TX
- Charleston, SC

Upon application by the Petitioner to any of the Port Directors of the ports listed above, the Port Director(s) shall make available to the Petitioner information on merchandise of the kind covered by the petition (as described in NY E83408) entered after the date of publication of this notice in order that the petitioner may determine whether the entry presented raises the issue involved in the petition. *See* 19 U.S.C. 1516(c); 19 CFR 175.25. By this notice, Port Directors at these ports are directed to notify the Petitioner by mail when the first of such entries is liquidated. *See* 19 U.S.C. 1516(c) and 19 CFR 175.25(b).

Authority

This notice is published in accordance with 19 U.S.C. 1516(c) and §§ 175.23 and 175.24 of the CBP Regulations (19 CFR 175.23–24).

Dated: January 10, 2018.

Kevin K. McAleenan,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2018–00577 Filed 1–12–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5997–N–85]

30-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure With Service Members Act

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* February 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 12, 2017 at 82 FR 42831.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure with Service Members Act.

OMB Approval Number: 2502–0584.

Type of Request: Extension of a currently approved collection.

Form Number:

HUD–2008–5—FHA Save Your Home Tips to Avoid Foreclosure Brochure
HUD 9539—Request for Occupied Conveyance
HUD 92070—Servicemembers Civil Relief Act Notice Disclosure
HUD 92068–A—Monthly Delinquent Loan Report
HUD–50012—Mortgagee's Request for Extensions of Time

Description of the need for the information and proposed use: This information collection covers the mortgage loan servicing of FHA-insured loans that are delinquent, in default or in foreclosure. The data and information provided is essential for managing HUD's programs and the FHA's Mutual Mortgage Insurance Fund (MMI).

Respondents (i.e. affected public): Business or other for-profit.

Estimated Number of Respondents: 7806.

Estimated Number of Responses: 38,291,776.

Frequency of Response: On occasion.

Average Hours per Response: 7 minutes to 8 minutes.

Total Estimated Burdens: 3,984,411,694,068.48.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 20, 2017.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–00593 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–39]

60-Day Notice of Proposed Information Collection: Budget-Based Rent Increases

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Harry Messner at *harry.messner@hud.gov* or telephone 202–402–2626. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Budget Based Rent Increases.

OMB Approval Number: 2502–0324.

Type of Request: Extension..

Form Number: HUD–92457–a.

Description of the need for the information and proposed use: Budget worksheet will be used by HUD Field staff, along with other information submitted by owners, as a tool for determining the reasonableness of rent increases. The purposes of the worksheet and the collection of budgetary information are to allow owners to plan for expected increases in expenditures.

Respondents: Owners and project managers of HUD subsidized properties.

Estimated Number of Respondents: 974.

Estimated Number of Responses: 974.

Frequency of Response: Annually.

Average Hours per Response: 5 hours 20 minutes.

Total Estimated Burdens: 5,191.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 13, 2017.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2018–00590 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–44]

60-Day Notice of Proposed Information Collection: Dispute Resolution Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Pamela Danner, Director of the office of Manufactured Housing and Dispute Resolution, 451 7th Street SW, Washington, DC 20410; email Pamela Danner at *Pamela.B.Danner@hud.gov* or telephone 202–402–7112. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Dispute Resolution Program.

OMB Approval Number: 2502–0562.

Type of Request: Extension.

Form Number: HUD–310–DRSC and HUD–311–DR.

Description of the Need for the Information and Proposed Use: 310–DRSC is used to collect information on an individual state that would like to have a dispute resolution program either as part of their state plan or outside of the state plan. The HUD–311–DR form is used to collect pertinent information from the party seeking dispute resolution.

Respondents (*i.e.* affected public): Individuals or households.

Estimated Number of Respondents: 114.

Estimated Number of Responses: 114.

Frequency of Response: Once per complaint.

Average Hours per Response: 1.5 hourly.

Total Estimated Burdens: 507.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and

clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 14, 2017.

Dana T. Wade,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2018–00588 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5997–N–84]

30-Day Notice of Proposed Information Collection: Public Housing Assessment System (PHAS) Appeals; PHAS Unaudited Financial Statement Submission Extensions; Assisted and Insured Housing Property Inspection Technical Reviews and Database Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* February 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 11, 2017 at 82 FR 47241.

A. Overview of Information Collection

Title of Information Collection: Public Housing Assessment System (PHAS) Appeals; Public Housing and Multifamily Housing Technical Reviews and Database Adjustments; Assisted and Insured Housing property inspection Technical Reviews and Database Adjustments.

OMB Approval Number: 2577–0257.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–52306.

Description of the need for the information and proposed use: The collection of this information supports HUD's ongoing mission to provide safe, decent and affordable housing to lower income households. Accurate assessment information is necessary. PHAs performing poorly may be subject to additional reporting requirements, may receive HUD assistance, and are subject to possible penalties. For the Office of Housing, accurate scores are vital to their monitoring and compliance efforts. Unacceptable property scores result in automatic penalties and referral for enforcement actions.

Pursuant to § 6(j)(2)(A)(iii) of the United States Housing Act of 1937, as amended, HUD established procedures in the Public Housing Assessment System (PHAS) rule for a public housing agencies (PHAs) to appeal a troubled assessment designation (§ 902.69). The PHAS rule in §§ 902.24 and 902.68 also provides that under certain circumstances PHAs may submit a request for a database adjustment and technical review, respectively, of physical condition inspection results.

Pursuant to the Office of Housing Physical Condition of Multifamily Properties regulation at § 200.857(d) and (e), multifamily property owners also have the right, under certain circumstances, to submit a request for a database adjustment and technical review, respectively, of physical condition inspection results.

Appeals, when granted, change assessment scores and designations; database adjustments and technical reviews, when granted, change property scores. These changes result is more accurate assessments.

Section 902.60 of the PHAS rule also provides that, in extenuating circumstances, PHAs may request an extension of time to submit required unaudited financial information. When granted, an extension of time postpones the imposition of sanctions for a late submission.

Respondents (i.e., affected public): Public Housing Agencies (PHAs) and Multifamily Housing property owners (MF POs).

Type	Number of respondents	×	Frequency of response	Total responses	×	Estimated hours	=	Total annual burden hours
Burden Hour Estimates for Respondents for Appeals, TRs and DBAs								
PHA Appeal	151		1	151		5		−755
PHA DBA	189		1	189		8		1,512
Burden Hour Estimates for Respondents for Appeals, TRs and DBAs								
PHA TR	293		1	293		8		2,344
MF PO DBA	189		1	189		8		1,512
MF PO TR	688		1	688		8		5,504
Totals	1,510			1,510				11,627

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 19, 2017.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–00594 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–41]

60-Day Notice of Proposed Information Collection: Application for Mortgagor's Certificate of Actual Cost

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Daniel J. Sullivan, Acting Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, email *Daniel.J.Sullivan@hud.gov,* telephone 202–402–6130. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Application for Mortgagor's Certificate of Actual Cost.

OMB Approval Number: 2502–0112.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–92330.

Description of the Need for the Information and Proposed Use: HUD uses form to obtain data from a mortgagor relative to actual cost of a project. HUD uses the cost information to determine the maximum insurable mortgage for final endorsement of an insured mortgage. Actual cost is defined in section 227c of the National Housing Act. In addition, form HUD–92330 must be accompanied by an audited balance sheet certified by accountant unless the project has less than 40 units, or if it is a refinancing or a purchase of an existing project under 207/223f or 232/223f.

Respondents: 1,206.

Estimated Number of Respondents: 1.

Estimated Number of Responses: 1,206.

Frequency of Response: 1.

Average Hours per Response: 8.

Total Estimated Burden: 9,648.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 13, 2017.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2018–00589 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5997–N–82]

30-Day Notice of Proposed Information Collection: Relocation and Real Property Acquisition Recordkeeping Requirements Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as Amended (URA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* February 15, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of

Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 25, 2017 at 82 FR 40589.

A. Overview of Information Collection

Title of Information Collection: Relocation and Real Property Acquisition Recordkeeping Requirements Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as Amended (URA).

OMB Approval Number: 2506–0121.

Type of Request: Revision with change of a previously approved collection.

Form Number: None.

Description of the Need for the Information and Proposed Use: HUD funded projects involving the acquisition of real property or the displacement of persons as a direct result of acquisition, rehabilitation or demolition are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Agencies receiving HUD funding for such projects are required to document their compliance with the applicable requirements of the URA and its implementing government-wide regulations at 49 CFR 24.

Information collection	Frequency of responses	Number of respondents	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per hour *	Total
Displacements	2,000.00	10.00	20,000.00	5.00	100,000.00	$21.59	$2,159,000.00
Non-Displacements ..	2,000.00	20.00	40,000.00	2.00	80,000.00	21.59	1,727,200.00
Acquisitions	2,000.00	10.00	20,000.00	5.00	100,000.00	21.59	2,159,000.00
Total	.....	.....	80,000.00	.....	280,000.00	.....	6,045,200.00

* Substantially equivalent to a GS–8 step 1 based on OPM pay scale.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 18, 2017.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–00597 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–38]

60-Day Notice of Proposed Information Collection: Land Survey Report for Insured Multifamily Projects (Form HUD–92457)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Daniel J. Sullivan, Deputy Director, Office of Multifamily Production, 451 7th Street SW, Washington, DC 20410; email *daniel.j.sullivan@hud.gov,* or telephone 202–402–6130. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Land Survey Report for Insured Multifamily Projects.

OMB Approval Number: 2502–0010.

Type of Request: Extension of currently approved collection.

Form Number: HUD–92457.

Description of the Need for the Information and Proposed Use: The information collected on Form HUD–

92457 ''HUD Survey Instructions and Report for Insured Multifamily Projects'', is necessary to secure a marketable title and title insurance for the property that provides security for project mortgage insurance furnished under FHA. The information is required to adequately describe the property to ensure compliance with various regulatory provisions, *i.e.,* flood hazard requirements and the integrity of property lines and possible encroachments of property lines.

Respondents: (*i.e.* affected public): Profit motivated, non-profit.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 400.

Frequency of Response: 2.

Average Hours per Response: 0.50.

Total Estimated Burden: 200.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 18, 2017.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2018–00591 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–36]

60-Day Notice of Proposed Information Collection: Local Appeals to Single-Family Mortgage Limits

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* March 19, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Kevin Stevens, Director, HMID, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Kevin Stevens at *Kevin.L.Stevens@hud.gov* or telephone 202–708–2121. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Stevens.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Local Appeals to Single-Family Mortgage Limits.

OMB Approval Number: 2502–0302.

Type of Request: Extension.

Form Number: N/A.

Description of the need for the information and proposed use: Any interested party may submit a request for the mortgage limits to be increased in a particular area if they believe that the present limit does not accurately reflect the higher sales prices in that area. Any request for an increase must be accompanied by sufficient housing sales price data to justify higher limits. This allows HUD the opportunity to examine additional data to confirm or adjust the set loan limit for a particular area.

Respondents (i.e. affected public): Business and other for-profit.

Estimated Number of Respondents: 0.

Estimated Number of Responses: 0.

Frequency of Response: 0 between 2014–2017.

Average Hours per Response: 7.

Total Estimated Burdens: 7.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 14, 2017.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2018–00592 Filed 1–12–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G]

The Chickasaw Nation; Amendments to the Beverage Control Act of 2007, and the Chickasaw Nation Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes amendments to the Beverage Control Act of 2007 and the Chickasaw Nation Code, which was originally enacted by the Chickasaw Tribal Legislature and published in the **Federal Register** on April 2, 2007.

DATES: These amendments shall become applicable on February 15, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Jobe, Tribal Government Services Officer, Eastern Oklahoma Regional Office, Bureau of Indian Affairs, 3100 West Peak Boulevard, Muskogee, OK 74402, Telephone: (918) 781–4685, Fax: (918) 781–4649.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On September 18, 2015, the Chickasaw Tribal Legislature, by Permanent Resolution 32–008, duly adopted amendments to Title 3, Chapter 2, and Title 5, Chapter 15. This **Federal Register** notice comprehensively amends and supersedes the existing Title 3, Chapter 2 (the Beverage Control Act of 2007), and Title 5, Chapter 15, Article F, Section 5–1506.35, of the Chickasaw Nation Code, which was enacted by the Chickasaw Tribal Legislature by Permanent Resolutions 24–001 and 24–003 on October 20, 2006, and December 15, 2006, respectively, and published in the **Federal Register** on April 2, 2007 (72 FR 15716).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Chickasaw Tribal Legislature of the Chickasaw Nation, Oklahoma, duly adopted these amendments to Title 3, Chapter 2 (Beverage Control Act of 2007), and Title 5, Chapter 15, of the Chickasaw Nation Code on September 18, 2015.

Dated: December 15, 2017.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs Exercising the Authority of the Assistant Secretary—Indian Affairs.

Title 3, Chapter 2 (Beverage Control Act of 2007), of the Chickasaw Nation Code, is amended to read as follows:

Title 3

3. Business Regulations and Licensing

Chapter 2. Alcoholic Beverage Licensing and Regulations

Section 3–201.1 Title
Section 3–201.2 Findings
Section 3–201.3 Definitions
Section 3–201.4 Chickasaw Nation Tax Commission Powers and Duties
Section 3–201.5 Inspection Rights
Section 3–201.6 Sales of Alcohol
Section 3–201.7 Licensing and Application
Section 3–201.8 Taxes
Section 3–201.9 Rules, Regulations and Enforcement
Section 3–201.10 Abatement
Section 3–201.11 Severability and Effective Date
Section 3–201.12 Amendment and Construction

Section 3–201.1 Title

Be it enacted by the Tribal Legislature of the Chickasaw Nation assembled, that this Act may be cited as the ''Beverage Control Act of 2007'' (hereinafter ''Act''), as amended. This Act is enacted by the Chickasaw Tribal Legislature under the authority of Article VI, Section 1 and Article VII, Section 4 of the Constitution of the Chickasaw Nation, wherein the Legislature is required to prescribe procedures and regulations pertaining to the Chickasaw Nation.

Section 3–201.2 Findings

The Legislature finds that:

1. It is necessary to adopt strict controls over the operation of certain beverage sales conducted in Indian Country which is under the jurisdiction of the Chickasaw Nation;

2. it is necessary to establish legal authority for the Chickasaw Nation, its agents, servants, employees, and licensees to engage in Alcoholic Beverage sales on tribal lands within the legal boundaries of the Chickasaw Nation, provided that such locations are in compliance with the laws of the State of Oklahoma.

Section 3–201.3 Definition

As used in this Act, the following words shall have the following meanings unless the context in which they appear clearly requires otherwise:

1. ''Alcohol'' means and includes hydrated oxide of ethyl, ethyl Alcohol, Alcohol, ethanol, or Spirits of Wine, from whatever source and by whatever process produced;

2. ''Alcoholic Beverage'' means Alcohol, Spirits, Beer and Wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing Alcohol, Spirits, Wine or Beer and capable of being consumed as a beverage by human beings, but does not include Low-Point Beer;

3. ''Bar'' means any establishment with special space and accommodations for the Sale of alcoholic beverages and for consumption on-premises as defined herein;

4. ''Beer'' means any beverage containing more than three and two-tenths percent (3.2%) of Alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of barley or other grain, malt or similar products. ''Beer'' may or may not contain hops or other vegetable products. ''Beer'' includes, among other things, Beer, ale, stout, lager Beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice Wine;

5. ''Chickasaw Nation Tax Commission'' means the commission created by the Legislature as found in Section 2–1071 in the Code of Laws of the Chickasaw Nation;

6. ''Light Wine'' means any Wine containing not more than fourteen percent (14%) Alcohol measured by volume at sixty (60) degrees Fahrenheit;

7. ''Liquor Store'' means any store at which Alcoholic Beverages are sold and, for the purpose of this Act, includes stores only a portion of which are devoted to the Sale of Alcoholic Beverages;

8. ''Low-Point Beer'' or ''Light Beer'' means and includes beverages containing more than one-half of one percent (½ of 1%) Alcohol by volume, and not more than three and two-tenths percent (3.2%) Alcohol by weight, including but not limited to Beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products;

9. ''Mixed Beverage'' means one or more servings of a beverage composed in whole or part of an Alcoholic Beverage in a sealed or unsealed container or any legal size for consumption on the premises where served or sold by the holder of a license;

10. ''Original Package'' means any container or receptacle used for holding Alcoholic Beverages filled and stamped or sealed by the manufacturer;

11. ''Public Place'' means federal, state, county or tribal highways and

roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages and filling stations which are open to and/or generally used by the public and to which the public has right to access; public conveyances of all kinds and character; and all other place of like or similar nature to which the general public has right to access, and which are generally used by the public; (PR24–003, 12/15/07)

12. ''Sale'' and ''Sell'' mean the exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, by any person to any person;

13. ''Spirits'' means any beverage other than Wine, Beer or Light Beer, which contains more than one-half of one percent (½ of 1%) Alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not include any Alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;

14. ''Tribal Court'' means the Chickasaw Nation Tribal District Court;

15. ''Tribal Lands'' means any or all land over which the Chickasaw Nation exercises governmental powers and that is either held in trust by the United States for the benefit of the Chickasaw Nation or individual citizens of the Chickasaw Nation subject to restrictions by the United States against alienation, and dependent Indian communities, as contained in Title 18 § 1151 of the United States Code;

16. ''Wine'' means and includes any beverage containing more than one-half of one percent (½ of 1%) Alcohol by volume and not more than twenty-four percent (24%) Alcohol by volume at sixty (60) degrees Fahrenheit obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice Wine.

Section 3–201.4 Chickasaw Nation Tax Commission Powers and Duties

In furtherance of this Act, the Chickasaw Nation Tax Commission shall have the following powers and duties:

1. Publish and enforce rules and regulations adopted by the Chickasaw Nation Tax Commission governing the Sale, distribution and possession of Alcoholic Beverages on Tribal Lands;

2. employ such persons as shall be reasonably necessary to allow the Chickasaw Nation Tax Commission to perform its functions;

3. issue licenses permitting the Sale or distribution of Alcoholic Beverages on Tribal Lands;

4. hold hearings on violations of this Act or for the issuance of revocation of licenses hereunder;

5. bring suit in Tribal Court or other appropriate court to enforce this Act as necessary;

6. determine and seek damages for violation of this Act;

7. make such reports as may be requested or required by the Governor of the Chickasaw Nation, who may share those reports with the Chickasaw Tribal Legislature;

8. collect taxes and fees levied or set by the Chickasaw Tribal Legislature and keep accurate records, books and accounts;

9. adopt procedures which supplement this Act and regulations promulgated by the Chickasaw Nation Tax Commission and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls; and

10. request amendments to this Act to address future changes in the way the Chickasaw Nation sells, distributes or possesses Alcoholic Beverages in order to ensure that his Act remains consistent with state Alcoholic Beverage laws.

Section 3–201.5 Inspection Rights

The premises on which beverages defined in this Act are sold or distributed shall be open for inspection by the Chickasaw Nation Tax Commission and/or its agents at all reasonable times for the purposes of ascertaining compliance with the rules and regulations of the Chickasaw Nation Tax Commission and this Act.

Section 3–201.6 Sales of Alcohol

A. A person or entity who is licensed by the Chickasaw Nation Tax Commission may make retail sales of beverages as defined in this Act in their facility and the patrons of the facility may consume such liquor within any facility, other than a convenience store location. The introduction and possession of beverages as defined in this Act consistent with this Act shall also be allowed. All other purchases and sales of beverages as defined in this Act on Tribal Lands shall be prohibited. Sales of beverages as defined in this Act on Tribal Lands may only be made at businesses that hold a license from the Chickasaw Nation Tax Commission.

B. All sales of beverages as defined in this Act on Tribal Lands shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

C. All sales of beverages as defined in this Act shall be for the personal use and consumption of the purchaser. Resale of any beverage as defined in this Act on Tribal Lands is prohibited. Any person who is not licensed pursuant to this Act who purchases beverages as defined in this Act on Tribal Lands and sells it, whether in the original container or not, shall be guilty of a violation of this Act and shall be subjected to paying damages to the Chickasaw Nation as set forth herein.

Section 3–201.7 Licensing and Application

A. In order to control the proliferation of establishments on Tribal Lands that Sell or serve liquor by the bottle or by the drink, all persons or entities that desire to Sell beverages as defined in this Act on Tribal Lands must apply for and receive from the Chickasaw Nation Tax Commission a license under this Act. A person desiring to serve Alcoholic Beverages as defined by this Act on Tribal Lands must apply for and receive from the Chickasaw Nation Tax Commission a license under this Act.

B. Any person or entity applying for a license to Sell or serve beverages as defined in this Act on Tribal Lands must fill in the application provided for this purpose by the Chickasaw Nation Tax Commission and pay such application fee as may be set by the Chickasaw Tax Commission. Said applications must be filled out completely in order to be considered.

1. Any person 21 years of age or older or entity that is owned or controlled by an individual 21 years of age or older may apply to the Chickasaw Nation Tax Commission for a license to Sell beverages as defined in this Act on Tribal Lands. A separate application and license will be required for each location where the applicant intends to Sell beverages as defined by this Act.

2. Any person 18 years of age or older, may apply to the Chickasaw Nation Tax Commission for a license to serve

Alcoholic Beverages as defined in this Act. Provided, no person under 21 years of age may be employed in the selling or handling of Alcoholic Beverages or serve in designated bar or lounge areas.

C. Any person who holds a license pursuant to Section 3–201.7(b)(1) or (2) of this Act must at a minimum make a showing once every two years, and must satisfy the Chickasaw Nation Tax Commission, that he is a person of good character, having never been convicted of violating any of the state Alcoholic Beverage laws or the laws promulgated under this Act; that he has never been convicted of violating any of the gambling laws of Oklahoma, or any other state of the United States, or of this or any other tribe; that he has not had, preceding the date of his application for a license, a felony conviction of any of the laws commonly called prohibition laws; and that he has not had any permit or license to Sell any intoxicating liquors revoked in any county of Oklahoma, or any other state, or of any tribe; and that at the time of his application for a license, he is not the holder of a retail liquor dealer's permit or license from the United States government to engage in the Sale of beverages as defined in this Act.

D. The Chickasaw Nation Tax Commission shall receive and process applications and related matters. All actions relating to applications by the Chickasaw Nation Tax Commission shall be by majority vote. The Chickasaw Nation Tax Commission may, by resolution, authorize one of its members or agent to issue licenses for the Sale of beverages as defined in this Act.

E. Each license shall be issued for a period not to exceed two (2) years from the date of issuance.

F. A licensee may renew its license if the licensee has complied in full with this Act; provided, however, that the Chickasaw Nation Tax Commission or its agent may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the residents of the Chickasaw Nation.

G. The Chickasaw Nation Tax Commission or its agent may suspend or revoke a license due to one or more violations of this Act upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

H. Within 15 days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Chickasaw Nation Tax Commission under this Act, the licensee may deliver to the Chickasaw Nation Tax Commission a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Chickasaw Nation Tax Commission and a written decision will be issued. Such decisions will be considered final unless an appeal is filed in accordance with Title 5, Chapter 2, Article G of the Chickasaw Nation Code. All proceedings conducted under all sections of this Act shall be in accord with due process of law.

I. Licenses issued by the Chickasaw Nation Tax Commission shall not be transferable and may only be used by the person or entity in whose name it is issued.

Section 3–201.8 Taxes

A. As a condition precedent to the conduct of any operations pursuant to a license issued by the Chickasaw Nation Tax Commission, the licensee must obtain from the Chickasaw Nation Tax Commission such licenses, permits, tax stamps, tags, receipts or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Chickasaw Nation Tax Commission or otherwise showing compliance with the tax laws of the Chickasaw Nation.

B. In addition to any other remedies provided in this Act, the Chickasaw Nation Tax Commission may suspend or revoke any licenses issued by it upon the failure of the licensee to comply with the obligations imposed upon the licensee by the Chickasaw Nation Tax Commission, by the Chickasaw Nation, or any rule, regulation or order of the Chickasaw Nation Tax Commission.

Section 3–201.9 Rules, Regulations and Enforcement

A. In any proceeding under this Act, conviction of one unlawful Sale or distribution of beverages as defined in this Act shall establish prima facie intent of unlawfully keeping, selling, or distributing beverages as defined in this Act in violation of this Act.

B. Any person who shall in any manner Sell or offer for Sale or distribution or transport beverages as defined in this Act in violation of this Act shall be subject to civil damages assessed by the Chickasaw Nation Tax Commission.

C. Any person within the boundaries of Tribal Lands who buys beverages as defined in this Act from any person other than a properly licensed facility shall be guilty of a violation of this Act.

D. Any person who keeps or possesses beverages as defined in this Act upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to Sell or distribute it contrary to the provisions of this Act, shall be guilty of a violation of this Act.

E. Any person who knowingly sells beverages as defined in this Act to a person who is obviously intoxicated or appears to be intoxicated shall be guilty of a violation of this Act.

F. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person, who shall knowingly permit any person to drink beverages as defined in this Act in any public conveyance shall be guilty of an offense. Any person who shall drink beverages as defined in this chapter in a public conveyance shall be guilty of a violation of this Act.

G. Except for persons possessing a valid license to serve beverages at designated locations as set forth in this Act, the following prohibitions shall apply:

1. No person under the age of twenty-one (21) years shall consume or acquire any beverages as defined in this Act; provided, no person under the age of twenty-one (21) years shall have in his possession Alcoholic Beverages as defined in this Act. No person shall permit any other person under the age of twenty-one (21) years to consume beverages as defined in this Act on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Act for each and every drink so consumed.

2. Any person who shall Sell or provide any beverages as defined in this Act to any person under the age of twenty-one (21) years shall be guilty of a violation of this Act for each and every Sale or drink provided; provided, nothing in this Section shall be construed to criminalize the selling of Low-Point Beer by persons eighteen (18) years of age or older who (a) are employed by a licensed retailer of Low-Point Beer; and (b) make such sale in accordance with this Act.

3. Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain beverages as defined in this Act shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Act.

4. Any person who attempts to purchase beverages as defined in this Act through the use of false or altered identification that falsely purports to

show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Act.

H. Any person who is convicted or pleads guilty to a violation of this Act shall be punished by imprisonment for not more than one (1) year, a fine not to exceed five thousand dollars ($5,000) or a combination of both penalties. In addition, if such person holds a license issued by the Chickasaw Tax Commission, the license shall be revoked.

I. When requested by the provider of beverages as defined in this Act any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

1. Driver's license or identification card issued by any state department of motor vehicles;

2. United States Active Duty Military Identification card;

3. tribally-issued identification card; or

4. passport.

J. The consumption of beverages as defined in this Act on premises where such consumption or possession is contrary to the terms of this Act will result in a declaration that such beverages as defined in this Act are contraband. Any tribal agent, employee or officer who is authorized by the Chickasaw Nation Tax Commission shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property. Upon being found in violation of this Act, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Chickasaw Nation Tax Commission.

Section 3–201.10 Abatement

A. Any room, house, building, vehicle, structure or other place where beverages as defined in this Act are sold, manufactured, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this Act or of any other tribal statute or law relating to the manufacture, importation, transportation, possession, distribution and Sale of beverages as defined in this Act and all property kept in and used in maintaining such place, is hereby declared a nuisance.

B. The chairman of the Chickasaw Nation Tax Commission, or if the chairman fails or refuses to do so, the Chickasaw Nation Tax Commission, by a majority vote, shall institute and maintain an action in the Tribal Court in the name of the Chickasaw Nation to abate and perpetually enjoin any nuisance declared under this Section. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure or place closed for a period of one year or until the owner, lessee, tenant or occupant thereof shall give bond or sufficient sum from $1,000 to $15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Chickasaw Nation and conditioned that beverages as defined in this Act will not be thereafter kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this Act or of any other applicable tribal laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Chickasaw Nation under this Act.

Section 3–201.11 Severability and Effective Date

A. If any provision under this Act under this Act is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Act or to render such provisions inapplicable to other persons or circumstances.

B. Once it has been signed into law by the Governor, this Act shall be effective on such date as the Secretary of the United States Department of the Interior certifies this Act and publishes the same in the **Federal Register**.

C. Any and all previous statutes, laws and ordinances of the Chickasaw Nation Code which are inconsistent with this Act are hereby repealed and rescinded. Specifically repealed is Title 3, Chapter 2, Sections 3–201 through 3–215 as they existed before passage of this, the Beverage Control Act of 2007.

Section 3–201.12 Amendment and Construction

Nothing in this Act may be construed to diminish or impair in any way the rights or sovereign powers of the Chickasaw Nation or its tribal government other than the due process provision at Section 3–201.7.H which provides that licensees whose licenses have been revoked or suspended may seek review of that decision in Tribal Court.

Title 5, Chapter 15, Article F, Section 5–1506.35, of the Chickasaw Nation Code, as amended, shall read as follows:

Title 5

''**5. Courts and Procedures**''

Chapter 15

Criminal Offenses

Article F

Crimes Against Public Health, Safety, and Welfare

Section 5–1506.35 Possession, Purchase, and Consumption by Persons Under Twenty–One (21) Years of Age

A. It shall be unlawful for any person under twenty-one (21) years of age to either:

1. consume or possess with the intent to consume beverages as defined in the Beverage Control Act of 2007; or

2. purchase or attempt to purchase beverages as defined in the Beverage Control Act of 2007, except under supervision of law enforcement officers.

B. Possession, Purchase, or Consumption by Person Under Twenty-One (21) Years of Age shall be punishable by a fine not to exceed Two Hundred Fifty Dollars ($250.00), by imprisonment for not more than three (3) months, or both.

C. Nothing in this Section shall be construed to criminalize possession of an Alcoholic Beverage by a person who is at least eighteen (18) years of age and who is in possession of an Alcoholic Beverage solely and exclusively for the purpose of serving such Alcoholic Beverage within the scope of a license from the Chickasaw Nation Tax Commission.

[FR Doc. 2018–00622 Filed 1–12–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES962000 L14400000 BJ0000 18X]

Notice of Filing of Plat Survey; Eastern States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the Bureau of Land Management (BLM) Eastern States Office, Washington, DC, 30 days from the date of this publication. The survey, at the request of the United States Forest Service, is necessary for the management of these lands.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on February 15, 2018.

ADDRESSES: Written notices protesting this survey must be sent to the State Director, BLM Eastern States, 20 M Street SE, Suite 950, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Dominica Van Koten, Chief Cadastral Surveyor for Eastern States; (202) 912–7756; email: *dvankote@blm.gov;* or U.S. Postal Service: BLM–ES, 20 M Street SE, Suite 950, Washington, DC 20003. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat, in three sheets, incorporating the field notes of the dependent resurvey of a portion of the township boundaries and of the sub-divisional lines. The survey of the sub-division of sections 2, 4, 6, 7, 8, 9, 11, 13, 14, and 17; and the survey of the ordinary high water mark of Holy Lake in section 4, Township 64 North, Range 12 West, Fourth Principal Meridian, in the State of Minnesota; approved September 29, 2016.

A person or party who wishes to protest the above survey must file a written notice 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for a protest may be filed with the notice of protest and must be filed within 30 days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire protest, 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.

A copy of the described plat will be placed in the open files, and available to the public as a matter of information.

Authority: 43 CFR 1831.1.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2018–00582 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X LLUT030000 L17110000.XZ0000]

Notice of Intent To Prepare Resource Management Plans for the Grand Staircase-Escalante National Monument—Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands Previously Included in the Monument That Are Excluded From the Boundaries and Associated Environmental Impact Statement, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and Presidential Proclamation 6920 as modified by Proclamation 9682, the Bureau of Land Management (BLM) Grand Staircase-Escalante National Monument (GSENM) and Kanab Field Office, Kanab, Utah, intends to prepare Resource Management Plans (RMPs) for the GSENM-Grand Staircase, Kaiparowits, and Escalante Canyon Units, and Federal lands previously included in the Monument that were excluded from the boundaries by Proclamation 9682. The BLM will prepare a single Environmental Impact Statement (EIS) to satisfy the NEPA requirements for these RMPs. By this Notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues. The RMPs will replace the existing Grand Staircase Escalante National Monument Management Plan (the ''1999 Monument Management Plan''), which was completed in 1999.

DATES: This Notice initiates the public scoping process for the RMPs and associated EIS. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM website at: *https://www.blm.gov/utah.* In order to be considered in the Draft EIS, all comments must be received prior to March 19, 2018 or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the planning process by any of the following methods:

- *Website:* Grand Staircase-Escalante National Monument: *https://goo.gl/EHvhbc.*
- *Mail:* 669 S Hwy. 89A Kanab, UT 84741.

Documents pertinent to this proposal may be examined at the GSENM and the BLM Kanab Field Office.

FOR FURTHER INFORMATION CONTACT: Matthew Betenson, Associate Monument Manager, telephone (435) 644–1200; address 669 S Hwy. 89A Kanab, UT 84741; email *BLM_UT_CCD_monuments@blm.gov.* Contact Mr. Betenson to add your name to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM GSENM and Kanab Field Office, Kanab, Utah, intend to prepare RMPs for the GSENM-Grand Staircase, Kaiparowits, and Escalante Canyon Units, and Federal lands previously included in the GSENM that are excluded from the boundaries by Proclamation 9682. The BLM will prepare a single EIS for this planning process. This document announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Kane and Garfield Counties, Utah and encompasses approximately 1.87 million acres of public land.

On December 4, 2017, President Donald Trump signed Presidential Proclamation 9682 modifying the boundaries of the GSENM as established by Proclamation 6920 to exclude from designation and reservation approximately 861,974 acres of land. Lands that remain part of the GSENM are included in three units, known as the Grand Staircase, Kaiparowits, and Escalante Canyons Units of the monument and are reserved for the care and management of the objects of historic and scientific interest described in Proclamation 6920 as modified by Proclamation 9682.

The purpose of the public scoping process is to determine relevant issues

that will inform the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. These preliminary issues include paleontology, geology, cultural and historic resources, travel management, livestock grazing, vegetation and fire management, outdoor recreation, wildlife, and other resources. Preliminary planning criteria include: (1) The public planning process for the RMPs will be guided by Presidential Proclamation 6920 as modified by Proclamation 9682 in addition to FLPMA and NEPA. (2) Those Federal lands excluded from the Monument will remain in Federal ownership and will be managed by the BLM under applicable laws. (3) The BLM will use current scientific information, and results of inventory, monitoring, and coordination to determine appropriate management. (4) The BLM will strive for consistency of management decisions with other adjoining planning jurisdictions, both Federal and non-Federal. (5) Decisions made in the planning process will only apply to Federal lands and, where appropriate, to split-estate lands where the subsurface mineral estate is managed by the BLM. (6) Existing Wilderness Study Areas (WSAs) will continue to be managed to prevent impairment and ensure continued suitability for designation as wilderness. Should Congress release all or part of a WSA from wilderness study, resource management will be determined by preparing an amendment to the RMPs. (7) A baseline reasonably foreseeable development scenario will be developed for oil and gas and other mineral resources for Federal lands previously included in the GSENM that are now excluded from the monument boundaries. (8) The BLM will consider changes to off-highway vehicle (OHV) area designations. (9) The public is invited to nominate or recommend areas on public lands that are excluded from the modified monument boundaries as potentially new special management areas as part of this planning process (BLM Manual 1613.3.31). (10) Parties interested in leasing and development of Federal coal in areas that are excluded from the monument should provide coal resource data for their area(s) of interest. Specifically, information is requested on surface resource values related to the 20 coal unsuitability criteria described at 43 CFR part 3461. This information will be used for any necessary updating of coal screening determinations (43 CFR 3420.1–4) and in the environmental analysis, completion of which would be necessary before any proposal to lease or develop Federal coal in such areas.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, and to ensure inclusion in the Draft EIS, you should submit comments prior to the close of the 60-day scoping period or 15 days after the last public meeting, whichever is later. 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. The BLM will evaluate identified issues to be addressed in the plans, and will place them into one of three categories:

1. Issues to be resolved in the plans;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of the plans.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plans. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given full consideration consistent with these authorities and policies. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Edwin L. Roberson,

State Director.

[FR Doc. 2018–00518 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO250000.18XL1109AF.L12200000.PM0000; OMB Control Number 1004–0165]

Agency Information Collection Activities; Cave Management: Cave Nominations and Requests for Confidential Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before March 19, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington DC 20240, Attention: Jean Sonneman; by email to *jesonnem@blm.gov.* Please reference OMB Control Number 1004–0165 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Dorothy Morgan by email at *dmorgan@blm.gov,* or by telephone at 202–689–5684.

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 BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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: Agencies within the Department of the Interior use the information in a cave nomination to determine if the nominated cave will be listed as significant in accordance with the Federal Cave Resources Protection Act (FCRPA), 16 U.S.C. 4301 through 4310 and the Department's regulations at 43 CFR 37.11(c). The information is thus necessary for full compliance with agencies' responsibilities to identify and protect significant caves and their resources.

Agencies within the Department of the Interior use the information in requests for confidential cave information to determine whether to grant access to confidential cave data. Agencies need this information in order to comply with their statutory responsibilities to communicate, cooperate, and exchange information, within the limits prescribed by the FCRPA.

Title of Collection: Cave Management: Cave Nominations and Requests for Confidential Information.

OMB Control Number: 1004–0165.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Cave nominations may be submitted pursuant to 16 U.S.C. 4303 and 43 CFR 37.11 by governmental agencies and the public, including those who utilize caves for scientific, education, and recreational purposes. Requests for confidential information may be submitted pursuant to 16 U.S.C. 4304 and 43 CFR 37.12 by Federal and state governmental agencies and their cooperators, bona fide educational and research institutions, and individuals or organizations assisting a land management agency with cave management activities.

Total Estimated Number of Annual Respondents: 16.

Total Estimated Number of Annual Responses: 16.

Estimated Completion Time per Response: Varies from 1 hour to 10 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 124.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The estimated annual burdens are itemized in the following table:

Type of response	Number of responses	Hours per response	Total Hours (Column B × Column C)
A.	B.	C.	D.
Cave Nomination	12	10	120
Request for Confidential Cave Information	4	1	4
Totals	16		124

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2018–00607 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X LLUTY00000 L16100000.XZ0000]

Notice of Intent To Prepare Monument Management Plans for the Bears Ears National Monument Indian Creek and Shash Jáa Units and Associated Environmental Impact Statement, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the National Forest Management Act of 1976, as amended (NFMA), and Presidential Proclamation 9558 as modified by Presidential Proclamation 9681, the Bureau of Land Management (BLM) Canyon Country District Office, Moab, Utah intends to prepare a Monument Management Plan (MMP) for the Bears Ears National Monument Indian Creek Unit, and intends to jointly prepare, with the Manti La-Sal National Forest (USFS), Price, Utah, a MMP for the Shash Jáa Unit. The BLM and USFS, which is a co-manager of the Shash Jáa Unit, will prepare a single Environmental Impact Statement (EIS) to satisfy the NEPA requirements for this planning process. By this Notice, the BLM announces the beginning of the scoping process to solicit public

comments and identify issues. These MMPs may replace portions of the existing Monticello Field Office Record of Decision and Approved Resource Management Plan, as amended, and Manti- La Sal National Forest Plan.

DATES: This Notice initiates the public scoping process for separate MMPs for each monument unit with an associated combined EIS. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM website at: *https://www.blm.gov/utah.* In order to be included in the Draft EIS, all comments must be received prior to March 19, 2018 or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the planning process by any of the following methods:

- *Website:* Bears Ears National Monument: *https://goo.gl/uLrEae*
- *Mail:* 365 North Main, P.O. Box 7, Monticello, UT 84535

Documents pertinent to this proposal may be examined at the BLM Canyon Country District or Monticello Field Office.

FOR FURTHER INFORMATION CONTACT: Lance Porter, District Manager, telephone (435) 259–2100; address 365 North Main, P.O. Box 7, Monticello, UT 84535; email *blm_ut_monticello_monuments@blm.gov.* Contact Mr. Porter to add your name to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Canyon Country District Office, Moab, Utah, intends to prepare an MMP for the Bears Ears National Monument Indian Creek Unit, and jointly prepare an MMP with the Manti La-Sal National Forest, Price, Utah, for the Shash Jáa Unit, as well as an associated EIS. The BLM announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in San Juan County, Utah and encompasses approximately 169,289 acres of BLM-managed lands and 32,587 acres of National Forest System Lands.

On December 4, 2017, President Donald Trump signed Proclamation 9681 modifying the Bears Ears National Monument designated by Proclamation 9558 to exclude from its designation and reservation approximately 1,150,860 acres of land, which lands are not covered by this Notice of Intent and will continue to be managed under the governing Monticello Record of Decision and Approved Resource Management Plan and Manti La-Sal National Forest Plan until they are otherwise revised or amended. The revised BENM boundary includes two units known as the Shash Jáa and Indian Creek Units that are reserved for the care and management of the objects of historic and scientific interest within their boundaries. Proclamation 9558, as modified by Proclamation 9681, requires the BLM and the USFS to jointly develop a MMP. Each agency will continue to manage their lands within the monument pursuant to their respective applicable legal authorities.

To ensure that management decisions reflect tribal expertise and traditional and historical knowledge, Proclamation 9558, signed on December 28, 2016, established a Bears Ears Commission to provide guidance and recommendations on the development and implementation of a management plan for the Bears Ears National Monument. Proclamation 9681 modifies Proclamation 9558 and clarifies that the Bears Ears Commission shall be known as the Shash Jáa Commission, and shall apply only to the Shash Jáa Unit. The Commission consists of one elected officer each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and Zuni Tribe, designated by the officers' respective tribes, and the elected officer of the San Juan County Commission representing District 3 acting in that officer's official capacity.

The purpose of the public scoping process is to determine relevant issues that will inform the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM and USFS personnel; Federal, State, and local agencies; and other stakeholders. These preliminary issues include cultural and historic resources, including protection of Indian sacred sites and traditional cultural properties; paleontological resources; travel management; livestock grazing; wildlife; vegetation and fire management; outdoor recreation; and other resource management.

Preliminary planning criteria include: (1) The public planning process for the MMPs will be guided by Proclamation 9558 as modified by Proclamation 9681 in addition to FLPMA, NFMA, and NEPA. (2) The BLM and USFS will use current scientific information, research, technologies, and results of inventory, monitoring, and coordination to determine appropriate management. (3) The BLM and USFS will strive to coordinate management decisions with other adjoining planning jurisdictions, both Federal and non-Federal. (4) Decisions made in the planning process will only apply to BLM-managed lands, National Forest System Lands, and, where appropriate, split-estate lands where the subsurface mineral estate is managed by the BLM. (6) Existing Wilderness Study Areas (WSAs) will continue to be managed to prevent impairment and ensure continued suitability for designation as wilderness. Should Congress release all or part of a WSA from wilderness study, resource management will be determined by preparing an amendment to the MMP. (7) The BLM will consider changes to the off-highway vehicle (OHV) area designations approved through the Monticello Field Office Record of Decision and Approved Resource Management Plan. (8) As required by the Proclamations, the BLM and USFS will meaningfully engage with the Shash Jáa Commission and will carefully and fully consider integrating the traditional and historical knowledge and special expertise of the Commission for the Shash Jáa Unit. The BLM and USFS will also work with the Commission to identify parameters for continued meaningful engagement that will be set forth in the MMP.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, and to ensure inclusion in the Draft EIS, you should submit comments prior to the close of the 60-day scoping period or 15 days after the last public meeting, whichever is later. 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. The BLM and USFS will evaluate

identified issues to be addressed in the plans, and will place them into one of three categories:

1. Issues to be resolved in the plans;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of these plans.

The BLM and USFS will provide an explanation in the Draft MMPs/Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plans.

The BLM and USFS will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM and USFS will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM and USFS in identifying and evaluating impacts to such resources.

The BLM and USFS will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given full consideration consistent with these authorities and policies. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM and USFS are evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM and USFS to participate in the development of the environmental analysis as a cooperating agency.

The BLM and USFS will use an interdisciplinary approach to develop the plans in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Edwin L. Roberson,

State Director.

[FR Doc. 2018–00520 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L14400000.PN0000.18X; OMB Control Number 1004–0153]

Agency Information Collection Activities; Conveyance of Federally Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 19, 2018.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington DC 20240, Attention: Jean Sonneman; by email to *jesonnem@blm.gov*. Please reference OMB Control Number 1004–0153 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Robert Jolley by email at *rbjolley@blm.gov,* or by telephone at (202) 912–7350.

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 BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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: Section 209(b) of the Federal Land Policy and Management Act (43 U.S.C. 1719) authorizes the Secretary of the Interior to convey Federally-owned mineral interests to non-Federal owners of the surface estate. The respondents in this information collection are non-Federal owners of surface estates who apply for underlying Federally-owned mineral interests. This information collection enables the BLM to determine if the applicants are eligible to receive title to the Federally-owned mineral interests beneath their lands. Regulations at 43 CFR part 2720 establish guidelines and procedures for the processing of these applications.

Title of Collection: Conveyance of Federally-Owned Mineral Interests.

OMB Control Number: 1004–0153.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Owners of surface estates (*i.e.,* individuals, businesses, or state, local, or tribal governments) that want to obtain underlying Federally-owned mineral estates.

Total Estimated Number of Annual Respondents: 11 businesses, 10 individuals, and 3 State/Local/Tribal Governments.

Total Estimated Number of Annual Responses: 24.

Estimated Completion Time per Response: 10 hours per response.

Total Estimated Number of Annual Burden Hours: 240 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $1,200 dollars.

Type of response	Number of responses	Hours per response	Total hours (Column B × Column C)
A.	B.	C.	D.
Conveyance of Federally-Owned Mineral Interests—Businesses	11	10	110
Conveyance of Federally-Owned Mineral Interests—Individuals	10	10	100
Conveyance of Federally-Owned Mineral Interests—State/Local/Tribal Governments	3	10	30
Totals	24		240

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*).

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2018–00606 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X.LLWO310000.L13100000.PP0000; OMB Control Number 1004–0137]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Onshore Oil and Gas Operations and Production

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before February 15, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; or by email to *jesonnem@blm.gov*. Please reference OMB Control Number 1004–0137 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Subijoy Dutta by email at *sdutta@blm.gov,* or by telephone at 202–912–7152. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 12, 2017 (82 FR 42832). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Various Federal and Indian mineral leasing statutes authorize the BLM to grant and manage onshore oil and gas leases on Federal and Indian (except Osage Tribe) lands. In order to fulfill its responsibilities under these statutes, the BLM needs to perform the information collection (IC) activities set forth in the regulations at 43 CFR parts 3160 and 3170, and in onshore oil and gas orders promulgated in accordance with 43 CFR 3164.1. The BLM requests renewal and revision of OMB control number 1004–0137. Some of the revisions are a result of the rules and the order that are listed in the following table:

RECENT BLM ACTIONS THAT AFFECT INFORMATION COLLECTION ACTIVITIES IN CONTROL NO. 1004–0137

Title of order or rule	Regulatory information No.	**Federal Register** citation	Control No.
Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations (Final Order).	RIN 1004–AE37	82 FR 2906 (Jan. 10, 2017)	1004–0213 (expires March 31, 2020).
Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security (Final Rule).	RIN 1004–AE15	81 FR 81356 (Nov. 17, 2016)	1004–0207 (expires Jan. 31, 2020).
Waste Prevention, Production Subject to Royalties, and Resource Conservation (Final Rule) [1].	RIN 1004–AE14	81 FR 83008 (Nov. 18, 2016)	1004–0211 (expires Jan. 31, 2018).

[1] This rule is under review in federal district court (*State of Wyoming* v. *U.S. Department of the Interior,* Case No. 2:16–CV–0285–SWS (D. Wyo.)).

The effects of the revision of Onshore Order 1 and control number 1004–0213 on control number 1004–0137 are as follows:

- The incorporation of a general requirement to use an electronic system to file Application for Permits to Drill (Form 3160–3) and Notices of Staking;
- The addition of a new activity to authorize requests for a waiver of the electronic-filing requirement; and
- The addition of ''Notice of Staking,'' which is a historic IC activity that has been in use without a control number.

After control number 1004–0137 is renewed with the changes listed above, we plan to request discontinuation of control number 1004–0213, since we anticipate that all of the IC activities in that control number will be merged with control number 1004–0137.

The effects of the Site Security Rule and control number 1004–0207 on control number 1004–0137 are as follows:

- The transfer of new uses of Form 3160–5 (Sundry Notice) from control number 1004–0207 to control number 1004–0137;
- The removal of ''Records for Seals,'' a historic IC activity in control number 1004–0137;
- The removal of ''Site Security,'' a historic IC activity in control number 1004–0137; and
- The removal of ''Schematic/Facility Diagrams,'' a historic IC activity in control number 1004–0137.

After control number 1004–0137 is renewed, we plan to submit an IC request to reflect the changes listed above, and keep the remaining IC activities in the Site Security rule in control number 1004–0207. Consequently, we do not anticipate the discontinuation of control number 1004–0207.

The sole effect of the Waste Prevention Rule and control number 1004–0211 on control number 1004–0137 is the removal of ''Gas Flaring,'' a historic IC activity in control number 1004–0137. While there are some continuing IC activities pertaining to venting and flaring in 1004–0211, BLM anticipates that rulemakings in the near future will result in changes to those activities. Because the content of those rulemakings is uncertain at this time, the BLM is not requesting merger of those activities with control number 1004–0137.

In addition to the rules and order listed above, we note a recent BLM rule on hydraulic fracturing and a recent federal district court ruling. On June 21, 2016, the U.S. District Court for the District of Wyoming set aside a BLM rule on hydraulic fracturing (80 FR 16128 (March 26, 2015)). See *Wyoming* v. *U.S. Department of the Interior,* Order on Petition for review of Final Agency Action, Case No. 2:15–CV/043–SWS (D. Wyo.). Previously, the court had issued an order postponing the effective date of the rule. Thus, the rule never became effective, and its pre-approved control number (1004–0203) has never been activated.

In these circumstances, the BLM rescinded the March 2015 rule on hydraulic fracturing (82 FR 61924, December 29, 2017) and the BLM is requesting revision of the information collection activity labeled ''Subsequent Well Operations'' by removing ''nonroutine fracturing jobs'' from the list of subsequent well operations that require the submission of Form 3160–5. We are also requesting the removal of a reference to ''Post hydraulic fracturing chemical disclosures on FracFocus.org'' from Item 27 of Form 3160–4, Well Completion or Recompletion Report and Log.

Title of Collection: Onshore Oil and Gas Operations and Production (43 CFR parts 3160 and 3170).

OMB Control Number: 1004–0137.

Form Numbers: Form 3160–3, Form 3160–4, Form 3160–5, and Form 3160–6.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Oil and gas operators on public lands and some Indian lands.

Total Estimated Number of Annual Respondents: 7,500.

Total Estimated Number of Annual Responses: 301,663.

Estimated Completion Time per Response: Varies from 45 minutes to 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,835,888.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, except for the activities listed in the following table:

Type of response	Regulatory cite(s)	Frequency
Request for Approval of a CAA	43 CFR 3173.15 ..	Once.
Response to Notice of Insufficient CAA	43 CFR 3173.16 ..	Once.
Request for Approval of an FMP for Future Measurement Facilities	43 CFR 3173.12(d).	Once.
Request for Approval of an FMP for Existing Measurement Facilities	43 CFR 3173.12(e).	Once.
Measurement Tickets	43 CFR 3174.12 ..	Monthly.

Total Estimated Annual Nonhour Burden Cost: $29,370,000.

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*).

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2018–00604 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES962000 L14400000 BJ0000 18X]

Notice of Filing of Plat Survey; Eastern States

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Official Filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of land Management (BLM), Eastern States Office, Washington, DC, 30 days from the date of this publication. The survey, executed at the request of the Midwest Regional Office of the BIA, is necessary for the management of these lands.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on February 15, 2018.

ADDRESSES: BLM Eastern States, Suite 950, 20 M Street SE, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Dominica VanKoten, Chief Cadastral Surveyor for Eastern States; (202) 912–

7756; email: *dvankote@blm.gov;* or U.S. Postal Service: BLM–ES, 20 M Street SE, Washington, DC 20003. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat, incorporating the field notes describe the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, the east and west center line of section 2; and the survey of the subdivision of section 2, the division of accretion in section 2, a portion of the present day meanders of section 2, an informational traverse of a portion of the present day meanders of section 2, and an informational traverse of the adjusted 1852 connecting traverse line, of Township 48 North, Range 3 West, in the Fourth Principal Meridian in the State of Wisconsin., accepted December 6, 2017.

A person or party who wishes to protest the above survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire protest, 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.

A copy of the described plat will be placed in the open files, and available to the public as a matter of information.

Authority: 43 U.S.C. Chap. 3.

Dominica J. VanKoten,

Chief Cadastral Surveyor.

[FR Doc. 2018–00584 Filed 1–12–18; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Healthcare Barcode Readers and Components Thereof, DN 3286;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of The Code Corporation on January 09, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain healthcare barcode readers and components thereof. The complaint names as respondents: Honeywell International Inc. of Morristown, NJ; Hand Held Products, Inc. of Fort Mill, SC; Intermec Technologies Corporation of Fort Mill, SC; Intermec IP Corp. of Fort Mill, SC; and Intermec Inc. of Lynwood, WA. The complainant requests that the Commission issue an exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (Docket No. 3286) in a

prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 10, 2018.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2018–00605 Filed 1–12–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Vulcan Materials Company, SPO Partners II, L.P., and Aggregates USA, LLC, Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Vulcan Materials Company, SPO Partners, II, L.P., and Aggregates USA, LLC,* Civil Action No. 1:17–cv–02761. On December 22, 2017, the United States and the State of Tennessee filed a Complaint alleging that Vulcan Material Company's proposed acquisition of Aggregates USA, LLC would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Defendants to divest all of Aggregates USA's active quarries, plants, and yards in the Knoxville, Tennessee, Tri-Cities, Tennessee, and Abingdon, Virginia areas. These divestitures include seventeen Aggregates USA facilities.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: (202) 307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 and *State of Tennessee, Attorney General's Office, 500 Charlotte Avenue, Nashville, Tennessee 37202 Plaintiffs*, v. *Vulcan Materials Company, 1200 Urban Center Drive, Birmingham, Alabama 35242, SPO Partners II, L.P., 591 Redwood Highway, Suite 3215, Mill Valley, California 94941,* and *Aggregates USA, LLC, 3300 Cahaba Road, Suite 320, Birmingham, Alabama 35223 Defendants.*

Civil Action No: 1:17–cv–02761
Judge: Amit Mehta

COMPLAINT

Plaintiffs, the United States of America (''United States''), acting under the direction of the Attorney General of the United States, and the State of Tennessee, acting by and through the Attorney General of Tennessee, bring this civil antitrust action against Defendants to enjoin Vulcan Materials Company's (''Vulcan'') proposed acquisition of Aggregates USA, LLC (''Aggregates USA'') from SPO Partners II, L.P. (''SPO Partners''). Plaintiffs complain and allege as follows:

I. INTRODUCTION

1. Vulcan's proposed acquisition of Aggregate USA's quarries would secure Vulcan's control over the supply of coarse aggregate necessary to complete various construction projects in parts of east Tennessee and southwest Virginia. Coarse aggregate is one of the primary materials used to build, pave, and repair roads and is used widely in other types of construction. Coarse aggregate is an essential input in asphalt concrete, which is used to pave roads, and ready mix concrete, which is used to create bridges and is a structural element of many buildings. Coarse aggregate is also needed for other phases of construction, such as the base layer of rock that provides a foundation for paved roads and large buildings. Vulcan currently supplies coarse aggregate in east Tennessee and southwest Virginia and already holds a significant market share in each region.

2. Vulcan and Aggregates USA are the primary suppliers of coarse aggregate for projects in parts of east Tennessee and southwest Virginia, together supplying nearly all of the coarse aggregate purchased directly by the Tennessee and Virginia Departments of Transportation (''DOT'') or purchased by contractors for use in Tennessee and Virginia DOT projects. Vulcan and Aggregates USA are also the two leading suppliers of coarse aggregate used in private construction projects in parts of east Tennessee and southwest Virginia. The proposed acquisition would eliminate the head-to-head competition between Vulcan and Aggregates USA.

As a result, prices for coarse aggregate would likely increase significantly if the acquisition is consummated.

3. The states of Tennessee and Virginia spend hundreds of millions of dollars on new construction and road maintenance projects each year. Without competing suppliers for the necessary inputs for road construction and other building projects, individuals, the states of Tennessee and Virginia, as well as federal and state taxpayers, would pay the price for Vulcan's control over these important markets. In light of these market conditions, Vulcan's acquisition of Aggregates USA's quarries would cause significant anticompetitive effects in the markets for coarse aggregate in parts of east Tennessee and southwest Virginia. Therefore, the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. THE PARTIES AND THE PROPOSED TRANSACTION

4. Defendant Vulcan is incorporated in New Jersey with its headquarters in Birmingham, Alabama. Vulcan produces and sells coarse aggregate for the construction industry in 20 states as well as the District of Columbia. Vulcan also produces coarse aggregate in Mexico, which it distributes and sells at numerous terminals and yards along the Gulf Coast of the United States. In 2016, Vulcan reported net sales of $3.5 billion.

5. Defendant SPO Partners is a Delaware limited partnership headquartered in Mill Valley, California. With more than $7 billion in assets under management, SPO Partners invests in a wide range of industries, including industrial materials, media, telecommunications, energy, power and real estate. SPO Partners acquired Aggregates USA in 2010.

6. Defendant Aggregates USA is headquartered in Birmingham, Alabama. Aggregates USA produces and sells coarse aggregate in four states: Florida, Georgia, Tennessee and Virginia. In 2016, Aggregates USA reported net sales of approximately $124 million.

7. On May 25, 2017, Vulcan announced a definitive agreement with SPO Partners to acquire Aggregates USA for approximately $900 million. The primary assets acquired are Aggregates USA's 13 active quarries, including nine quarries in east Tennessee and one quarry in southwest Virginia, the equipment used to operate those quarries, and several inactive quarries in east Tennessee.

III. JURISDICTION AND VENUE

8. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

9. The State of Tennessee brings this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain Vulcan and Aggregates USA from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The State of Tennessee, by and through the Attorney General of Tennessee, brings this action as *parens patriae* on behalf of the citizens, general welfare, and the general economy of the State of Tennessee.

10. Defendants produce and sell coarse aggregate in the flow of interstate commerce. Defendants' activity in the production and sale of coarse aggregate substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

IV. TRADE AND COMMERCE

A. Coarse Aggregate is an Essential Input for Many Construction Projects

12. Coarse aggregate is a category of material used for construction projects and in various industrial processes. Produced in quarries, mines, and gravel pits, coarse aggregate is predominantly limestone, granite, or trap rock. Different types and sizes of rock are needed to meet different specifications for use in asphalt concrete, ready mix concrete, industrial processes, and other products. Asphalt concrete consists of approximately 95 percent coarse aggregate, and ready mix concrete is made of up of approximately 75 percent coarse aggregate. Coarse aggregate thus is an integral input for road and other construction projects.

13. For each construction project, a customer establishes specifications that must be met for each application for which coarse aggregate is used. For example, state DOTs, including the Tennessee and Virginia DOTs, set specifications for coarse aggregate used to produce asphalt concrete, ready mix concrete, and road base for state DOT projects. State DOTs specify characteristics such as hardness and durability, size, polish value, and a variety of other characteristics. The specifications are intended to ensure the longevity and safety of the projects that use coarse aggregate.

14. For Tennessee and Virginia DOT projects, to ensure that the stone for an application meets proper specifications, the respective DOTs qualify quarries according to the end uses of the coarse aggregate. In addition, the Tennessee and Virginia DOTs test the coarse aggregate at various points: At the quarry before it is shipped; when the coarse aggregate is sent to the purchaser to produce an end product such as asphalt concrete; and after the end product has been produced. Many cities, counties, commercial entities, and individuals in Tennessee and Virginia use their respective state DOT-qualified coarse aggregate specifications when building roads, bridges, and other construction projects in order to optimize longevity.

B. Transportation is a Significant Component of the Cost of Coarse Aggregate

15. Coarse aggregate is priced by the ton and is a relatively inexpensive product, with prices typically ranging from approximately five to twenty dollars per ton. A variety of approaches are used to price coarse aggregate. For small volumes, coarse aggregate often is sold according to a posted price. For large volumes, customers typically either negotiate prices for a particular job or seek bids from multiple coarse aggregate suppliers.

16. In areas where coarse aggregate is locally available, it is transported from quarries to customers by truck. Truck transportation is expensive and, for construction projects located more than a few miles from a quarry, transportation costs can become a significant portion of the total cost of coarse aggregate.

C. Relevant Markets

1. State DOT-Qualified Coarse Aggregate is a Relevant Product Market

17. Within the broad category of coarse aggregate, different types and sizes of stone are used for different purposes. For instance, coarse aggregate qualified for use as road base may not be the same size and type of rock as coarse aggregate qualified for use in asphalt concrete. Accordingly, they are not interchangeable for one another and demand for each is separate. Thus, each type and size of coarse aggregate likely is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

18. State DOT-qualified coarse aggregate is coarse aggregate qualified

by the state DOT for use in road construction in that particular state. State DOT-qualified coarse aggregate meets particular standards for size, physical composition, functional characteristics, end uses, and availability. A customer whose job specifies state DOT-qualified coarse aggregate cannot substitute non-DOT-qualified coarse aggregate or other materials, including coarse aggregate qualified by a different state DOT.

19. Although numerous narrower product markets exist, the competitive dynamic for most types of state DOT-qualified coarse aggregate is nearly identical, as a quarry can typically produce all, or nearly all, types of state DOT-qualified coarse aggregate for a particular state. Therefore, most types of state DOT-qualified coarse aggregate for a particular state may be combined for analytical convenience into a single relevant product market for the purpose of evaluating the competitive impact of the acquisition.

20. A small but significant increase in the price of state DOT-qualified coarse aggregate would not cause a sufficient number of customers to substitute to another type of coarse aggregate or another material so as to make such a price increase unprofitable. Accordingly, the production and sale of Tennessee DOT-qualified coarse aggregate and Virginia DOT-qualified coarse aggregate (hereinafter ''DOT-qualified coarse aggregate'') are distinct lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act.

2. The Relevant Geographic Markets are Local

21. Coarse aggregate is a relatively low-cost product that is bulky and heavy. As a result, the cost of transporting coarse aggregate is high as compared to the value of the product.

22. When customers seek price quotes or bids, the distance from the quarry to the project site or plant location will have a considerable impact on the selection of a supplier, due to the high cost of transporting coarse aggregate relative to the low value of the product. Suppliers know the importance of transportation cost to a potential customer's selection of a coarse aggregate supplier; they know the locations of their competitors, and they often will factor the cost of transportation from other suppliers into the price or bid that they submit.

23. The primary factor that determines the area a supplier can serve is the location of competing quarries. When quoting prices or submitting bids, coarse aggregate suppliers will account for the location of the project site or plant, the cost of transporting coarse aggregate to the project site or plant, and the locations of the competitors that might bid on a job. Therefore, depending on the location of the project site or plant, suppliers are able to adjust their bids to account for the distance other competitors are from a job.

a. The Knoxville area is a Relevant Geographic Market

24. Vulcan owns and operates eleven quarries that serve Knox, Loudon, Jefferson, and Grainger Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Knoxville area''). Customers with plants or jobs in the Knoxville area may, depending on the location of their plant or job sites, also economically procure Tennessee DOT-qualified coarse aggregate from four quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Knoxville area because they are too far away and transportation costs are too great.

25. A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Knoxville area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Knoxville area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

b. The Tri-Cities area is a Relevant Geographic Market

26. Vulcan owns and operates four quarries that serve Washington, Sullivan, Carter and Unicoi Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Tri-Cities area''). Customers with plants or jobs in the Tri-Cities area may, depending on the location of their plant or job site, also economically procure Tennessee DOT-qualified coarse aggregate from five quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Tri-Cities area because they are too far away and transportation costs are too great.

27. A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Tri-Cities area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Tri-Cities area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

c. The Abingdon area is a Relevant Geographic Market

28. Vulcan owns and operates one quarry that serves parts of Washington County in Virginia and portions of surrounding counties (hereinafter referred to as the ''Abingdon area''). Customers with plants or jobs in the Abingdon area may, depending on the location of their plant or job sites, also economically procure Virginia DOT-qualified coarse aggregate from a quarry operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Abingdon area because they are too far away and transportation costs are too great.

29. A small but significant post-acquisition increase in the price of Virginia DOT-qualified coarse aggregate to customers with plants or job sites in the Abingdon area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Abingdon area is a relevant geographic market for the production and sale of Virginia DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

D. Vulcan's Acquisition of Aggregates USA is Anticompetitive

30. Vigorous competition between Vulcan and Aggregates USA on price and customer service in the production and sale of DOT-qualified coarse aggregate has benefitted customers in the Knoxville, Tri-Cities, and Abingdon areas (the ''Relevant Areas''), all of which face similar competitive conditions.

31. The competitors that could constrain Vulcan and Aggregates USA from raising prices on DOT-qualified coarse aggregate in the Relevant Areas are limited to those who are qualified by the Tennessee and Virginia DOTs to supply coarse aggregate and can economically transport the coarse aggregate into these areas.

32. Since the Relevant Areas are each exclusively served today by Vulcan and Aggregates USA, the proposed acquisition will reduce from two to one the number of suppliers of DOT-qualified coarse aggregate in each of those areas. Further, the proposed acquisition will substantially increase the likelihood that Vulcan will unilaterally increase the price of DOT-qualified coarse aggregate to a significant number of customers in the Relevant Areas.

33. For many customers, a combined Vulcan and Aggregates USA will have the ability to increase prices for DOT-qualified coarse aggregate. The combined firm could also decrease service for these same customers by limiting availability or delivery options. DOT-qualified coarse aggregate producers know the distance from their own quarries or yards and their competitors' quarries to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the higher the price and margin that supplier can expect for that project. Post-acquisition, in instances where Vulcan and Aggregates USA quarries or yards are the closest locations to a customer's project, the combined firm, using the knowledge of its competitors' locations, will be able to charge such customers higher prices or decrease the level of customer service.

34. The proposed acquisition will substantially lessen competition in the market for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas, which is likely to lead to higher prices and reduced customer service for consumers of such products, in violation of Section 7 of the Clayton Act.

E. Difficulty of Entry

35. Timely, likely, and sufficient entry in the production and sale of DOT-qualified coarse aggregate in the Relevant Areas is unlikely, given the substantial time and cost required to open a quarry.

36. Quarries are particularly difficult to locate and permit. First, securing the proper site for a quarry is difficult and time-consuming. Finding land with the correct rock composition requires extensive investigation and testing of candidate sites, as well as the negotiation of necessary land transfers, leases, and/or easements. Further, the location of a quarry close to likely job sites is extremely important due to the high cost of transporting coarse aggregate. Once a location is chosen, obtaining the necessary permits is difficult and time-consuming. Attempts to open a new quarry often face fierce public opposition, which can prevent a quarry from opening or make opening it much more time-consuming and costly. Finally, even after a site is acquired and permitted, the owner must spend significant time and resources to prepare the land and purchase and install the necessary equipment.

37. Because of the cost and difficulty of establishing a quarry, entry will not be timely, likely or sufficient to mitigate the anticompetitive effects of Vulcan's proposed acquisition of Aggregates USA.

V. VIOLATION ALLEGED

38. Vulcan's proposed acquisition of Aggregates USA likely will substantially lessen competition in the production and sale of DOT-qualified coarse aggregate in the Relevant Areas, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

39. Unless enjoined, the proposed acquisition likely will have the following anticompetitive effects, among others:

(a) actual and potential competition between Vulcan and Aggregates USA in the market for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas will be eliminated; and

(b) prices for DOT-qualified coarse aggregate likely will increase and customer service likely will decrease.

VI. REQUESTED RELIEF

40. Plaintiffs request that this Court:

(a) adjudge and decree that Vulcan's acquisition of Aggregates USA would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin and restrain the Defendants and all persons acting on their behalf from consummating the proposed acquisition of Aggregates USA by Vulcan, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Vulcan with Aggregates USA;

(c) award Plaintiffs their costs for this action; and

(d) award Plaintiffs such other and further relief as the Court deems just and proper.

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ _____

Makan Delrahim

Assistant Attorney General.

/s/ _____

Andrew C. Finch

Principal Deputy Assistant Attorney General.

/s/ _____

Maribeth Petrizzi (DC Bar #435204)

Chief, Defense, Industrials, and Aerospace Section.

/s/ _____

Stephanie A. Fleming

Assistant Chief, Defense, Industrials, and Aerospace Section.

/s/ _____

Bernard A. Nigro Jr. (DC Bar #412357)

Deputy Assistant Attorney General.

/s/ _____

Patricia A. Brink

Director of Civil Enforcement.

/s/ _____

Jay D. Owen

Stephen A. Harris

Christine A. Hill *(DC Bar #461048),*

Attorneys, United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, (202) 598–2987, jay.owen@usdoj.gov.

Dated: December 22, 2017.

FOR PLAINTIFF STATE OF TENNESSEE:

Herbert H. Slatery III

Attorney General and Reporter.

/s/ _____

Victor J. Domen Jr.

Senior Counsel, Tennessee Attorney General's Office, 500 Charlotte Avenue, Nashville, TN 37202, Phone: 615–(253)–3327, vic.domen@ag.tn.gov.

Dated: December 22, 2017.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America and *State of Tennessee,* Plaintiffs, v. *Vulcan Materials Company, SPO Partners II, L.P.,* and *Aggregates USA, LLC,* Defendants.

Civil Action No: 1:17–cv–02761

Judge: Amit Mehta

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the State of Tennessee, filed their Complaint on December 22, Plaintiffs and Defendants, VulCan Materials Company, SPO Partners II, LP., and Aggregates USA, LLC, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, Plaintiffs require Defendants to make certain divestitures

for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means Blue Water Industries or another entity to which Defendants divest the Divestiture Assets.

B. ''Vulcan'' means Defendant Vulcan Materials Company, a corporation headquartered in Birmingham, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Aggregates USA'' means Defendant Aggregates USA, LLC, a corporation headquartered in Indianapolis, Indiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Blue Water Industries'' means Blue Water Industries LLC, a wholly owned subsidiary of Blue Water Industries Holdings LLC, headquartered in Palm Beach, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means:

1. Abingdon, Virginia Area

Aggregates USA's quarry located at 21339 & 21490 Gravel Lake Rd., Abingdon, Virginia 24210;

2. Tri-Cities, Tennessee Area

a. Aggregates USA's quarry located at 350 W. Fourth Ave., Watauga, Tennessee 37694;

b. Aggregates USA's quarry located at 210 Judger Ben Allen Rd., Elizabethton, Tennessee 37643;

c. Aggregates USA's quarry located at 4175 Marbleton Rd., Unicoi, Tennessee 37692;

d. Aggregates USA's quarry located at 164 Asphalt Plant Rd., Jonesborough, Tennessee 37659; and

e. Aggregates USA's quarry located at 736 Centenary Rd., Blountville, Tennessee 37617;

3. Knoxville, Tennessee Area

a. Aggregates USA's quarry at 2107 Big Hill Road, Lenoir City, Tennessee 37772;

b. Aggregates USA's quarry at 2303 Gov. John Sevier Hwy., Knoxville, Tennessee 37914;

c. Aggregates USA's quarry at 9600 Mascot Rd., Mascot, Tennessee 37806;

d. Aggregates USA's quarry at 1949 E Raccoon Valley Rd., Heiskell, Tennessee 37754;

e. Aggregates USA's quarry at 605 Cherokee Explosives Rd., Rutledge, Tennessee 37861;

f. Aggregates USA's quarry at 450 and 461 Rocktown Road, Jefferson City, Tennessee 37760;

g. Aggregates USA's quarry at 1001 Park St., New Market, Tennessee 37820;

h. Aggregates USA's quarry at 1550 Quarry Road, New Market, Tennessee 37820;

i. Aggregates USA's Coy Stone Plant at 345 E. Broadway Blvd., Jefferson City, Tennessee 37760;

j. Aggregates USA's Coster Yard at 224 Heiskell Ave., Knoxville, Tennessee 37917; and

k. Aggregates USA's Young Yard at 1977 West Andrew Johnson Highway, Strawberry Plains, Tennessee 37871.

4. all tangible assets used at the quarries and yards listed in Paragraphs II(E)(1)–(3), including, but not limited to, all manufacturing equipment, tooling, and fixed assets, mining equipment, aggregate reserves, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities, and other tangible property and all assets used in connection with the facilities listed in Paragraphs II(E)(1)–(3); all licenses, permits, and authorizations issued by any governmental organization relating to the facilities listed in Paragraphs II(E)(1)–(3); all contracts, agreements, teaming arrangements, leases (including renewal rights), commitments, certifications and understandings, including sales agreements and supply agreements relating to the facilities listed in Paragraphs II(E)(1)–(3); all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the facilities listed in Paragraphs II(E)(1)–(3); and

5. all intangible assets used in the production and sale of aggregate at the quarries and yards listed in Paragraphs II(E)(1)–(3), including but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software (including dispatch software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, and all data (including aggregate reserve testing information) concerning the facilities listed in Paragraphs II(E)(1)–(3).

III. APPLICABILITY

A. This Final Judgment applies to Vulcan and Aggregates USA, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed, within 45 calendar days after the Court's signing of the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Blue Water Industries or an alternative Acquirer acceptable to the United States, in its sole discretion, after consultation with the State of Tennessee. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event Defendants are attempting to divest the Divestiture

Assets to an Acquirer other than Blue Water Industries, Defendants promptly shall make known, by usual and customary means (to the extent Defendants have not already done so), the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestitures ordered by this Final Judgment, Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility is the operation of the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer that (1) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and (2) following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of Tennessee, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the production and sale of DOT-qualified coarse aggregate. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, after consultation with the State of Tennessee, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of producing and selling DOT-qualified coarse aggregate; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of Tennessee, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States and the State of Tennessee of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestitures to an Acquirer acceptable to the United States, after consultation with the State of Tennessee, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestitures. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by

the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURES

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States and the State of Tennessee of any proposed divestitures required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, after consultation with the State of Tennessee, may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestitures proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), the divestitures proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or Section V, Defendants shall deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, which shall describe the fact and manner of Defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an

affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, or the Tennessee Attorney General's Office, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NOTIFICATION

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendants, without providing advance notification to the United States, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity, or management interest, related to the production and sale of DOT-qualified coarse aggregate in Knox, Loudon, Jefferson, Grainger, Washington, Sullivan, Carter, and Unicoi Counties in Tennessee, or Washington County, Virginia, during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division of the U.S. Department of Justice in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the production and sale of DOT-qualified coarse aggregate. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and they waive any argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that the Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

XV. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XVI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America and *State of Tennessee, Plaintiffs,* v. *Vulcan Materials Company, SPO PARTNERS II, L.P.,* and *Aggregates USA, LLC, Defendants.*

Civil Action No: 1:17–cv–02761

Judge: Amit Mehta

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant Vulcan Materials Company (''Vulcan'') and Defendant SPO Partners II, L.P. (''SPO'') entered into an agreement, dated May 25, 2017, pursuant to which Vulcan would acquire SPO's aggregates business, Aggregates USA, LLC (''Aggregates USA''), for approximately $900 million. The United States and the State of Tennessee filed a civil antitrust Complaint on December 22, 2017, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this proposed acquisition would be to substantially lessen competition in the production and sale of Department of Transportation (''DOT'')-qualified coarse aggregate in the Knoxville, Tri-Cities and Abingdon areas (the 'Relevant Areas''), in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in increased prices and decreased customer service for customers in those areas.

At the same time the Complaint was filed, Plaintiffs also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required, among other things, to divest Aggregates USA's active quarries and yards in the Relevant Areas. Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the quarries and yards are operated as a competitively independent, economically viable and ongoing business concern, that they will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestitures.

Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Defendant Vulcan is incorporated in New Jersey with its headquarters in Birmingham, Alabama. Vulcan produces and sells coarse aggregate for the construction industry in 20 states as well as the District of Columbia. Vulcan also produces coarse aggregate in Mexico, which it distributes and sells at numerous terminals and yards along the Gulf Coast of the United States. In 2016, Vulcan reported net sales of $3.5 billion.

Defendant SPO Partners is a Delaware limited partnership headquartered in Mill Valley, California. With more than $7 billion in assets under management, SPO Partners invests in a wide range of industries, including industrial materials, media, telecommunications, energy, power and real estate. SPO Partners acquired Aggregates USA in 2010.

Defendant Aggregates USA is headquartered in Birmingham, Alabama. Aggregates USA produces and sells coarse aggregate in four states: Florida, Georgia, Tennessee and Virginia. In 2016, Aggregates USA reported net sales of approximately $124 million.

The proposed transaction, as initially agreed to by Defendants on May 25, 2017, would lessen competition substantially as a result of Vulcan owning nearly all of the quarries and yards that supply DOT-qualified aggregate to the Relevant Areas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by Plaintiffs on December 22, 2017.

B. Coarse Aggregate is an Essential Input for Many Construction Projects

Coarse aggregate is a category of material used for construction projects and in various industrial processes. Produced in quarries, mines, and gravel pits, coarse aggregate is predominantly limestone, granite, or trap rock. Different types and sizes of rock are needed to meet different specifications for use in asphalt concrete, ready mix concrete, industrial processes, and other products. Asphalt concrete consists of approximately 95 percent coarse aggregate, and ready mix concrete is made of up of approximately 75 percent coarse aggregate. Coarse aggregate thus is an integral input for road and other construction projects.

For each construction project, a customer establishes specifications that must be met for each application for which coarse aggregate is used. For example, state DOTs, including the Tennessee and Virginia DOTs, set specifications for coarse aggregate used to produce asphalt concrete, ready mix concrete, and road base for state DOT projects. State DOTs specify characteristics such as hardness and durability, size, polish value, and a variety of other characteristics. The specifications are intended to ensure the longevity and safety of the projects that use coarse aggregate.

For Tennessee and Virginia DOT projects, to ensure that the stone for an application meets proper specifications, the respective DOTs qualify quarries according to the end uses of the coarse aggregate. In addition, the Tennessee and Virginia DOTs test the coarse aggregate at various points: at the quarry before it is shipped; when the coarse aggregate is sent to the purchaser to produce an end product such as asphalt concrete; and after the end product has been produced. Many cities, counties, commercial entities, and individuals in Tennessee and Virginia use their respective state DOT-qualified coarse aggregate specifications when building

roads, bridges, and other construction projects in order to optimize longevity.

C. Transportation is a Significant Component of the Cost of Coarse Aggregate

Coarse aggregate is priced by the ton and is a relatively inexpensive product, with prices typically ranging from approximately five to twenty dollars per ton. A variety of approaches are used to price coarse aggregate. For small volumes, coarse aggregate often is sold according to a posted price. For large volumes, customers typically either negotiate prices for a particular job or seek bids from multiple coarse aggregate suppliers.

In areas where coarse aggregate is locally available, it is transported from quarries to customers by truck. Truck transportation is expensive and, for construction projects located more than a few miles from a quarry, transportation costs can become a significant portion of the total cost of coarse aggregate.

D. Relevant Markets

1. State DOT-Qualified Coarse Aggregate is a Relevant Product Market

Within the broad category of coarse aggregate, different types and sizes of stone are used for different purposes. For instance, coarse aggregate qualified for use as road base may not be the same size and type of rock as coarse aggregate qualified for use in asphalt concrete. Accordingly, they are not interchangeable for one another and demand for each is separate. Thus, each type and size of coarse aggregate likely is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

State DOT-qualified coarse aggregate is coarse aggregate qualified by the state DOT for use in road construction in that particular state. State DOT-qualified coarse aggregate meets particular standards for size, physical composition, functional characteristics, end uses, and availability. A customer whose job specifies state DOT-qualified coarse aggregate cannot substitute non-DOT-qualified coarse aggregate or other materials, including coarse aggregate qualified by a different state DOT.

Although numerous narrower product markets exist, the competitive dynamic for most types of state DOT-qualified coarse aggregate is nearly identical, as a quarry can typically produce all, or nearly all, types of state DOT-qualified coarse aggregate for a particular state. Therefore, most types of state DOT-qualified coarse aggregate for a particular state may be combined for analytical convenience into a single relevant product market for the purpose of evaluating the competitive impact of the acquisition.

A small but significant increase in the price of state DOT-qualified coarse aggregate would not cause a sufficient number of customers to substitute to another type of coarse aggregate or another material so as to make such a price increase unprofitable. Accordingly, the production and sale of Tennessee DOT-qualified coarse aggregate and Virginia DOT-qualified coarse aggregate (hereinafter ''DOT-qualified coarse aggregate'') are distinct lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act.

2. The Relevant Geographic Markets are Local

Coarse aggregate is a relatively low-cost product that is bulky and heavy. As a result, the cost of transporting coarse aggregate is high as compared to the value of the product.

When customers seek price quotes or bids, the distance from the quarry to the project site or plant location will have a considerable impact on the selection of a supplier, due to the high cost of transporting coarse aggregate relative to the low value of the product. Suppliers know the importance of transportation cost to a potential customer's selection of a coarse aggregate supplier; they know the locations of their competitors, and they often will factor the cost of transportation from other suppliers into the price or bid that they submit.

The primary factor that determines the area a supplier can serve is the location of competing quarries. When quoting prices or submitting bids, coarse aggregate suppliers will account for the location of the project site or plant, the cost of transporting coarse aggregate to the project site or plant, and the locations of the competitors that might bid on a job. Therefore, depending on the location of the project site or plant, suppliers are able to adjust their bids to account for the distance other competitors are from a job.

a. The Knoxville area is a Relevant Geographic Market

Vulcan owns and operates eleven quarries that serve Knox, Loudon, Jefferson, and Grainger Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Knoxville area''). Customers with plants or jobs in the Knoxville area may, depending on the location of their plant or job sites, also economically procure Tennessee DOT-qualified coarse aggregate from four quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Knoxville area because they are too far away and transportation costs are too great.

A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Knoxville area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Knoxville area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

b. The Tri-Cities area is a Relevant Geographic Market

Vulcan owns and operates four quarries that serve Washington, Sullivan, Carter and Unicoi Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Tri-Cities area''). Customers with plants or jobs in the Tri-Cities area may, depending on the location of their plant or job site, also economically procure Tennessee DOT-qualified coarse aggregate from five quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Tri-Cities area because they are too far away and transportation costs are too great.

A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Tri-Cities area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Tri-Cities area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

c. The Abingdon area is a Relevant Geographic Market

Vulcan owns and operates one quarry that serves parts of Washington County in Virginia and portions of surrounding counties (hereinafter referred to as the ''Abingdon area''). Customers with plants or jobs in the Abingdon area may, depending on the location of their plant or job sites, also economically procure

Virginia DOT-qualified coarse aggregate from a quarry operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Abingdon area because they are too far away and transportation costs are too great.

A small but significant post-acquisition increase in the price of Virginia DOT-qualified coarse aggregate to customers with plants or job sites in the Abingdon area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Abingdon area is a relevant geographic market for the production and sale of Virginia DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

E. Vulcan's Acquisition of Aggregates USA is Anticompetitive

Vigorous competition between Vulcan and Aggregates USA on price and customer service in the production and sale of DOT-qualified coarse aggregate has benefitted customers in the Relevant Areas, all of which face similar competitive conditions.

The competitors that could constrain Vulcan and Aggregates USA from raising prices on DOT-qualified coarse aggregate in the Relevant Areas are limited to those who are qualified by the Tennessee and Virginia DOTs to supply coarse aggregate and can economically transport the coarse aggregate into these areas.

Since the Relevant Areas are each exclusively served today by Vulcan and Aggregates USA, the proposed acquisition will reduce from two to one the number of suppliers of DOT-qualified coarse aggregate in each of those areas. Further, the proposed acquisition will substantially increase the likelihood that Vulcan will unilaterally increase the price of DOT-qualified coarse aggregate to a significant number of customers in the Relevant Areas.

For many customers, a combined Vulcan and Aggregates USA will have the ability to increase prices for DOT-qualified coarse aggregate. The combined firm could also decrease service for these same customers by limiting availability or delivery options. DOT-qualified coarse aggregate producers know the distance from their own quarries or yards and their competitors' quarries to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the higher the price and margin that supplier can expect for that project. Post-acquisition, in instances where Vulcan and Aggregates USA quarries or yards are the closest locations to a customer's project, the combined firm, using the knowledge of its competitors' locations, will be able to charge such customers higher prices or decrease the level of customer service.

The proposed acquisition will substantially lessen competition in the market for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas, which is likely to lead to higher prices and reduced customer service for consumers of such products, in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. Divestiture Provisions

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the production and sale of DOT-qualified coarse aggregate in the Knoxville, Tri-Cities and Abingdon areas by establishing a new, independent, and economically viable competitor. Paragraph IV(A) of the proposed Final Judgment requires Defendants to divest, as a viable, ongoing business, Aggregates USA's active quarries and yards in the Relevant Areas to Blue Water Industries LLC or an alternative Acquirer acceptable to the United States, in its sole discretion, after consultation with the State of Tennessee, within forty-five (45) days after the signing of the Hold Separate. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with the State of Tennessee, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved with the Aggregates USA business. Paragraph IV(D) of the proposed Final Judgment requires Defendants to provide the Acquirer with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment, and provides that Defendants will not interfere with any negotiations by the Acquirer to hire these employees.

In the event that Defendants do not accomplish the divestitures within the period prescribed in the proposed Final Judgment, Paragraph V(A) of the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, Paragraph V(D) of the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. Paragraph V(F) of the proposed Final Judgment requires that, after his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestitures. Paragraph V(G) of the proposed Final Judgment requires that, at the end of six months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Notification

Section XI of the proposed Final Judgment requires Defendants to provide notification to the Antitrust Division of certain proposed acquisitions not otherwise subject to filing under the Hart-Scott-Rodino Act, 15 U.S.C 18a (the ''HSR Act''), and in the same format as, and per the instructions relating to the notification required under that statute. The notification requirement applies in the case of any direct or indirect acquisitions of any assets related to the production and sale of DOT-qualified coarse aggregate in Knox, Loudon, Jefferson, Grainger, Washington, Sullivan, Carter, and Unicoi Counties in Tennessee, or Washington County, Virginia, during the term of the proposed Final Judgment. Section XI further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated.

C. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph XIV(A) provides

that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIV(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph XIV(B) requires Defendants to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against Vulcan's acquisition of Aggregates USA. Plaintiffs are satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas. Thus, the proposed Final Judgment would achieve all or substantially all of the relief Plaintiffs would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the

complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 74 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 74 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 75 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public interest determination based on the competitive impact statement and

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 75.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 22, 2017.

Respectfully Submitted,

/s/

Jay D. Owen,

United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street NW, Suite 8700, Tel.: (202) 598–2987, Washington, DC 20530, Fax: (202) 514–9033, Email: jay.owen@usdoj.gov.

[FR Doc. 2018–00578 Filed 1–12–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement: United States v. TransDigm Group Incorporated

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *TransDigm Group Incorporated,* Civil Action No. 1:17–cv–2735. On December 21, 2017, the United States filed a Complaint alleging that TransDigm Group Incorporated's (TransDigm) February 2017 acquisition of SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, ''SCHROTH'') from Takata Corporation violated Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires TransDigm to divest the entirety of SCHROTH.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *TransDigm Group Incorporated, 1301 East 9th Street, Suite 3000, Cleveland, Ohio 44114,* Defendant.

Civil Action No.: 1:17–cv–2735

Judge: Amy Berman Jackson

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action for equitable relief against defendant TransDigm Group Incorporated (''TransDigm'') to remedy the harm to competition caused by TransDigm's acquisition of SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. from Takata Corporation (''Takata''). The United States alleges as follows:

I. NATURE OF THE ACTION

1. In February 2017, TransDigm acquired SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, ''SCHROTH'') from Takata. TransDigm's AmSafe, Inc. (''AmSafe'') subsidiary is the world's dominant supplier of restraint systems used on commercial airplanes. Prior to the acquisition, SCHROTH was AmSafe's closest competitor and, indeed, its only meaningful competitor for certain types of restraint systems.

2. Restraint systems are critical safety components on every commercial airplane seat that save lives and reduce injuries in the event of turbulence, collision, or impact. There are a wide range of restraint systems used on commercial airplanes, including traditional two-point lapbelts, three-point shoulder belts, technical restraints, and more advanced ''inflatable'' restraint systems such as airbags. The airplane type, seat type, and seating configuration dictate the proper restraint type for each airplane seat.

3. Prior to the acquisition, SCHROTH was a growing competitive threat to AmSafe. Until 2012, AmSafe, the long-standing industry leader, was nearly unrivaled in the markets for restraint systems used on commercial airplanes. Certification requirements and other entry barriers reinforced AmSafe's position as the dominant supplier to the industry. However, beginning in 2012, after being acquired by Takata, SCHROTH embarked on an ambitious plan to capture market share from AmSafe by competing with AmSafe on price and heavily investing in research and development of new restraint technologies. Over the next five years, the increasing competition between AmSafe and SCHROTH resulted in lower prices for restraint system products for commercial airplanes and the development of innovative new restraint technologies such as inflatable restraints. TransDigm's acquisition of SCHROTH removed SCHROTH as an independent competitor and eliminated the myriad benefits that customers had begun to realize from competition in this industry.

4. Accordingly, TransDigm's acquisition of SCHROTH is likely to substantially lessen competition in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. DEFENDANT AND THE TRANSACTION

5. TransDigm is a Delaware corporation headquartered in Cleveland, Ohio. TransDigm operates as a holding company and owns over 100 subsidiaries. Through its subsidiaries, TransDigm is a leading global designer, manufacturer, and supplier of highly engineered airplane components. TransDigm's fiscal year 2016 revenues were approximately $3.1 billion. TransDigm is the ultimate parent company of AmSafe, a Delaware corporation headquartered in Phoenix, Arizona. AmSafe develops, manufactures, and sells a wide range of restraint systems used on commercial airplanes. AmSafe had global revenues of approximately $198 million in fiscal year 2016.

6. Takata is a global automotive and aerospace parts manufacturer based in Japan. Takata was the ultimate parent entity of SCHROTH Safety Products GmbH, a German limited liability corporation base in Arnsberg, Germany, and Takata Protection Systems, Inc., a

Colorado corporation based in Pompano Beach, Florida. SCHROTH Safety Products and Takata Protection Systems collectively had approximately $37 million in revenue in fiscal year 2016.

7. On February 22, 2017, TransDigm completed its acquisition of SCHROTH Safety Products and substantially all the assets of Takata Protection Systems from Takata for approximately $90 million. Because of the way the transaction was structured, it was not required to be reported under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a. After the acquisition was completed, the Takata Protection Systems assets were incorporated as SCHROTH Safety Products LLC.

III. JURISDICTION AND VENUE

8. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain TransDigm from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

9. TransDigm sells restraint systems used on commercial airplanes throughout the United States. It is engaged in the regular, continuous, and substantial flow of interstate commerce, and its activities in the development, manufacture, and sale of restraint systems used on commercial airplanes have had a substantial effect upon interstate commerce. The Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

10. TransDigm has consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

IV. TRADE AND COMMERCE

A. Industry Overview

11. Commercial airplanes are fixed-wing aircraft used for scheduled passenger transport. Restraint systems used on commercial airplanes are critical safety devices that secure the occupant of a seat to prevent injury in the event of turbulence, collision, and impact.

12. Restraint systems used in the economy and premium cabins in commercial airplanes vary based on the airplane type, seat type (*e.g.,* economy, premium, crew, ''lie-flat,'' etc.), and seating configuration of the airplane.

13. Restraint systems used on commercial airplanes come in two primary forms: (i) conventional belt systems with two or more belts or ''points'' that are connected to a central buckle; or (ii) inflatable systems with one or more airbags that may be installed in combination with a conventional belt system. The airbags can be installed either within the belt itself (called an ''inflatable lapbelt'') or in a structural monument within the airplane (called a ''structural mounted airbag'').

14. Economy cabin seats typically require two-point lapbelts, though other restraint systems such as inflatable restraint systems may be necessary in limited circumstances to comply with Federal Aviation Administration (''FAA'') safety requirements.

15. Premium cabin seats come in many different seating configurations, and passenger restraint systems used in premium cabin seats vary as well. Premium cabin restraint systems include two-point lapbelts, three-point shoulder belts, and inflatable restraint systems. While two-point lapbelts and three-point shoulder belts are used widely throughout the premium cabins, the use of inflatable restraint systems is more common in first-class and other ultra-premium cabins.

16. Flight crew seats on commercial airplanes require special restraint systems called ''technical'' restraints. Technical restraints are multipoint restraints with four or more belts that provide additional protection to the flight crew.

17. Restraint systems typically are purchased by commercial airlines and airplane seat manufacturers. Because certification of a restraint system is expensive and time-consuming, once a restraint system is certified for a particular seat and airplane type it is rarely substituted in the aftermarket for a different restraint system or supplier. Accordingly, competition between suppliers of restraint systems generally only occurs when a customer is designing a new seat or purchasing a new seat design, either when retrofitting existing airplanes or purchasing new airplanes.

B. Industry Regulation and Certification Requirements

18. All commercial airplanes must contain FAA-certified restraint systems on every seat installed on the airplane. The process for obtaining FAA certification is complex and involves several distinct stages.

19. Before selling a restraint system, a supplier of airplane restraint systems must first obtain a technical standard order authorization (''TSOA''). A TSOA certifies that the supplier's restraint system meets the minimum design requirements of the codified FAA Technical Standard Order (''TSO'') for that object, and that the manufacturer has a quality system necessary to produce the object in conformance with the TSO. To obtain a TSOA for a restraint system, a supplier must test its restraint system for durability and other characteristics. Once a TSOA is issued for the restraint system, the supplier must then obtain a TSOA for the entire seat system—*i.e.,* the seat and belt combination. To obtain a TSOA for the seat system, the seat system must successfully complete dynamic crash testing to demonstrate that the seat system meets the FAA required g-force and head-injury-criteria safety requirements. Dynamic crash-testing is expensive and can be cost prohibitive to potential suppliers. Once a supplier obtains a TSOA for the seat system, it must then obtain a supplemental type certificate, which certifies that the seat system meets the applicable airworthiness requirements for the particular airplane type on which it is to be installed.

20. Certain restraint system types such as inflatable restraint systems do not have a codified TSO and must instead satisfy a ''special condition'' from the FAA prior to manufacture and installation of the restraint system. In those circumstances, the FAA must first determine and then publish the terms of the special condition. Once the special condition is published, the supplier must then satisfy the terms of the special condition to install the object on an airplane.

V. RELEVANT MARKETS

21. AmSafe and SCHROTH compete across the full range of restraint systems used on commercial airplanes. However, restraint systems are designed for specific airplane configurations and seat types and are therefore not interchangeable or substitutable for different restraint systems. FAA regulations dictate which restraint system may be used for a particular airplane configuration and seat type. In the event of a small but significant price increase for a given type of restraint system, commercial customers would not substitute another restraint system in sufficient numbers so as to render the price increase unprofitable. Thus, each restraint system described below is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

22. The relevant geographic market for restraint systems used on commercial airplanes is worldwide. Restraint systems are marketed internationally and may be sourced economically from suppliers globally.

A. Relevant Market 1: Two-Point Lapbelts Used on Commercial Airplanes

23. A two-point lapbelt is a restraint harness that connects two fixed belts to a single buckle and restrains an occupant at his or her waist. Two-point lapbelts are used on nearly every seat in the economy cabins of commercial airplanes; they also are regularly used in the premium cabins. Commercial airline companies prefer lightweight two-point lapbelts in the economy cabins to save fuel costs, reduce CO_2 emissions, and provide convenience to their passengers. Two-point lapbelts are significantly less expensive than other restraint system types.

24. The market for the development, manufacture, and sale of two-point lapbelts used on commercial airplanes is already highly concentrated and has become significantly more concentrated as a result of TransDigm's acquisition of SCHROTH. Prior to the acquisition, there were only three significant suppliers of two-point lapbelts used on commercial airplanes: AmSafe, SCHROTH, and a third firm, a small, privately-held company that has been supplying two-point lapbelts for many years. Although a handful of other firms served the market, they only sell a negligible quantity of two-point lapbelts each year. AmSafe is by far the largest supplier of two-point lapbelts used on commercial airplanes, and serves the vast majority of major commercial airlines around the world. However, SCHROTH recently entered this market after developing a new, innovative lightweight two-point lapbelt and had emerged as AmSafe's most significant competitor as it aggressively sought to market its lapbelt to major international airline customers.

B. Relevant Market 2: Three-Point Shoulder Belts Used on Commercial Airplanes

25. A three-point shoulder belt is a restraint harness that restrains an occupant at his or her waist and shoulder. It consists of both a lapbelt component and shoulder belt (or sash) component. Three-point shoulder belts are widely used in the premium cabins of commercial airplanes where the seating configurations often necessitate the additional protection provided by three-point shoulder belts.

26. The market for the development, manufacture, and sale of three-point shoulder belts used on commercial airplanes was already highly concentrated prior to the acquisition. In fact, AmSafe and SCHROTH were the only two significant suppliers of three-point shoulder belts used on commercial airplanes although a handful of other firms made a negligible quantity of sales each year. As with two-point lapbelts, AmSafe was the dominant supplier of three-point shoulder belts, and SCHROTH was aggressively seeking to grow its business at AmSafe's expense.

C. Relevant Market 3: Technical Restraints Used on Commercial Airplanes

27. Technical restraints are multipoint restraint harnesses (usually four or five points) that restrain an occupant at his or her waist and shoulders. Technical restraints consist of multiple belts that connect to a single fixed buckle—typically a rotary-style buckle. Technical restraints are used by the flight crew in commercial airplanes. The critical nature of the flight crew's responsibilities and the design of their seats necessitate the additional protections provided by technical restraints.

28. The market for the development, manufacture, and sale of technical restraint systems used on commercial airplanes was already highly concentrated and became significantly more concentrated as a result of the acquisition. Prior to the acquisition, there were only three significant suppliers of technical restraints used on commercial airplanes: AmSafe, SCHROTH, and a third firm, an international aerospace equipment manufacturer. Although a handful of other firms supplied technical restraints, they only sold a negligible quantity of technical restraints each year. As with passenger restraints, AmSafe was the leading supplier of technical restraints, and SCHROTH was aggressively seeking to grow its business at AmSafe's expense.

D. Relevant Market 4: Inflatable Restraint Systems Used on Commercial Airplanes

29. Inflatable restraint systems, which include both inflatable lapbelts and structural mounted airbags, are restraint systems that utilize one or more airbags to restrain an airplane seat occupant. Inflatable restraint systems are most commonly used in the premium cabin of commercial airplanes, particularly in first-class and other ultra-premium cabins that have ''lie-flat'' or oblique-facing seats. Inflatable restraint systems also are used in the economy cabin in certain circumstances, for example, in bulkhead rows to prevent an occupant's head from impacting the bulkhead. When required by FAA regulations, inflatable restraint systems provide airplane passengers with additional safety.

30. The market for the development, manufacture, and sale of inflatable restraint systems used on commercial airplanes was already highly concentrated prior to the acquisition. The only two suppliers of inflatable restraint systems used on commercial airplanes were AmSafe and SCHROTH. AmSafe and SCHROTH both offered structural mounted airbags, while AmSafe was the exclusive supplier of inflatable lapbelts. In recent years, SCHROTH had emerged as a strong competitor to AmSafe in the development of inflatable restraint technologies.

VI. ANTICOMPETITIVE EFFECTS

31. Mergers and acquisitions that reduce the number of competitors in highly concentrated markets are likely to substantially lessen competition. Before TransDigm's acquisition of SCHROTH, the markets for all restraint system types set forth above were highly concentrated. In each of these markets, SCHROTH and at most one other smaller firm competed with AmSafe prior to the acquisition and AmSafe had at least a substantial—and often a dominant—share of the market. TransDigm's acquisition of SCHROTH therefore significantly increased concentration in already highly concentrated markets and is unlawful.

32. TransDigm's acquisition of SCHROTH also eliminated head-to-head competition between AmSafe and SCHROTH in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide. Prior to the acquisition, SCHROTH was a growing competitive threat to AmSafe and was challenging AmSafe on pricing and innovation.

33. In 2012, Takata acquired SCHROTH with the stated intention to ''overtake AmSafe'' in the markets for restraint systems used on commercial airplanes. AmSafe had traditionally dominated these markets with few, if any, significant competitors. Sensing a demand for new competitors and restraint technologies, SCHROTH began to compete with AmSafe on price and to invest heavily in research and development to create new restraint technologies.

34. Customers were already beginning to see the benefits of increased competition in these markets. Between 2012 and 2017, SCHROTH introduced several new innovative restraint products, challenging older products from AmSafe. These products included a new lightweight two-point lapbelt called the ''Airlite,'' structural mounted

airbag systems, and other advanced restraint systems. Prior to the acquisition, SCHROTH had already found customers—including major U.S. commercial airlines—for both its new Airlite belt and structural mounted airbag systems. With the introduction of these new products, potential customers also had begun qualifying SCHROTH as an alternative supplier to AmSafe and leveraging SCHROTH against AmSafe to obtain more favorable pricing. As new commercial airplanes were expected to be ordered, SCHROTH believed that its market share would continue to grow. Indeed, SCHROTH expected that it would capture nearly 20% of the sales of restraint systems used on commercial airplanes by 2020, with most of the gains coming at the expense of AmSafe.

35. Prior to the acquisition, SCHROTH and AmSafe competed head-to-head on price. The resulting loss of a competitor indicates that the acquisition likely will result in significant harm from expected price increases. Furthermore, prior to the acquisition, AmSafe and SCHROTH also competed to develop new restraint technologies. The transaction eliminated that competition depriving customers of more innovative and life-saving restraint systems.

36. The transaction, therefore, is likely to substantially lessen competition in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide in violation of Section 7 of the Clayton Act.

VII. ENTRY

37. New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Entry into the development, manufacture, and sale of restraint systems used on commercial airplanes is costly, and unlikely to be timely or sufficient to prevent the harm to competition caused by the elimination of SCHROTH as an independent supplier.

38. Barriers to entry and expansion include certification requirements. Before a supplier may sell restraint systems, it must first obtain several authorizations, including a TSOA for the restraint system, a TSOA for the seat system, a supplemental type certificate, and, in certain cases, a special condition. These certification requirements discourage entry by imposing substantial sunk costs on potential suppliers with no guarantee that their restraint systems will be successful in the market. They also take substantial time—in some cases, years—to complete.

39. Barriers to entry and expansion also include the significant technical expertise required to design a restraint system that satisfies the certification requirements. The technical expertise required to design a restraint system is proportionate to the complexity of the restraint system design. However, while more advanced restraint systems such as inflatable restraint systems require more expertise than simpler belt-type restraint systems, even belt-type restraint systems require significant expertise to design the belt to be strong, lightweight, and functional.

40. Additional barriers to entry and expansion include economies of scale and reputation. Customers of restraint systems used on commercial airplanes require large volumes of restraint systems at low prices. Companies that cannot manufacture restraint systems at these volumes efficiently cannot compete effectively. Furthermore, customers of restraint systems used on commercial airplanes prefer established suppliers with known reputations.

VIII. VIOLATIONS ALLEGED

41. The acquisition of SCHROTH by TransDigm is likely to substantially lessen competition in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

42. The transaction will likely have the following anticompetitive effects, among others:

a. actual and potential competition between AmSafe and SCHROTH in the relevant markets will be eliminated;

b. competition generally in the relevant markets will be substantially lessened; and

c. prices in the relevant markets will likely increase and innovation will likely decline.

IX. REQUEST FOR RELIEF

43. The United States requests that this Court:

a. adjudge and decree TransDigm's acquisition of SCHROTH to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. order TransDigm to divest all assets acquired from Takata Corporation on February 22, 2017 relating to SCHROTH Safety Products GmbH and Takata Protection Systems and to take any further actions necessary to restore the market to the competitive position that existed prior to the acquisition;

c. award the United States its costs of this action; and

d. grant the United States such other relief as the Court deems just and proper.

Dated: December 21, 2017

Respectfully submitted,

For Plaintiff United States:

/s/ _____

Makan Delrahim,

Assistant Attorney General, Antitrust Division.

/s/ _____

Andrew C. Finch,

Principal Deputy Assistant Attorney General, Antitrust Division.

/s/ _____

Bernard A. Nigro, Jr. (D.C. Bar #412357),

Deputy Assistant Attorney General, Antitrust Division.

/s/ _____

Patricia A. Brink,

Director of Civil Enforcement.

/s/ _____

Maribeth Petrizzi (D.C. Bar #435204),

Chief, Defense, Industrials, and Aerospace Section, Antitrust Division.

/s/ _____

David E. Altschuler (D.C. Bar #983023),

Assistant Chief, Defense, Industrials, and Aerospace Section, Antitrust Division.

/s/ _____

Jeremy Cline* (D.C. Bar #1011073),
Tara Shinnick (D.C. Bar #501462),
Rebecca Valentine (D.C. Bar #989607),

Defense, Industrials, and Aerospace Section, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, D.C. 20530, Telephone: (202) 598–2294, Facsimile: (202) 514–9033, jeremy.cline@usdoj.gov.

*Lead Attorney to be Noticed

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *TransDigm Group Incorporated,* Defendant.

Civil Action No.: 1:17–cv–2735

Judge: Amy Berman Jackson

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 22, 2017, Defendant TransDigm Group Incorporated (''TransDigm'') acquired SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, ''SCHROTH'') from Takata Corporation (''Takata'') for approximately $90 million. Due to the structure of the transaction, it was not required to be reported under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a.

The United States filed a civil antitrust Complaint on December 21, 2017, seeking the divestiture of SCHROTH and such other relief as necessary to restore the market to the competitive position that existed prior to the acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher prices for several types of restraint systems used on commercial airplanes and diminished innovation in the development of new airplane restraints.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, TransDigm is expected to divest all SCHROTH shares and assets acquired from Takata (the ''Divestiture Assets'') to Perusa Partners Fund 2, L.P. and SSP MEP Beteiligungs GmbH & Co. KG, a management buyout group composed of former SCHROTH executives. Under the terms of the Hold Separate, TransDigm will take steps to ensure that the Divestiture Assets are operated as a competitively independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by TransDigm, and that competition is maintained during the pendency of the ordered divestiture.

The United States and TransDigm have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendant and the Transaction

TransDigm is a Delaware corporation headquartered in Cleveland, Ohio. TransDigm operates as a holding company and owns over 100 subsidiaries. Through its subsidiaries, TransDigm is a leading global designer, manufacturer, and supplier of highly engineered airplane components. TransDigm's fiscal year 2016 revenues were approximately $3.1 billion. TransDigm is the ultimate parent company of AmSafe Inc. (''AmSafe''), a Delaware corporation headquartered in Phoenix, Arizona. AmSafe develops, manufactures, and sells a wide range of restraint systems used on commercial airplanes. AmSafe had global revenues of approximately $198 million in fiscal year 2016.

Takata is a global automotive and aerospace parts manufacturer based in Japan.[1] Prior to the acquisition, Takata was the ultimate parent entity of SCHROTH Safety Products GmbH and Takata Protection Systems, Inc. SCHROTH Safety Products is a German limited liability corporation based in Arnsberg, Germany. Takata Protection Systems was a Colorado corporation based in Pompano Beach, Florida.[2] SCHROTH Safety Products and Takata Protection Systems develop, manufacture, and sell a wide range of restraint systems used on commercial airplanes. SCHROTH Safety Products and Takata Protection Systems collectively had approximately $37 million in revenue in fiscal year 2016.

On February 22, 2017, TransDigm acquired SCHROTH Safety Products and substantially all the assets of Takata Protection Systems for approximately $90 million. The transaction combined the two leading suppliers of restraint systems used on commercial airplanes worldwide. AmSafe is the dominant supplier of airplane restraint systems used on commercial airplanes; SCHROTH was its closest competitor and, indeed, its only meaningful competitor for certain types of restraint systems. As a result, the acquisition would lessen competition substantially in the development, manufacture, and sale of several types of restraint systems used on commercial airplanes. This acquisition is the subject of the Complaint and proposed Final Judgment filed today by the United States.

B. Industry Overview

Commercial airplanes are fixed-wing aircraft used for scheduled passenger transport. Restraint systems used on commercial airplanes are critical safety devices that secure the occupant of a seat to prevent injury in the event of turbulence, collision, and impact.

Restraint systems used in the economy and premium cabins in commercial airplanes vary based on the airplane type, seat type, and seating configuration of the airplane. Restraint systems used on commercial airplanes come in two primary forms: (i) conventional belt systems with two or more belts or ''points'' that are connected to a central buckle; or (ii) inflatable systems with one or more airbags that may be installed in combination with a conventional belt system. The airbags can be installed either within the belt itself (called an ''inflatable lapbelt'') or in a structural monument (such as a seat back or wall) within the airplane (called a ''structural mounted airbag'').

Economy cabin seats typically require two-point lapbelts, though other restraint systems such as inflatable restraint systems may be necessary in limited circumstances to comply with Federal Aviation Administration (''FAA'') safety requirements. Premium cabin seats come in many different seating configurations, and passenger restraint systems used in premium cabin seats vary as well. Premium cabin restraint systems include two-point lapbelts, three-point shoulder belts, and inflatable restraint systems. While two-point lapbelts and three-point shoulder belts are used widely throughout the premium cabins, the use of inflatable restraint systems is more common in first-class and other ultra-premium cabins. Flight crew seats on commercial airplanes require special restraint systems called ''technical'' restraints. Technical restraints are multipoint restraints with four or more belts that provide additional protection to the flight crew.

Restraint systems typically are purchased by commercial airlines and airplane seat manufacturers. Because certification of a restraint system is expensive and time consuming, once a restraint system is certified for a particular seat and airplane type, it is rarely substituted in the aftermarket for a different restraint system or supplier. Accordingly, competition between suppliers of restraint systems generally only occurs when a customer is designing a new seat or purchasing a new seat design, either when retrofitting existing airplanes or purchasing new airplanes.

C. Industry Regulation and Certification Requirements

All commercial airplanes must contain FAA-certified restraint systems on every seat installed on the airplane. The process for obtaining FAA certification is complex and involves several distinct stages.

[1] Takata filed for bankruptcy protection on June 25, 2017.

[2] After the acquisition was completed, the Takata Protection Systems assets were incorporated as SCHROTH Safety Products LLC.

Before selling a restraint system, a supplier of airplane restraint systems must first obtain a technical standard order authorization (''TSOA''). A TSOA certifies that the supplier's restraint system meets the minimum design requirements of the codified FAA Technical Standard Order (''TSO'') for that object, and that the manufacturer has a quality system necessary to produce the object in conformance with the TSO. To obtain a TSOA for a restraint system, a supplier must test its restraint system for durability and other characteristics. Once a TSOA is issued for the restraint system, the supplier must then obtain a TSOA for the entire seat system—*i.e.,* the seat and belt combination. To obtain a TSOA for the seat system, the seat system must successfully complete dynamic crash testing to demonstrate that the seat system meets the FAA required g-force and head-injury-criteria safety requirements. Dynamic crash-testing is expensive and can be cost prohibitive to potential suppliers. Once a supplier obtains a TSOA for the seat system, it must then obtain a supplemental type certificate, which certifies that the seat system meets the applicable airworthiness requirements for the particular airplane type on which it is to be installed.

Certain restraint system types such as inflatable restraint systems do not have a codified TSO and must instead satisfy a ''special condition'' from the FAA prior to manufacture and installation of the restraint system. In those circumstances, the FAA must first determine and then publish the terms of the special condition. Once the special condition is published, the supplier must then satisfy the terms of the special condition to install the object on an airplane.

D. Relevant Markets Affected by the Proposed Acquisition

AmSafe and SCHROTH compete across the full range of restraint systems used on commercial airplanes. As alleged in the Complaint, restraint systems are not generally interchangeable or substitutable for different restraint systems; restraint systems are designed for specific aircraft configurations and seat types. FAA regulations dictate which restraint system may be used for a particular aircraft configuration and seat type. In the event of a small but significant price increase for a given type of restraint system, commercial customers would not substitute another restraint system in sufficient numbers so as to render the price increase unprofitable. For these reasons, the Complaint alleges that each restraint system identified in the Complaint is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

As alleged in the Complaint, the relevant geographic market for the development, manufacture, and sale of restraint systems used on commercial airplanes is worldwide. Restraint systems are marketed internationally and may be sourced economically from suppliers globally.

The Complaint alleges likely harm in four distinct product markets for restraint systems used on commercial airplanes worldwide: (1) two-point lapbelts; (2) three-point shoulder belts; (3) technical restraints; and (4) inflatable restraint systems.

A two-point lapbelt is a restraint harness that connects two fixed belts to a single buckle and restrains an occupant at his or her waist. Two-point lapbelts are used on nearly every seat in the economy cabins of commercial airplanes; they also are regularly used in the premium cabins. A three-point shoulder belt is a restraint harness that restrains an occupant at his or her waist and shoulder. It consists of both a lapbelt component and shoulder belt (or sash) component. Three-point shoulder belts are widely used in the premium cabins of commercial airplanes where the seating configurations often necessitate the additional protection provided by three-point shoulder belts. Technical restraints are multipoint restraint harnesses (usually four or five points) that restrain an occupant at his or her waist and shoulders. Technical restraints consist of multiple belts that connect to a single fixed buckle—typically a rotary-style buckle. Technical restraints are used by the flight crew in commercial airplanes. The critical nature of the flight crew's responsibilities and the design of their seats necessitate the additional protections provided by technical restraints. Inflatable restraint systems, which include both inflatable lapbelts and structural mounted airbags, are restraint systems that utilize one or more airbags to restrain an airplane seat occupant. Inflatable restraint systems are most commonly used in the premium cabin of commercial airplanes, particularly in first-class and other ultra-premium cabins that have ''lie-flat'' or oblique-facing seats. Inflatable restraint systems also are used in the economy cabin in certain circumstances. When required by FAA regulations, inflatable restraint systems provide airplane passengers with additional safety.

E. Anticompetitive Effects

According to the Complaint, the acquisition reduced the number of competitors in already highly concentrated markets. Before TransDigm's acquisition of SCHROTH, the markets for all four restraint system types alleged in the Complaint were highly concentrated. In each of these markets, SCHROTH and at most one other smaller firm competed with AmSafe prior to the acquisition and AmSafe had at least a substantial—and often a dominant—share of the market. The Complaint alleges that TransDigm's acquisition of SCHROTH therefore significantly increased concentration in already highly concentrated markets and is likely to enhance market power.

In addition to increasing concentration, the Complaint alleges that TransDigm's acquisition of SCHROTH would eliminate head-to-head competition between AmSafe and SCHROTH in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide. According to the Complaint, prior to the acquisition, SCHROTH was a growing competitive threat to AmSafe and was challenging AmSafe on pricing and innovation. In 2012, Takata acquired SCHROTH with the intention of challenging AmSafe in the markets for restraint systems used on commercial airplanes. SCHROTH began to compete with AmSafe on price and to invest heavily in research and development to create new restraint technologies. Customers were already beginning to see the benefits of increased competition in these markets. Between 2012 and 2017, SCHROTH introduced several new innovative restraint products, challenging older products from AmSafe. Prior to the acquisition, SCHROTH had already found customers—including major U.S. commercial airlines—for its new products. With the introduction of these new products, potential customers also had begun qualifying SCHROTH as an alternative supplier to AmSafe and leveraging SCHROTH against AmSafe to obtain more favorable pricing. As new commercial airplanes were expected to be ordered, SCHROTH believed that its market share would continue to grow. For all of these reasons, the Complaint alleges that the loss of SCHROTH as an independent competitor to AmSafe is likely to result in higher prices for several types of restraints used on commercial airplanes and diminished innovation worldwide in violation of Section 7 of the Clayton Act.

F. Barriers to Entry

As alleged in the Complaint, new entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Entry into the development, manufacture, and sale of restraint systems used on commercial airplanes is costly, and unlikely to be timely or sufficient to prevent the harm to competition caused by the elimination of SCHROTH as an independent supplier.

Barriers to entry and expansion include certification requirements. Before a supplier may sell restraint systems, it must first obtain several authorizations, including a TSOA for the restraint system, a TSOA for the seat system, a supplemental type certificate, and, in certain cases, a special condition. These certification requirements discourage entry by imposing substantial sunk costs on potential suppliers with no guarantee that their restraint systems will be successful in the market. They also take substantial time—in some cases, years—to complete.

Barriers to entry and expansion also include the significant technical expertise required to design a restraint system that satisfies the certification requirements. The technical expertise required to design a restraint system is proportionate to the complexity of the restraint system design. However, while more advanced restraint systems such as inflatable restraint systems require more expertise than simpler belt-type restraint systems, even belt-type restraint systems require significant expertise to design the belt to be strong, lightweight, and functional.

Additional barriers to entry and expansion include economies of scale and reputation. Customers of restraint systems used on commercial airplanes require large volumes of restraint systems at low prices. Companies that cannot manufacture restraint systems at these volumes efficiently cannot compete effectively. Furthermore, customers of restraint systems used on commercial airplanes prefer established suppliers with known reputations.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by establishing a new, independent, and economically viable competitor in the development, manufacture, and sale of commercial airplane restraint systems worldwide.

A. Divestiture

Pursuant to the proposed Final Judgment, TransDigm must divest all of the SCHROTH assets it acquired from Takata pursuant to the February 2017 transaction. Specifically, Paragraph II(J) defines the Divestiture Assets to include all of the assets TransDigm acquired pursuant to the parties' Share and Asset Purchase Agreement and Share Transfer Agreement, including SCHROTH's owned real property and leases in Arnsberg, Germany, and Pompano Beach, Florida, and all other tangible and intangible assets that comprise SCHROTH.

Paragraph IV(A) of the proposed Final Judgment provides that TransDigm must divest the Divestiture Assets to Perusa Partners Fund 2, L.P. (''Perusa'') and SSP MEP Beteiligungs GmbH & Co. KG (''MEP KG''), or to an alternative acquirer acceptable to the United States, within 30 days after all necessary regulatory approvals have been obtained from the Committee on Foreign Investment in the United States (''CFIUS'') and the German Federal Ministry of Economic Affairs and Energy (the ''*Bundesministerium für Wirtschaft und Energie*''), or 30 days after the Court's signing of the Hold Separate, whichever is later. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the assets can and will be operated by Perusa and MEP KG as a viable, ongoing business that can compete effectively in the relevant markets. TransDigm must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with Perusa and MEP KG, or any other prospective purchaser.

The proposed Acquirer is a consortium between Perusa and certain members of the current management team of SCHROTH. Perusa is a diversified German private equity firm that invests in mid-sized companies. The SCHROTH management buyout group, which is acquiring an equity stake in SCHROTH through an investment entity (MEP KG), consists of 11 current SCHROTH executives, including several individuals who have had significant responsibilities related to SCHROTH's engineering, manufacture, and sale of airplane restraints. Under the terms of the divestiture agreement, Perusa will own a majority stake of SCHROTH.

In order to facilitate the Acquirer's immediate use of the Divestiture Assets, Paragraph IV(J) of the proposed Final Judgment provides the Acquirer with the option to enter into a transition services agreement with TransDigm, for a period of up to 12 months, to obtain information technology services and other such transition services that are reasonably necessary for the Acquirer to operate the Divestiture Assets. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional 6 months.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved with the SCHROTH business. Paragraph IV(D) of the proposed Final Judgment requires TransDigm to provide the Acquirer with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment, and provides that TransDigm will not interfere with any negotiations by the Acquirer to hire them. In addition, Paragraph IV(E) provides that for employees that elect employment with the Acquirer, TransDigm shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which the employees would generally be provided if transferred to a buyer of an ongoing business. The Paragraph further provides, that for a period of two years from filing of the Complaint, TransDigm may not solicit to hire, or hire any such person who was hired by the Acquirer, unless such individual is terminated or laid off by the Acquirer or the Acquirer agrees in writing that TransDigm may solicit to hire that individual.

In the event that TransDigm does not accomplish the divestiture within the period provided in the proposed Final Judgment, Paragraph V(A) provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that TransDigm will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After its appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth its efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Firewalls

The proposed Final Judgment also contains a firewall provision intended to ensure that TransDigm's AmSafe subsidiary does not obtain SCHROTH's competitively sensitive information. During the U.S. Department of Justice, Antitrust Division's (''Antitrust Division'') investigation of the acquisition, TransDigm entered into an asset preservation agreement with the United States to ensure that the SCHROTH assets were preserved and operated independently during the pendency of the investigation. As part of that agreement, the United States agreed to allow three TransDigm executives to assist in the day-to-day management of SCHROTH on the condition that the executives would have no decision-making responsibility or participation in the business of AmSafe while they served in this capacity.[3] Section IX of the proposed Final Judgment includes a firewall provision to ensure that for the duration of the Final Judgment these three TransDigm employees do not share competitively sensitive information regarding SCHROTH that they obtained during the pendency of the investigation with individuals with responsibilities relating to AmSafe.

C. Notification

Section XII of the proposed Final Judgment requires TransDigm to provide notification to the Antitrust Division of certain proposed acquisitions not otherwise subject to filing under the Hart-Scott-Rodino Act, 15 U.S.C 18a (the ''HSR Act''), and in the same format as, and per the instructions relating to the notification required under that statute. The notification requirement applies in the case of any direct or indirect acquisitions of any assets of or interest in any entity engaged in the development, manufacture, or sale of airplane restraint systems. Section XII further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated.

D. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph XV(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, TransDigm has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that TransDigm has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XV(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that TransDigm has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph XV(B) requires TransDigm to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

Finally, Section XVI of the proposed Final Judgment provides that the Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and TransDigm that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against TransDigm.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and TransDigm have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against TransDigm. The United States could have continued the litigation and sought a divestiture of all SCHROTH assets acquired from Takata by TransDigm. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the development,

[3] Under Section V(B) of the Hold Separate, those three TransDigm executives may continue to assist with the management of SCHROTH for the term of the Hold Separate.

manufacture, and sale of commercial airplane restraint systems worldwide. Indeed, the divestiture includes all SCHROTH assets acquired from Takata. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *US Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[4]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (*quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also US Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also US Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft,* 56 F.3d at 1461); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also US Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the

[4] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004) *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[5] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also US Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the Court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[6] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *US Airways,* 38 F. Supp. 3d at 76

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 21, 2017

Respectfully submitted,

/s/

JEREMY CLINE* (D.C. Bar #1011073)
United States Department of Justice,
Antitrust Division,
Defense, Industrials, and Aerospace Section,
450 Fifth Street NW, Suite 8700,
Washington, D.C. 20530,
Tel: (202) 598–2294,
Fax: (202) 514–9033,
Email: jeremy.cline@usdoj.gov.
* Attorney of Record

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *TransDigm Group Incorporated,* Defendant.

Civil Action No.: 1:17–cv–2735

Judge: Amy Berman Jackson

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on December 21, 2017, the United States and Defendant, TransDigm Group Incorporated, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, TransDigm agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by TransDigm to assure that competition is substantially restored;

AND WHEREAS, the United States requires TransDigm to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, TransDigm has represented to the United States that the divestiture required below can and will be made and that TransDigm will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against TransDigm under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means Perusa and MEP KG, or another entity to whom TransDigm divests the Divestiture Assets.

B. ''TransDigm'' means Defendant TransDigm Group Incorporated, a Delaware corporation with its headquarters in Cleveland, Ohio, its successors and assigns, and its subsidiaries (including, but not limited to, SCHROTH Safety Products LLC, SCHROTH Safety Products GmbH, and AmSafe, Inc.), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''SCHROTH'' means, collectively, SCHROTH Germany and SCHROTH U.S.

D. ''SCHROTH Germany'' means SCHROTH Safety Products GmbH, a German limited liability company headquartered in Arnsberg, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''SCHROTH U.S.'' means SCHROTH Safety Products LLC, a Delaware limited liability company, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Share and Asset Purchase Agreement'' means the Share and Asset Purchase Agreement among Takata Europe GmbH, Takata Protection Systems, Inc., Interiors In Flight, Inc., Takata Corporation, TransDigm, and TDG Germany GmbH, dated February 22, 2017.

G. ''Share Transfer Agreement'' means the Share Transfer Agreement among Takata Europe GmbH and TDG Germany GmbH, dated February 21, 2017.

[6] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D.Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

H. ''Perusa'' means Perusa Partners Fund 2, L.P., a Guernsey limited partnership with its headquarters in St. Peter Port, Guernsey, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''MEP KG'' means SSP MEP Beteiligungs GmbH & Co. KG, a German limited partnership with its headquarters in Munich, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. ''Divestiture Assets'' means all SCHROTH shares and assets acquired by TransDigm pursuant to the Share and Asset Purchase Agreement and Share Transfer Agreement including, but not limited to:

1. SCHROTH Germany's owned real property listed in Appendix A including, but not limited to, SCHROTH Germany's warehouses located at Im Ohl 14, 59757 Arnsberg, Germany;

2. SCHROTH Germany's leases for the real property listed in Appendix A including, but not limited to, SCHROTH Germany's headquarters located at Im Ohl 14, 59757 Arnsberg, Germany;

3. SCHROTH U.S.'s leases for the real property listed in Appendix A including, but not limited to, SCHROTH U.S.'s facility at 1371 SW 8th Street, Pompano Beach, Florida;

4. All tangible assets that comprise SCHROTH, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used by SCHROTH; all licenses, permits, certifications, and authorizations issued by any governmental organization (including, but not limited to, the Federal Aviation Administration and the European Aviation Safety Agency) or industry standard-setting body (including, but not limited to, the Society of Automotive Engineers and the International Organization for Standardization) relating to SCHROTH; all contracts, teaming arrangements, agreements, leases, commitments, and understandings, relating to SCHROTH, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to SCHROTH;

5. All intangible assets relating to the SCHROTH businesses, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to SCHROTH employees, customers, suppliers, agents, or licensees. Intangible assets also include all research data concerning historic and current research and development efforts relating to the development, manufacture, and sale of airplane restraint systems, designs of experiments, and the results of successful and unsuccessful designs, experiments, and testing.

K. ''Airplane restraint system'' means a belt, harness, or airbag used to restrain airplane passengers and crew.

III. Applicability

A. This Final Judgment applies to TransDigm, as defined above, and all other persons in active concert or participation with TransDigm who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, TransDigm sells or otherwise disposes of all or substantially all of its assets or of lesser business units that include the Divestiture Assets, TransDigm shall require the purchaser to be bound by the provisions of this Final Judgment. TransDigm need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. TransDigm is ordered and directed, within 30 calendar days after all necessary regulatory approvals have been obtained from the Committee on Foreign Investment in the United States (''CFIUS'') and the German Federal Ministry of Economic Affairs and Energy (the ''*Bundesministerium für Wirtschaft und Energie*''), or 30 calendar days after the Court's signing of the Hold Separate Stipulation and Order in this matter, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Perusa and MEP KG, or to an alternative Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. TransDigm agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event TransDigm is attempting to divest the Divestiture Assets to an Acquirer other than Perusa and MEP KG, TransDigm promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. TransDigm shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestiture ordered by this Final Judgment, TransDigm shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. TransDigm shall make available such information to the United States at the same time that such information is made available to any other person.

D. TransDigm shall provide the Acquirer and the United States information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. TransDigm will not interfere with any negotiations by the Acquirer to employ any TransDigm employee whose primary responsibility is the operation of the Divestiture Assets.

E. For any personnel involved in the operation of the Divestiture Assets that elect employment with the Acquirer, TransDigm shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which the relevant employees would generally be provided if transferred to a buyer of an ongoing business. For a period of two (2) years from the filing of the Complaint in this matter, TransDigm may not solicit to hire, or hire, any such person who was hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that TransDigm may solicit or hire that individual. Nothing in this paragraph shall prohibit TransDigm from maintaining any reasonable restrictions on the disclosure by any employee who accepts an offer of employment with the Acquirer of TransDigm's proprietary

non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to TransDigm's businesses and clients, and (3) unrelated to the Divestiture Assets.

F. TransDigm shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of SCHROTH; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. TransDigm shall warrant to the Acquirer that each asset will be operational on the date of sale.

H. TransDigm shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

I. TransDigm shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, TransDigm will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. At the Acquirer's option, and subject to approval by the United States, TransDigm shall enter a Transition Services Agreement for information technology services and other such transition services that are reasonably necessary for the Acquirer to operate the Divestiture Assets for a period of up to twelve months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six months. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions. Any amendments or modifications of the Transition Services Agreement may only be entered into with the approval of the United States, in its sole discretion.

K. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of developing, manufacturing, and selling airplane restraint systems. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of developing, manufacturing, and selling airplane restraint systems; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and TransDigm give TransDigm the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If TransDigm has not divested the Divestiture Assets within the time period specified in Paragraph IV(A), TransDigm shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of TransDigm any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. TransDigm shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by TransDigm must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of TransDigm pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to TransDigm and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and TransDigm are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to TransDigm and the United States.

E. TransDigm shall use its best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and TransDigm shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. TransDigm shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as

appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. In the event TransDigm divests the Divestiture Assets to an Acquirer other than Perusa and MEP KG, within two (2) business days following execution of a definitive divestiture agreement, TransDigm or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify TransDigm. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from TransDigm, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. TransDigm and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from TransDigm, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to TransDigm and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to TransDigm's limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by TransDigm under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

TransDigm shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, TransDigm shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. TransDigm shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Firewalls

A. TransDigm shall implement and maintain procedures to prevent the sharing by the TransDigm Executive Vice President currently assigned to SCHROTH, the TransDigm Controller currently assigned to SCHROTH, and the TransDigm Executive Vice President of Mergers & Acquisitions of competitively sensitive information from SCHROTH with personnel with responsibilities relating to AmSafe, Inc.

B. TransDigm shall, within thirty (30) calendar days of the Court's entry of the Hold Separate Stipulation and Order, submit to the United States a document setting forth in detail the procedures implemented to effect compliance with this Section. The United States shall notify TransDigm within ten (10) business days whether, in its sole discretion, it approves or rejects TransDigm's compliance plan.

C. In the event TransDigm's compliance plan is rejected, the reasons for the rejection shall be provided to TransDigm and TransDigm shall be given the opportunity to submit, within ten (10) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan, the United States shall have the right to request that the Court rule on whether TransDigm's proposed compliance plan fulfills the requirements of Paragraph IX(A).

D. TransDigm may at any time submit to the United States evidence relating to the actual operation of any firewall in support of a request to modify any firewall set forth in this Section. In determining, in its sole discretion, whether it would be appropriate for the United States to consent to modify the firewall, the United States, shall consider the need to protect competitively sensitive information of SCHROTH and the impact the firewall has had on TransDigm's ability to efficiently manage AmSafe, Inc.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, TransDigm shall deliver to the United States an affidavit, signed by TransDigm's Chief Financial Officer and General Counsel, which shall describe the fact and manner of TransDigm's compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to

acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts TransDigm has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by TransDigm, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, TransDigm shall deliver to the United States an affidavit that describes in reasonable detail all actions TransDigm has taken and all steps TransDigm has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. TransDigm shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in TransDigm's earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. TransDigm shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to TransDigm, be permitted:

(1) access during TransDigm's office hours to inspect and copy, or at the option of the United States, to require TransDigm to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of TransDigm, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, TransDigm's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by TransDigm.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, TransDigm shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by TransDigm to the United States, TransDigm represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and TransDigm marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give TransDigm ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Notification

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), TransDigm, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity, or management interest, in any entity engaged in the development, manufacture, or sale of airplane restraint systems during the term of this Final Judgment.

B. Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about airplane restraint systems. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, TransDigm shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIII. No Reacquisition

TransDigm may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. TransDigm agrees that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and TransDigm waives any

argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that TransDigm has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. TransDigm agrees to reimburse the United States for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

XVI. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and TransDigm that the divestiture has been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XVII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

APPENDIX A: Real Property

(Owned and Leased)

SCHROTH U.S. Leased Real Property

Facility name	Address	Type of facility
Pompano Beach	1371 SW 8th Street, Pompano Beach, FL	Manufacturing Plant, Office, and Warehouse.

SCHROTH Germany Leased Real Property

Facility name	Address	Type of facility
Headquarters "Im Ohl"	Im Ohl 14, 59757, Arnsberg, Germany	Manufacturing Plant and Office (Headquarters).
Parking Area "Im Ohl"	Im Ohl 14, 59757, Arnsberg, Germany	Parking Area.

SCHROTH Germany Owned Real Property

Facility name	Address	Type of facility
Warehouse "Im Ohl"	Im Ohl 14, 59757, Arnsberg, Germany; Land Register of Neheim-Husten of the local court of Arnsberg; Page 13024; Plot 5, Parcel 390.	Warehouse.
Warehouse "Im Ohl"	Im Ohl 14, 59757, Arnsberg, Germany; Land Register of Neheim-Husten of the local court of Arnsberg; Page 9777; Plot 5, Parcel 88.	Warehouse.

[FR Doc. 2018–00544 Filed 1–12–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Janssen Pharmaceuticals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 15, 2018. Such persons may also file a written request for a hearing on the application pursuant on or before February 15, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant

Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on September 19, 2017, Janssen Pharmaceuticals Inc., 1400 Olympic Drive, BLDGS 1–5 & 7–14, Athens, Georgia 30601 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Tapentadol	9780	II
Thebaine	9333	II
Concentrated Poppy Straw.	9670	II

The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol for distribution to its customers. The company plans to import thebaine derivatives (9333) as reference standards. The company plans to import concentrated poppy straw to manufacture other controlled substances. No other activity for these drug codes is authorized for this registration. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: January 4, 2018.

Susan A. Gibson,

Deputy Assistant Administrator.

[FR Doc. 2018–00508 Filed 1–12–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Catalent Pharma Solutions, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 15, 2018. Such persons may also file a written request for a hearing on the application February 15, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on October 13, 2017, Catalent Pharma Solutions, LLC, 1100 Enterprise Drive, Winchester, KY 40391 applied to be registered as an importer for Gamma Hydroxybutyric Acid (2010) the basic class of controlled substances.

The company plans to import the listed controlled substance in finished dosage form for analytical purposes only. No other activity for these drug codes is authorized for this registration. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under to 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: January 4, 2018.

Susan A. Gibson,

Deputy Assistant Administrator.

[FR Doc. 2018–00507 Filed 1–12–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 19, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on November 10, 2017, Johnson Matthey Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Amphetamine	1100	II
Methylphenidate	1724	II
Codeine	9050	II
Oxycodone	9143	II
Diphenoxylate	9170	II
Hydrocodone	9193	II
Meperidine	9230	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Thebaine	9333	II
Opium tincture	9630	II

The company plans to manufacture the listed controlled substances in bulk for either internal use or for sale to its customers. Thebaine (9333) will be used to manufacture other controlled substances for sale in bulk to its customers.

Dated: January 4, 2018.

Susan A. Gibson,

Deputy Assistant Administrator.

[FR Doc. 2018–00506 Filed 1–12–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Virtual Meeting of the Task Force on Apprenticeship Expansion

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA) and its implementing regulations, notice is hereby given to announce a virtual meeting of the Task Force on Apprenticeship Expansion on Tuesday, February 6, 2018. The Task Force will convene its second meeting virtually; information on how to access this meeting is provided below and will be prominently posted on the Task Force's homepage: *https://www.dol.gov/apprenticeship/task-force.htm.* The Task Force is a FACA committee established by Presidential Executive Order that is charged with identifying strategies and proposals to promote and expand apprenticeships, especially in sectors where apprenticeship programs are insufficient. The Task Force is solely advisory in nature, and will consider reports, comments, research, evidence, and existing practices as appropriate to develop recommendations for inclusion in its final report to the President. A virtual meeting of the Task Force provides cost savings to the government while still offering a venue that allows for public participation and transparency, as required by FACA. To achieve its mission, the Task Force will likely convene four meetings between February and May 2018; two meetings will convene virtually and two meetings will convene in person.

DATES: The meeting will begin at approximately 1:00 p.m. Eastern Standard Time on Tuesday, February 6, 2018, and adjourn at approximately 3:00 p.m. Eastern Standard Time.

ADDRESSES: The meeting will convene virtually. Any updates to the agenda and meeting logistics will be posted on the Task Force homepage at: *https://www.dol.gov/apprenticeship/task-force.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane A. Jones, Senior Policy Advisor to the Secretary, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Telephone: (202) 693–2700 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Virtual Meeting Log-In Instructions

In order to promote openness and increase public participation, webinar and audio conference technology will be used throughout the meeting. Webinar and audio instructions will be prominently posted on the Task Force homepage at: *https://www.dol.gov/apprenticeship/task-force.htm.*

II. Task Force Meeting Schedule

The Task Force is charged with identifying strategies and proposals to promote apprenticeships, especially in sectors where apprenticeship programs are insufficient. Upon completion of its work, the Task Force shall submit to the President of the United States a final report detailing these strategies and proposals. To achieve its mission, the Task Force will likely convene four meetings between February and May 2018. The remaining meeting dates for the 2018 calendar year will be posted on the Task Force homepage and subsequent **Federal Register** Notices will be published.

III. Task Force Subcommittees

Pursuant to the Executive Order and the Task Force Charter, the final report must specifically address the following four topics: (1) Federal initiatives to promote apprenticeships; (2) administrative and legislative reforms that would facilitate the formation and success of apprenticeship programs; (3) the most effective strategies for creating industry-recognized apprenticeships; and (4) the most effective strategies for amplifying and encouraging private-sector initiatives to promote apprenticeships. In order to accomplish this goal, Secretary R. Alexander Acosta established the following four subcommittees.

1. *Expanding Access, Equity and Career Awareness Subcommittee*
2. *Administrative and Regulatory Strategies to Expand Apprenticeship Subcommittee*
3. *Attracting Business to Apprenticeship Subcommittee*
4. *Education and Credentialing Subcommittee*

Interested parties can obtain further meeting details and subcommittee descriptions on the Task Force website: *https://www.dol.gov/apprenticeship/task-force.htm.*

Notice of Intent to Attend the Meeting and Submission of a Written Statement:

Interested members of the public must register for the virtual Task Force meeting by Thursday, January 25, 2018, via the public registration website using the following link: *https://secure.thegateam.com/dol-aetf-reg/.* Additionally, individuals with special needs and/or disabilities that will require special accommodations should send an email to *Apprenticeshiptaskforce@dol.gov* with the subject line ''Special Accommodations for the February 2018 Virtual Task Force Meeting'' no later than Thursday, January 25, 2018.

The tentative agenda for this meeting includes the following:

- Updates Since November 2017 Meeting
- Overview and Status Report on the Work of the Subcommittees
- Taking Apprenticeship to Scale
- Next Meeting and Next Steps

Also in the interest of increasing public participation, any member of the public who wishes to provide a written statement should send it via electronic mail to *Apprenticeshiptaskforce@dol.gov,* subject line ''Public Comment February 2018 Virtual Task Force Meeting.'' The agenda and meeting logistics may be updated between the time of this publication and the scheduled date of the Task Force meeting. All meeting updates will be posted to the Task Force website: *https://www.dol.gov/apprenticeship/task-force.htm.*

Rosemary Lahasky,

Deputy Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2018–00565 Filed 1–12–18; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cognitive and Psychological Research

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Cognitive and Psychological Research,'' 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 February 15, 2018.

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 website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201708-112201-004* (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, 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–BLS, 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 Cognitive and Psychological Research information collection. The BLS Behavioral Science Research Center (BSRC) conducts psychological research focusing on the design and execution of the data collection process in order to improve the quality of data collected by the Bureau. The research is aimed at improving data collection quality by assessing questionnaire/form management and administration, as well as issues that relate to interviewer training and interaction with respondents during the interview process. BSRC staff work closely with economists and/or program specialists responsible for defining the concepts to be measured by BLS collection programs. This laboratory research enhances BLS survey data quality. Improvements are made by examining psychological and cognitive aspects of BLS data collection procedures, including questionnaire design, interviewing procedures, collection modalities, and administrative technology. The BLS Authorizing Statute authorizes this information collection. *See* 29 U.S.C. 1, 2.

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 1220–0141.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on April 30, 2018. 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 1, 2017 (82 FR 35826).

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 1220–0141. 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–BLS.

Title of Collection: Cognitive and Psychological Research.

OMB Control Number: 1220–0141.

Affected Public: Private Sector—businesses or other for-profits and Individuals and Households.

Total Estimated Number of Respondents: 18,300.

Total Estimated Number of Responses: 18,300.

Total Estimated Annual Time Burden: 6,300 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: January 8, 2018.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2018–00556 Filed 1–12–18; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''*Local Area Unemployment Statistics (LAUS) Program*''. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual

listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before March 19, 2018.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The BLS has been charged by Congress (29 U.S.C. Sections 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Workforce Agencies.

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Innovation and Opportunity Act of 2014 (that supplanted the Workforce Investment Act of 1998) and the Public Works and Economic Development Act, among others.

The estimates also are used in economic analysis by public agencies and private industry, and for State and area funding allocations and eligibility determinations according to legal and administrative requirements. Implementation of current policy and legislative authorities could not be accomplished without collection of the data.

The reports and manual covered by this request are integral parts of the LAUS program insofar as they ensure and measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research.

II. Current Action

Office of Management and Budget clearance is being sought for a revision of the information collection request that makes up the LAUS program. All aspects of the information collection are conducted electronically. All data are entered directly into BLS-provided systems.

The BLS, as part of its responsibility to develop concepts and methods by which States prepare estimates under the LAUS program, developed a manual for use by the States. The manual explains the conceptual framework for the State and area estimates of employment and unemployment, specifies the procedures to be used, provides input information, and discusses the theoretical and empirical basis for each procedure. This manual is updated on a regular schedule.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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 continues to 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.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Affected Public: State governments.

	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
LAUS 3040	52 respondents with 6962 reporting units	13	90,506	1.5	135,759
LAUS 8	52	11	572	1	572
LAUS 15	6	1	6	2	12
LAUS 16	52	1	52	1	52
Totals			91,136		136,395

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on January 9, 2018.

Eric Molina,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2018–00557 Filed 1–12–18; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet January 21–23, 2018. On Sunday, January 21, the first meeting will commence at 12:30 p.m., Central Standard Time (CST), with the meetings thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Monday, January 22, the first meeting will commence at 8:30 a.m. CST with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, January 23, the first meeting will commence at 9:45 a.m., CST and will be followed by the closed session meeting of the Board

of Directors that will commence promptly upon adjournment of the prior meeting.

LOCATION: The Hilton Nashville Downtown, 121 Fourth Avenue South, Nashville, Tennessee 37201.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

Call-In Directions for Open Sessions

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- Once connected to the call, your telephone line will be *automatically* ''MUTED''.
- To participate in the meeting during public comment press #6 to ''UNMUTE'' your telephone line, once you have concluded your comments please press *6 to ''MUTE'' your line.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

MEETING SCHEDULE

	Time *
Sunday, January 21, 2018:	
1. Operations & Regulations Committee	12:30 p.m.
2. Governance and Performance Review Committee	
3. Combined Audit and Finance Committees	
4. Audit Committee	
5. Finance Committee	
Monday, January 22, 2018:	
1. Institutional Advancement Committee	8:30 a.m.
2. Communications Subcommittee Committee	
3. Delivery of Legal Services Committee	
Tuesday, January 23, 2018:	
1. Board of Directors	9:30 a.m.

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective funders.**

Combined Audit and Finance Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to hear a briefing from the Corporation's Auditor.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new Leaders Council invitees and to receive a briefing on the development activities.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, Audit Committee, and Combined Audit and Finance Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection.

A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

Matters To Be Considered

January 21, 2018

Operations & Regulations Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of October 15, 2017
3. Consider and act on Proposed Rulemaking to repeal 45 CFR parts 1603—State Advisory Councils
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
   - Zoe Osterman, Law Fellow
4. Consider and act on Proposed Rulemaking to adopt a Touhy rule for LSC's process to respond to subpoenas
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
   - Kristin Martin, Law Fellow
5. Update on Implementation of Revised 45 CFR parts 1630 and 1631 Regarding Costs and Acquisitions
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
6. Update on Consideration of Opening Rulemaking to Revise 45 CFR part 1607—Governing Bodies
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Stefanie Davis, Assistant General Counsel
7. Discussion of future reports to the Committee by the Director of the Office of Date Governance and Analysis
   - Carlos Manjarrez, Director, Office of Data Governance and Analysis
8. Discussion of Committee's evaluations for 2017 and goals for 2018
9. Discussion of Management's report on implementation of the Strategic Plan 2017–2020
   - Jim Sandman, President
10. Public comment
11. Consider and act on other business
12. Consider and act on adjournment of meeting

* Please note that all times in this notice are in *Central Standard Time*.

** Any portion of the closed sessionc consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 C.F.R. 1622.2 & 1622.3.

January 21, 2018

Governance and Performance Review Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 16, 2017
3. Discussion of Board and Committee Evaluations
   a. Staff Report on 2017 Board and Committee Evaluations
   b. Discussion of Governance and Performance Committee's evaluations for 2017 and the Committee's goals for 2018
   - Carol Bergman, Vice President for Government Relations & Public Affairs
4. Discussion of President's Evaluation 2017
5. Discussion of the Inspector General's FY 2017 activities
6. Report on foundation grants and LSC's research agenda
   - Jim Sandman, President
7. Report on transition
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
   - Carol Bergman, Vice President for Government Relations & Public Affairs
8. Consider and act on other business
9. Public comment
10. Consider and act on adjournment of meeting

January 21, 2018

Combined Audit & Finance Committee

Open Session

1. Approval of agenda
2. Presentation of the Fiscal Year (FY) 2017 Annual Financial Audit
   - John Seeba, Assistant Inspector General for Audits
   - Millie Seijo, Castro & Company
3. Consider and act on *Resolution 2018–XXX,* Acceptance of the Draft Financial Statements for Fiscal Year 2017
4. Presentation of Financial Report for FY 2017
5. Review of LSC's Form 990 for FY 2017
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the Open Session Meeting and proceed to a Closed Session

Closed Session

9. Communication by Corporate Auditor with those charged with governance under Statement on Auditing Standard 114
   - Jeffrey Schanz, Inspector General
   - John Seeba, Assistant Inspector General for Audits
   - Millie Seijo, Castro & Company
10. Consider and act on motion to adjourn the meeting

January 21, 2018

Audit Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 15, 2017
3. Discussion of Committee's evaluations for 2017 and the Committee's Goals for 2018
4. Committee review of charter responsibilities and development of work plan
5. Briefing of Office of Inspector General
   - Jeffrey Schanz, Inspector General
6. Pursuant to Section VIII(C)(5) of the Committee Charter, review LSC's and the Office of Inspector General's mechanisms for the submission of confidential complaints
   - Jeffrey Schanz, Inspector General
   - Lora Rath, Director, Office of Compliance and Enforcement
7. Management update regarding risk management
   - Ron Flagg, General Counsel and Vice President for Legal Affairs
8. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
   - Jeffrey Schanz, Inspector General
   - Lora Rath, Director of Compliance and Enforcement
   - John Seeba, Assistant IG for Audits
9. Public comment
10. Consider and act on other business
11. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

12. Approval of minutes of the Committee's Closed Session meeting of October 15, 2017
13. Briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General
   - Lora Rath, Director of Compliance and Enforcement
14. Consider and act on adjournment of meeting

January 21, 2018

Finance Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 16, 2017
3. Discussion of Committee's evaluations for 2017 and the Committee's goals of 2018
4. Presentation of LSC's Financial Report for the first two months of FY 2018
   - David Richardson, Treasurer/ Comptroller
5. Discussion of LSC's FY 2018 appropriations request
   - Carol Bergman, Vice President for Government Relations & Public Affairs
6. Consider and act on LSC's Revised Operating Budget for FY 2018, *Resolution #2017–XXX*
   - David Richardson, Treasurer and Comptroller
7. Discussion of LSC's FY 2019 appropriations request
   - Carol Bergman, Director of Government Relations & Public Affairs
8. Report on the Selection of Accounts and Depositories for LSC Funds
   - David Richardson, Treasurer/ Comptroller
9. Public comment
10. Consider and act on other business
11. Consider and act on adjournment of meeting

January 22, 2018

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of October 15, 2017
3. Discussion of Committee's evaluations for 2017 and the Committee's goals of 2018
4. Update on Leaders Council
   - John G. Levi, Chairman of the Board
5. Development report
   - Nadia Elguindy, Director of Institutional Advancement
6. Consider and act on updating Institutional Advancement Protocols
   - Nadia Elguindy, Director of Institutional Advancement
   - Ron Flagg, Vice President for Legal Affairs, General Counsel and Corporate Secretary
7. Consider and act on *Resolution #2018–XXX,* Expenditure of Private Funds to Support Public Awareness Campaign for Business Community
   - Jim Sandman, President
8. Public Comment
9. Consider and act on other business
10. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

11. Approval of minutes of the Committee's Closed Session meeting of October 15, 2017
12. Development activities report
13. Consider and act on motion to approve Leaders Council invitees
14. Consider and act on other business
15. Consider and act on motion to adjourn the meeting

January 22, 2018

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting of October 15, 2017
3. Discussion of Subcommittee's evaluations for 2017 and the Subcommittee's goals for 2018
4. Communications analytics update
   - Carl Rauscher, Director of Communications and Media Relations
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

January 22, 2018

Delivery of Legal Services Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 15, 2017
3. Discussion of Committee's evaluations for 2017 and the Committee's goals for 2018
4. Discussion of future topics for Delivery of Legal Services Committee panel presentations
5. Panel presentation on online intake and triage
   - Ashley Holliday, Deputy General Counsel, Est Tennessee Legal Services
   - Iliana Sanchez-Bryson, Chief Information Officer, Greater Miami Legal Services
   - Angela Tripp, Director, Michigan Legal Help Program, and Technology Grants Manager, Michigan Advocacy Program
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the meeting

January 23, 2018

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of October 17, 2017
4. Approval of minutes of the Board's Open Session telephonic meeting of November 28, 2017
5. Consider and act on nomination for the Chairman of the Board Directors
6. Consider and act on nominations for the Vice Chairman of the Board of Directors
7. Chairman's Report
8. Members' Report
9. President's Report
10. Inspector General's Report
11. Consider and act on the report of the Operations and Regulations Committee
12. Consider and act on the report of the Governance and Performance Review Committee
13. Consider and act on the Combined Audit and Finance Committee
14. Consider and act on the report of the Audit Committee
15. Consider and act on the report of the Finance Committee
16. Consider and act on the report of the Institutional Advancement Committee
17. Consider and act on the report of the Delivery of Legal Services Committee
18. Public comment
20. Consider and act on other business
21. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

22. Approval of minutes of the Board's Closed Session meeting of October 17, 2017
23. Briefing by Management
24. Briefing by Inspector General
25. Consider and act on General Counsel's report on potential and pending litigation Involving LSC
26. Consider and act on list of prospective Leaders Council members
27. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: January 11, 2018.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2018–00698 Filed 1–11–18; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–015]

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 February 15, 2018. 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 Agriculture, Rural Development Agency (DAA–0572–2017–0004, 9 items, 9 temporary items). Community Facilities Program records. This loan and borrower program finances essential community facilities in rural areas. Included are field activity reports, routine studies, loan application information, borrower files, and loan docket records.

2. Department of Agriculture, Rural Development Agency (DAA–0572–2017–0007, 7 items, 7 temporary items). Multi-Family Housing Program records. This program provides affordable multi-family rental housing in rural areas by financing projects aimed at low income elderly and disabled individuals and families, as well as domestic farm laborers. Included are borrower files, loan applications, field activity reports, and loan docket files.

3. Department of Health and Human Services, Health Resources and Services Administration (DAA–0512–2017–0004, 1 item, 1 temporary item). Agency-wide system records containing the demographic data of trainees of grant programs. Included in this data are training and general employment information.

4. Department of Health and Human Services, Health Resources and Services Administration (DAA–0512–2018–0001, 1 item, 1 temporary item). Hotline complaint records of the Inspector General's Office relating to Health Resources and Services Administration programs. Included in these records are the initial complaint, administrative reviews, and responses to the Inspector General.

5. Department of Homeland Security, Bureau of Customs and Border Protection (DAA–0568–2017–0005, 8 items, 8 temporary items). Records related to international trade compliance, including records of audits, recordkeeping requirements, prohibited merchandise and commodities, and country of origin markings.

6. Department of Homeland Security, Bureau of Customs and Border Protection (DAA–0568–2017–0014, 1 item, 1 temporary item). Records of courses in which agents are trained to instruct other law enforcement personnel in professional strategies and practices.

7. Department of Homeland Security, Federal Emergency Management Agency (DAA–0311–2018–0001, 1 item, 1 temporary item). Radiological data collected for emergency management planning and assessment.

8. Department of Homeland Security, Federal Emergency Management Agency (DAA–0311–2018–0002, 1 item, 1 temporary item). Master files of an electronic information system used to track and monitor personnel deployed in disaster response.

9. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0031, 2 items, 2 temporary items). Data elements in an electronic information system used to manage and evaluate immigration petition workflow.

10. Department of Justice, Drug Enforcement Administration (DAA–0170–2017–0002, 1 item, 1 temporary item). Records related to transportation activities that support enforcement operations, including justification statements, passenger and cargo manifests, and reports.

11. Department of Justice, United States Marshals Service (DAA–0527–2017–0010, 1 item, 1 temporary item). Administrative records of the aircraft management program such as correspondence and instructional files.

12. Department of the Navy, Agency-wide (DAA–NU–2015–0005, 91 items, 59 temporary items). Records relating to

administration and management, including employment records, program management, interagency agreements, inspection reports, information management, working papers, and related records. Proposed for permanent retention are records on policy, organizational charts, command histories, directives case files, international agreements, Inspector General investigations, criminal investigative case files, and similar records.

13. Department of the Treasury, Internal Revenue Service (DAA–0058–2017–0016, 13 items, 13 temporary items). Records related to the collection of tax debts by private contractors such as case files; productivity reports; operational planning, procedure, and development files; business process review reports; complaint files; litigation background files; employee threat files; and related administrative materials.

14. Federal Election Commission, Information Division (DAA–0339–2018–0002, 1 item, 1 temporary item). Records related to requests for agency staff to speak to external groups.

15. Peace Corps, Office of Global Operations (DAA–0490–2017–0005, 3 items, 2 temporary items). Records related to the Office including general administrative records such as routine correspondence, reports, notices, and meeting agendas and minutes. Proposed for permanent retention are high level program records, such as policy files, decision memorandums, internal assessments, and reports.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2018–00545 Filed 1–12–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 on or after the date of publication of this notice.

DATES: Comments should be received on or before February 15, 2018 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 5060, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0195.

Title: Minority Depository Institution Preservation Program.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376) amended Financial Institution Reform, Recovery, and Enforcement Act (FIRREA) § 308 to require the NCUA, Office of the Comptroller of Currency, and the Federal Reserve Board to establish a program to comply with its goals to preserve and encourage Minority Depository Institutions (MDIs). The NCUA Board issued Interpretive Ruling and Policy Statement (IRPS) 13–1 establishing a MDI preservation program to comply with FIRREA § 308 goals. The IRPS identifies the procedure for a federally insured credit union to determine and document its ability to designate itself as a MDI, resulting in the ability to participate in the Program.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 48.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on January 10, 2018.

Dated: January 10, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018–00563 Filed 1–12–18; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collections; Comment Request; Capital Planning and Stress Testing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before March 19, 2018 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 5080, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above or Dawn Wolfgang at (703) 548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0199.

Title: Capital Planning and Stress Testing, 12 CFR part 702, subpart E.

Abstract: To protect the National Credit Union Share Insurance Fund (NCUSIF) and the credit union system, the largest Federally Insured Credit Unions (FICUs) must have systems and processes to monitor and maintain their capital adequacy. This rule requires FICUs with assets of $10 billion or more (covered credit unions) to develop, maintain, and submit a capital plan annually. NCUA took into account the risk to the NCUSIF of the largest FICUs as it considered the need for capital plans at these institutions. The size of these institutions relative to the NCUSIF makes capital planning essential.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 6.

Estimated Annual Frequency: 1.2.

Estimated Annual Number of Responses: 7.

Estimated Burden Hours per Response: 321.

Estimated Total Annual Burden Hours: 2,250.

Reason for Change: NCUA was granted an emergency clearance for the information collection requirements under this notice to bring it into compliance under the PRA; which is set to expire April 2018. The information collection requirements prescribed under subpart E of part 702 were published as final on April 30, 2014, at 79 FR 24311 (effective May 20, 2014). NCUA sought initial public comments via the proposed rule (NPRM November 1, 2013, at 78 FR 65583); but no PRA submission was made to OMB. NCUA is soliciting comments on the OMB clearance obtained under the emergency approval.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on January 10, 2018.

Dated: January 10, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018–00559 Filed 1–12–18; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0005]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from December 19, 2017 to December 29, 2017. The last biweekly notice was published on January 2, 2018.

DATES: Comments must be filed by February 15, 2018. A request for a hearing must be filed by March 19, 2018.

ADDRESSES: You may submit comments by any of the following methods.

Federal Rulemaking website: Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0005. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* May Ma, Office of Administration, Mail Stop: OWFN–2–A13, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0005, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0005.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0005, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in

§ 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the

provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2 (CNS), York County, South Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2 (MNS), Mecklenburg County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (ONC), Oconee County, South Carolina

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake County, North Carolina

Duke Energy Progress, LLC, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2 (RNP), Darlington County, South Carolina

Date of amendment request: November 7, 2017. A publicly-available version is in ADAMS under Accession No. ML17312A362.

Description of amendment request: The amendments would revise the technical specifications (TSs) based on Technical Specification Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing [IST] Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing'' (ADAMS Accession No. ML15294A555), with some variations. For each plant, the changes include deleting the current TS for the IST Program, adding a new defined term, ''INSERVICE TESTING PROGAM,'' to the TSs, and revising other TSs to reference this new defined term instead of the deleted TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5 (TS Chapter 6 for HNP), ''Administrative Controls,'' Section 5.5 (Section 6.8.4 for HNP), ''Programs and Manuals,'' by replacing the current contents of the ''Inservice Testing Program'' specification with a note referring to the TS Definition of ''INSERVICE TESTING PROGRAM.'' Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM Code [American Society of Mechanical Engineers Code for Operations and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' The remaining requirements in the Section 5.5 (Section 6.8.4 for HNP) IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, ''INSERVICE TESTING PROGRAM,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than or equal to 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than or equal to 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, Mail Code DEC45A, Charlotte NC 28202.

NRC Branch Chief: Undine Shoop.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: October 23, 2017, as supplemented by letter dated November 15, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17296B380, and ML17320A314, respectively.

Description of amendment request: The proposed amendment would adopt Technical Specification Task Force (TSTF) traveler TSTF–542, Revision 2, ADAMS Accession No. ML16343B008 ''Reactor Pressure Vessel Water Inventory Control.'' The proposed amendment would replace existing technical specification (TS) requirements related to operations with a potential for draining the reactor vessel (OPDRVs) with new requirements on Reactor Pressure Vessel (RPV) Water Inventory Control (WIC) to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires the reactor vessel water level to be greater than the top of active irradiated fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements RPV WIC that will protect Safety Limit 2.1.1.3. Draining of RPV water inventory in Mode 4 (*i.e.,* cold shutdown) and Mode 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in Mode 4 or Mode 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed change reduces the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in Modes 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be Operable in certain conditions in Mode 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in Modes 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed.

The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.1.3. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street NW, Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: November 28, 2017, as supplemented by letter dated December 7, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17332A898, and ML17341B295, respectively.

Description of amendment request: The proposed amendment would revise Section 4.3.3 of the Waterford 3 Updated Final Safety Analysis Report to indicate that the RAPTOR–M3G code is used for reactor vessel fluence calculations. The use of the RAPTOR–M3G code would meet the criteria present in Regulatory Guide (RG) 1.190, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence,'' dated March 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of occurrence of an accident previously evaluated for Waterford 3 is not altered by the proposed license amendment. The accidents currently analyzed in the Waterford 3 Final Safety Analysis Report (FSAR) remain the same. The proposed change does not impact the integrity of the reactor coolant pressure boundary (RCPB) (*i.e.,* there is no change to the operating pressure, materials, loadings, etc.). The proposed change does not affect the probability nor consequences of any design basis accident (DBA). The proposed neutron fluence calculational methodology meets the criteria in RG 1.190 and will be used to ensure that the P/T [pressure-temperature] limit curves, maximum heatup and cooldown rates, and LTOP [low-temperature overpressure protection] enable temperature remain acceptable to maintain reactor pressure vessel integrity.

Fracture toughness test data are obtained from material specimens contained in capsules that are periodically withdrawn from the reactor vessel. These data, combined

with the neutron fluence calculations, permit determination of the conditions under which the vessel can be operated with adequate safety margins against brittle fracture throughout its service life. For each analyzed transient and steady state condition, the allowable pressure is determined as a function of reactor coolant temperature considering postulated flaws in the reactor vessel beltline, inlet nozzle, outlet nozzle, and closure head.

The predicted radiation induced ΔRT_{NDT} [delta reference temperature nil ductility transition] is calculated using the respective reactor vessel beltline materials' copper and nickel contents and the neutron fluence determination. The RT_{NDT} and, in turn, the operating limits for Waterford 3 are adjusted, if necessary, to account for the effects of irradiation on the fracture toughness of the reactor vessel materials and maintain reactor vessel integrity within design assumptions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the neutron fluence calculational method will not create a new accident scenario. The requirements to have P/T limits and LTOP protection are part of the licensing basis for Waterford 3. The neutron fluence calculation method will validate, and when necessary, provide input to the development of new operating limits. The data analysis for the vessel surveillance specimens are used to confirm that the vessel materials are responding as predicted based on previous neutron fluence projections.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the neutron fluence calculational method conforms to the criteria presented in RG 1.190 and will ensure that Waterford 3 continues to operate within the operating margins allowed by 10 CFR 50.60 and the ASME [American Society of Mechanical Engineers] Code.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Anna Vinson Jones, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC (Exelon), Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey

Date of amendment request: November 16, 2017. A publicly-available version is available in ADAMS under Accession No. ML17320A411.

Description of amendment request: The amendment would revise the OCNGS renewed facility operating license (RFOL) and the associated Technical Specifications (TSs) to Permanently Defueled Technical Specifications (PDTS) consistent with the permanent cessation of reactor operation and permanent defueling of the reactor. By letter dated January 7, 2011 (ADAMS Accession No. ML110070507), Exelon provided formal notification to the NRC of Exelon's contingent determination to permanently cease operations at OCNGS no later than December 31, 2019. The amendment would eliminate those TSs applicable in operating modes or modes where fuel is placed in the reactor vessel. The amendment would change other TS limiting conditions for operation (LCOs), definitions, surveillance requirements (SRs), administrative controls, as well as several license conditions.

Basis for proposed no significant hazards consideration (NSHC) determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would not take effect until OCNGS has permanently ceased operation, entered a permanently defueled condition, and at least 60 days of irradiated fuel decay time after reactor shutdown. The proposed changes would revise the OCNGS RFOL and TS by deleting or modifying certain portions of the TS that are no longer applicable to a permanently shutdown and defueled facility. This change is consistent with the criteria set forth in 10 CFR 50.36 for the contents of TS.

Chapter 15 of the OCNGS Updated Final Safety Analysis Report (UFSAR) described the design basis accident (DBA) and transient scenarios applicable to OCNGS during power operations. The analyzed accidents that remains applicable to OCNGS in the permanently shut down and defueled condition is a Fuel Handling Accident (FHA) in the [spent fuel pool (SFP)] (a dropped fuel assembly onto the top of the core will no longer be applicable) and the Postulated Radioactive Tank Failure and Release of Radioactive Liquid Waste while radioactive liquids are still present. The FHA is the remaining accident with radiological consequences and has been revised for the permanently shutdown and defueled condition. The liquid tank accidents analysis remains bounding and unchanged; therefore, is not discussed further in this NSHC evaluation.

Once the reactor is in a permanently defueled condition, the spent fuel pool (SFP) and its cooling systems will be dedicated only to spent fuel storage. In this condition, the spectrum of credible accidents will be much smaller than for an operational plant. Once the certifications are docketed by OCNGS pursuant to 10 CFR 50.82(a)(1), and the consequent removal of authorization to operate the reactor or to place or retain fuel in the reactor vessel pursuant to 10 CFR 50.82(a)(2), the majority of the accident scenarios previously postulated in the UFSAR will no longer be possible and will be removed from the UFSAR under the provisions of 10 CFR 50.59.

The deletion of TS definitions and rules of usage and application, that will not be applicable in a defueled condition, has no impact on facility structures, systems, and components (SSCs) or the methods of operation of such SSCs. The deletion of design features and safety limits not applicable to the permanently shutdown and defueled status of OCNGS has no impact on the remaining applicable DBA. The removal of LCOs or SRs that are related to only the operation of the nuclear reactor or to only the prevention, diagnosis, or mitigation of reactor-related transients or accidents do not affect the applicable DBAs previously evaluated since these DBAs are no longer applicable in the defueled mode. The safety functions involving core reactivity control, reactor heat removal, reactor coolant system inventory control, and containment integrity are no longer applicable at OCNGS as a permanently defueled plant. The analyzed accidents involving damage to the reactor coolant system, main steam lines, reactor core, and the subsequent release of radioactive material will no longer be possible at OCNGS.

After OCNGS permanently ceases operation, the future generation of fission products will cease and the remaining source term will decay. The radioactive decay of the irradiated fuel following shutdown of the reactor will have reduced the consequences of the FHA in the SFP below those previously analyzed. The relevant parameter (water level) associated with the fuel pool provides an initial condition for the FHA analysis and is included in the PDTS.

The SFP water level and spent fuel storage TSs are retained to preserve the current requirements for safe storage of irradiated fuel. SFP cooling and makeup related equipment and support equipment (*e.g.,* electrical power systems) are not required to be continuously available since there will be sufficient time to effect repairs, establish alternate sources of makeup flow, or establish alternate sources of cooling in the event of a loss of cooling and makeup flow to the SFP.

The deletion and modification of provisions of the administrative controls do not directly affect the design of SSCs necessary for safe storage of irradiated fuel or the methods used for handling and storage of

such fuel in the fuel pool. The changes to the administrative controls are administrative in nature and do not affect any accidents applicable to the safe management of irradiated fuel or the permanently shutdown and defueled condition of the reactor.

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a defueled condition will be the only operation allowed, and therefore bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation will no longer be credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to delete and/or modify certain TS have no impact on facility SSCs affecting the safe storage of spent irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of spent irradiated fuel itself. The removal of TS that are related only to the operation of the nuclear reactor or only to the prevention, diagnosis, or mitigation of reactor related transients or accidents, cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shutdown and defueled and OCNGS will no longer be authorized to operate the reactor.

The proposed deletion of requirements of the OCNGS RFOL and TS do not affect systems credited in the accident analysis for the FHA in the SFP at OCNGS. The proposed RFOL and PDTS will continue to require proper control and monitoring of safety significant parameters and activities.

The TS regarding SFP water level and spent fuel storage is retained to preserve the current requirements for safe storage of irradiated fuel. The restriction on the SFP water level is fulfilled by normal operating conditions and preserves initial conditions assumed in the analyses of the postulated DBA.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (fuel cladding and spent fuel cooling). Since extended operation in a defueled condition will be the only operation allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes involve deleting and/or modifying certain TS once the OCNGS facility has been permanently shutdown, defueled, and at least 60 days of irradiated fuel decay time after reactor shutdown. As specified in 10 CFR 50.82(a)(2), the 10 CFR 50 license for OCNGS will no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel following submittal of the certifications required by 10 CFR 50.82(a)(1). As a result, the occurrence of certain design basis postulated accidents associated with reactor operation is no longer considered credible. The only remaining credible accidents are a FHA and the Postulated Radioactive Releases Due to Liquid Radwaste Tank Failures. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact either accident.

The proposed changes are limited to those portions of the RFOL and TS that are not related to the safe storage of irradiated fuel. The requirements that are proposed to be revised or deleted from the OCNGS RFOL and TS are not credited in the existing accident analysis for the remaining applicable postulated accidents; and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated design basis accidents involving the reactor will no longer be possible because the reactor will be permanently shutdown and defueled and OCNGS will no longer be authorized to operate the reactor.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Douglas A. Broaddus.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 9, 2017, as supplemented by letter dated November 1, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17164A076 and ML17305A910, respectively.

Description of amendment request: The proposed amendment would replace the existing technical specification (TS) requirements related to ''operations with a potential for draining the reactor vessel'' (OPDRVs) with requirements for reactor pressure vessel (RPV) water inventory control (WIC) to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires RPV water level to be greater than the top of active irradiated fuel. The proposed amendment is based on Technical Specification Task Force (TSTF) traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control,'' which was approved by the NRC by letter dated December 20, 2016.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. Draining of RPV water inventory in Mode 4 (*i.e.,* cold shutdown) and Mode 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in Mode 4 or Mode 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed change reduces the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in Modes 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be Operable in certain conditions in Mode 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in Modes 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed.

The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.1.3. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Blair, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: David J. Wrona.

Tennessee Valley Authority (TVA), Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

TVA, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

TVA, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant (WBN), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: November 17, 2017. A publicly-available version is in ADAMS under Accession Nos. ML17324A349.

Description of amendment request: The amendments would add a new level of protection, ''Unbalanced Voltage,'' to the Technical Specifications for the loss of power instrumentation. The NRC issued Bulletin 2012–01, ''Design Vulnerability in Electric Power System,'' which requested addressees to submit specific information regarding plant design and operating configurations relative to the regulatory requirements of General Design Criterion (GDC) 17, ''Electric power systems.'' The Nuclear Energy Institute notified the NRC that the nuclear industry's chief nuclear officers approved a formal initiative to address the open phase condition (OPC). It further stated that the initiative represented a formal commitment among nuclear power plant licensees to address the OPC design vulnerability for operating reactors.

The licensee stated, in its November 17, 2017, submittal, that the primary reason for the proposed change is to provide equipment protection from the effects of an unbalanced voltage in a similar fashion to the existing degraded and loss of voltage protection schemes. The identification of the vulnerability was based on industry operating experience and subsequent commitment to meet the voluntary Nuclear Strategic Issues Advisory Committee Open Phase Industry Initiative, also known as the ''Voluntary Industry Initiative'' (VII) for GDC 17 Compliance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed change to add a new unbalanced voltage relay (UVR) function at BFN, SQN, and WBN provides another level of undervoltage protection for the Class 1E electrical equipment. The new relay setpoints ensure that the normally operating Class 1E motors and equipment, which are powered from the Class 1E buses, are appropriately isolated from the normal offsite power source and would not be damaged in the event of sustained unbalanced voltage. The addition of the UVR function continues to allow the existing undervoltage protection circuitry to function as originally designed (*i.e.,* degraded and loss of voltage protection remain in place and are unaffected by this change). The addition of the new UVR function has no impact on accident initiators or precursors; does not alter the accident analysis assumptions or the manner in which the plant is operated or maintained; and does not affect the probability of operator error.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to add a new UVR function at BFN, SQN, and WBN provides another level of undervoltage protection for the Class 1E electrical equipment. This change ensures that the assumption in the previously evaluated accidents, which may involve a degraded voltage condition, continue to be valid. The proposed change does not result in the creation of any new accident precursors; does not result in changes to any existing accident scenarios; and does not introduce any operational changes or mechanisms that would create the possibility of a new or different kind of accident. The UVR function would not affect the existing loss of voltage and degraded voltage protection schemes, would not affect the number of occurrences of degraded voltage conditions that would cause the actuation of the existing Loss of Voltage Relays, Degraded Voltage Relays or the new UVRs; would not affect the failure rate of the existing protection relays; and would not impact the assumptions in any existing accident scenario.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The current undervoltage protection circuitry is designed to isolate the normally operating Class 1E motors/equipment, which are powered from the Class 1E buses, from the offsite power source such that the subject equipment would not be damaged in the event of sustained degraded bus voltage. After the Class 1E buses are isolated from the offsite power supply, the Class 1E motors would be sequenced back on the Class 1E bus powered by the diesel generators (DGs) and continue to perform their design basis function to mitigate the consequences of an accident, with a specified margin of safety. With the addition of the new level of undervoltage protection, the capability of the Class 1E equipment is assured. Thus the equipment would continue to perform its design basis function to mitigate the consequences of the previously analyzed accidents and maintain the existing margin to safety currently assumed in the accident analyses. A DG start due to a safety injection signal (*i.e.,* loss of coolant accident) and the subsequent sequencing of Class 1E loads back onto the Class 1E buses, powered by the DG, are not adversely affected by this change. If an actual loss of voltage condition were to occur on the Class 1E buses, the loss of voltage time delays would continue to isolate the Class 1E distribution system from the offsite power source prior to the DG assuming the Class 1E loads. The Class 1E loads would sequence back on the bus in a specified order and timer interval, again ensuring that the existing accident analysis assumptions remain valid and the existing margin to safety is unaffected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3 (Indian Point 2 and 3), Westchester County, New York

Date of amendment request: December 14, 2016, as supplemented by letters dated April 19, 2017; August 16, 2017; and October 2, 2017.

Brief description of amendments: The amendments revised the Appendix A Technical Specifications Limiting Condition for Operation (LCO) 3.7.13, ''Spent Fuel Pit Storage,'' for Indian Point 2 and Appendix C Technical Specifications LCO 3.1.2, ''Shielded Transfer Canister (STC) Loading,'' for Indian Point 2 and 3. These LCOs ensure that the fuel to be loaded into the STC meets the design basis for the STC and has an acceptable rack location in the Indian Point 2 spent fuel pool before the STC is loaded with fuel. The proposed changes increase the population of Indian Point 3 fuel eligible for transfer via the STC to the Indian Point 2 spent fuel pool.

Date of issuance: December 22, 2017.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 287 (Unit No. 2) and 264 (Unit No. 3). A publicly-available version is in ADAMS under Accession No. ML17320A354; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–26 and DPR–64: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: June 19, 2017 (82 FR 27885). The supplemental letters dated August 16, 2017, and October 2, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 22, 2017.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: May 1, 2017, as supplemented by letter dated June 13, 2017.

Brief description of amendment: The amendment revised the completion date for Milestone 8, full implementation of the Cyber Security Plan, from December 15, 2017, to July 31, 2019.

Date of issuance: December 15, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 266. A publicly-available version is in ADAMS under Accession No. ML17339A097; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License No. DPR–28: The amendment revised the Facility Operating License.

Date of initial notice in Federal Register: August 15, 2017 (82 FR 38717). The supplemental letter dated June 13, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 2017.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: January 30, 2017, as supplemented by letters dated August 11, 2017, September 8, 2017, and December 20, 2017.

Brief description of amendments: The amendments replaced existing Technical Specification requirements related to ''operations with a potential for draining the reactor vessel'' with new requirements on reactor pressure vessel water inventory control to protect Safety Limit 2.1.1.3. Safety Limit 2.1.1.3 requires reactor pressure vessel water level to be greater than the top of active irradiated fuel. The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control.''

Date of issuance: December 27, 2017.

Effective date: As of the date of issuance and shall be implemented prior to the Unit 2 fall 2018 refueling outage (P2R22).

Amendments Nos.: 317 (Unit 2) and 320 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML17325B708; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: March 28, 2017 (82 FR 15382). The supplemental letters dated August 11, 2017, September 8, 2017, and December 20, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2017.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: April 5, 2017.

Brief description of amendment: The amendment revised the Nine Mile Point Nuclear Station, Unit 2, Technical Specifications to allow greater flexibility in performing surveillance testing in Modes 1, 2, or 3 of emergency diesel generators. The changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–283A, Revision 3, ''Modify Section 3.8 Mode Restrictions Notes.''

Date of issuance: December 21, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 165. A publicly-available version of the amendment is in ADAMS under Accession No. ML17324B178; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–69: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: June 19, 2017 (82 FR 27887).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 2017.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey

Date of amendment request: April 10, 2017, as supplemented by letters dated October 4 and December 15, 2017.

Brief description of amendment: The amendment revised the OCNGS renewed facility operating license for the Cyber Security Plan (CSP) Milestone 8 full implementation completion date, as set forth in the CSP implementation schedule, and revised the physical protection license condition. The amendment revised the CSP Milestone 8 completion date from December 31, 2017, to August 31, 2021.

Date of issuance: December 22, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 292. A publicly-available version is in ADAMS under Accession No. ML17289A222; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–16: The amendment revised the renewed facility operating license.

Date of initial notice in Federal Register: May 23, 2017 (82 FR 23626). The supplemental letters dated October 4 and December 15, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 2017.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: March 24, 2017.

Brief description of amendments: The amendments revised the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Technical Specification (TS) 3.7.2, ''Steam Generator Stop Valves (SGSVs),'' to incorporate the SGSV actuator trains into the Limiting Condition for Operation statement and to provide associated Conditions, Required Actions, and Completion Times to the ACTIONS table. In addition, Surveillance Requirement (SR) 3.7.2.2 was revised to clearly identify that the SGSV actuator trains are required to be tested in accordance with the SR.

Date of issuance: December 19, 2017.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit No. 1–338; Unit No. 2–320. A publicly-available version is in ADAMS under Accession No. ML17312B030; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in Federal Register: May 23, 2017 (82 FR 23626).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 2017.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama

Date of amendment request: November 22, 2016, as supplemented by letters dated May 23, 2017; June 8, 2017;

September 7, 2017; November 21, 2017; and December 18, 2017.

Brief description of amendments: The amendments revised the licensing basis of FNP to support a full scope application of an Alternative Source Term methodology and modified Technical Specifications (TSs) 3.7.10, 3.9.3, and TS 5.5.18, consistent with Technical Specifications Task Force (TSTF) Travelers TSTF–448–A, ''Control Room Habitability,'' Revision 3, and TSTF–312, ''Administratively Control Containment Penetrations.''

Date of issuance: December 20, 2017.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 216 (Unit 1) and 213 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17271A265; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in Federal Register: January 3, 2017 (82 FR 160). The supplemental letters dated May 23, 2017; June 8, 2017; September 7, 2017; November 21, 2017; and December 18, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 2017.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3 (BFN), Limestone County, Alabama

Date of amendment request: June 7, 2017. As supplemented by letters dated September 18 and October 23, 2017.

Brief description of amendment: The amendments revised fire protection license condition 2.C.(13) for Unit 1, license condition 2.C.(14) for Unit 2, and license condition 2.C.(7) for Unit 3.

Date of issuance: December 19, 2017.

Effective date: As of the date of issuance and shall be implemented as indicated in Items 2 and 3 under ''Transition License Conditions'' of the Operating Licenses, as shown in the attachment to the license amendments.

Amendment Nos.: 302 (Unit 1), 326 (Unit 2), and 286 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML17317A422; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the licenses.

Date of initial notice in Federal Register: September 5, 2017 (82 FR 41997). The supplemental letters dated September 18 and October 23, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluations of the amendments are contained in Safety Evaluations dated December 19, 2017.

No significant hazards consideration comments received: No.

Tennessee Valley Authority (TVA) Docket Nos. 50–259, 50–260, 50–296, and 72–052, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

TVA Docket Nos. 50–327, 50–328, and 72–034, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

TVA Docket Nos. 50–390, 50–391, and 72–1048, Watts Bar Nuclear Plant (WBN), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: January 4, 2017, as supplemented by letter dated July 7, 2017.

Brief description of amendments: The amendments revised TVA Emergency Plans for the above nuclear plants. Specifically, they adopted the NRC-endorsed Radiological Emergency Plan Emergency Action Level schemes developed by the Nuclear Energy Institute (NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors'').

Date of issuance: December 22, 2017.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of its issuance or July 3, 2018, whichever comes later.

Amendment Nos.: BFN, 303 (Unit 1), 327 (Unit 2), and 287 (Unit 3); SQN, 339 (Unit 1) and 332 (Unit 2); and WBN, 118 (Unit 1) and 18 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17289A032; documents related to these amendments are listed in the Safety Evaluations (SEs) enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, DPR–68, DPR–77, DPR–79 and Facility Operating License Nos, NPF–90 and NPF–96: Amendments revised the licenses.

Date of initial notice in Federal Register: June 19, 2017 (82 FR 27891). The supplemental letter dated July 7, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in SEs dated December 22, 2017.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, on January 8, 2018.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–00386 Filed 1–12–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82476; File No. SR–BATSBZX–2017–58]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Cboe Vest S&P 500® Dividend Aristocrats® Target Income Index ETF Under the ETF Series Solutions Trust Under Rule 14.11(c)(3)

January 9, 2018.

I. Introduction

On September 19, 2017, Bats BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Cboe Vest S&P 500® Dividend Aristocrats® Target Income Index ETF (''Fund'') under the ETF Series Solutions Trust (''Trust''). The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change was published for comment in the **Federal Register** on October 11, 2017.[3] On November 17,2017, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 29, 2017, the Exchange filed Amendment No. 1 to the proposed rule change. On January 2, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced the original filing, as amended by Amendment No. 1, in its entirety.[6] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal [7]

The Exchange proposes to list and trade the Shares pursuant to its Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares on the Exchange.[8] The Shares do not qualify for generic listing because the index underlying the Shares includes derivatives, rather than consisting exclusively of ''U.S. Component Stocks'' (as defined in BZX Rule 14.11(c)(1)(D)) or ''U.S. Component Stocks and cash,'' as required by BZX Rule 14.11(c)(3)(A)(i).

The Funds' adviser, Cboe Vest Financial, LLC (the ''Adviser''), and index provider, Chicago Board Options Exchange (''Cboe Options'' or the ''Index Provider''), are not registered as broker-dealers, but are affiliated with a broker-dealer. The Index Provider has implemented and will maintain a ''fire wall'' with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the Index (as defined below). In addition, Index Provider personnel who make decisions regarding the Index composition or methodology are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Index, pursuant to BZX Rule 14.11(c)(3)(B)(iii). The Adviser has also implemented and will maintain a ''fire wall'' with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the portfolio. In addition, Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding a Fund's portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer; it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

A. The Index

The Fund will track the Cboe S&P 500® Dividend Aristocrats® Target Income Index (''Index''). The Index is composed of two parts: (1) An equal-weighted portfolio of the stocks contained in the S&P 500 Dividend Aristocrats Index [9] (''Aristocrat Stocks'') that have options that trade on a national securities exchange; and (2) a rolling series of short weekly or monthly call options on each of the Aristocrat Stocks (''Covered Calls'').[10] The equity component of the Index is rebalanced (*i.e.,* weights are reset to equal-weighted) quarterly effective after the close of the last business day of each January, April, July, and October and reconstituted (*i.e.,* Aristocrat Stocks are added and deleted according to the Index rules) annually effective after the close of the last business day of each January.

B. The Fund's Principal Investments

The Fund would invest all, or substantially all, of its assets in the component securities that make up the Index. Under Normal Market Conditions,[11] at least 80% of the Fund's total assets (exclusive of any collateral held from securities lending) will be invested in the component securities of the Index. The Fund will hold only: U.S. exchange-listed equity securities; FLEX options listed on a U.S. national securities exchange overlying other exchange-listed equity securities or U.S equity indexes; standardized options listed on a U.S. national securities exchange overlying exchange-listed equity securities or U.S. equity indexes; cash; and cash equivalents.

C. The Fund's Non-Principal Investments

The Fund would hold up to 20% of its assets in instruments that are not included in the Index, including only the following: U.S. exchange-listed ETFs that provide broad-based exposure to U.S. large cap stocks, U.S. exchange-listed FLEX and/or U.S. exchange-listed standardized options on such ETFs, U.S. exchange-listed FLEX and/or U.S. exchange-listed standardized options on the S&P 500 Index, and cash and cash equivalents.[12]

---

[3] *See* Securities Exchange Act Release No. 81815 (October 4, 2017), 82 FR 47265.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82115, 82 FR 55891 (November 24, 2017). The Commission designated January 9, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 2, the Exchange: (1) Updated information regarding the Fund's registration statement; (2) made representations regarding the fire walls to be implemented by the Fund's adviser and the provider of the underlying index; (3) disclosed the investment objective of the Fund; (4) provided additional information regarding the underlying index; (5) supplemented its description of the Fund's permitted investments; (6) described the availability of price information for the Shares and the Fund's permitted investments; (7) made certain representations regarding surveillance; (8) represented that the Fund's portfolio holdings will be disclosed daily on the issuer's website; (9) stated that the Exchange deems the Shares to be equity securities; (10) disclosed the minimum number of Shares that will be outstanding at the commencement of trading; (11) identified circumstances in which trading in the Shares may and will be halted; and (12) made other technical amendments. Amendment No. 2 is available at *https://www.sec.gov/comments/sr-batsbzx-2017-58/batsbzx201758-2869571-161745.pdf*. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[7] Additional information regarding the Trust, the Fund, the underlying index, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of the NAV, distributions, and taxes, among other things, can be found in Amendment No. 2, *supra* note 6, and the Registration Statement, *infra* note 8.

[8] According to the Exchange, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1993 relating to the Fund (File Nos. 333–179562 and 811–22668) (''Registration Statement''). According to the Exchange, the Commission has not yet issued an order granting exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) applicable to the activities of the Fund. The Exchange represents that the Fund will not be listed on the Exchange until such an order is issued and any conditions contained therein are satisfied.

[9] According to the Exchange, there are currently 51 stocks in the Index and at each annual reconstitution the minimum number of constituent stocks is 40.

[10] All of the options contracts held by the Fund will trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[11] ''Normal Market Conditions'' is defined in BZX Rule 14.11(i)(3)(E).

[12] For purposes of this proposal, cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S.

Continued

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares, as modified by Amendment No. 2, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, 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 Exchange Act,[14] which sets forth Congress's 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. According to the Exchange, quotation and last-sale information for the Shares will be available through the Consolidated Tape Association, and information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[15] 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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately.

The Exchange deems the Shares to be equity securities,[16] and therefore trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities. The Exchange represents that the Shares and the Index will satisfy, on an initial and continued listing basis, all of the generic listing standards other than BZX Rule 14.11(c)(3)(A)(i), and will satisfy all other applicable requirements for Index Fund Shares under BZX Rule 14.11(c).

The Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[17] Further, an Intraday Indicative Value for the Shares, updated at least every 15 seconds, will be disseminated during the Exchange's Regular Trading Hours.[18] The portfolio of instruments held by the Fund will be disclosed daily on the Fund's website.[19]

Quotation and last sale information for standardized options will be available via the Options Price Reporting Authority. RFQ information for FLEX Options will be available directly from the listing exchange. Last-sale information for FLEX Options will be available via the Options Price Reporting Authority. The intra-day, closing and settlement prices of exchange-traded options (both standardized and FLEX Options) will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Treasury bills and other cash equivalents is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

The Commission also believes that the proposal is designed to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. Similarly, trading in the Shares will be halted where there is an interruption to the Intraday Indicative Value being disseminated at least every 15 seconds during Regular Trading Hours and such interruption persists past the trading day in which it occurred.[20] The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and made available to all market participants at the same time.[21] If the Exchange becomes aware that the NAV for the Shares is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings does not occur, the Exchange shall halt trading in the Shares.[22]

To support this proposal, the Exchange has made the following representations:

(1) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[23]

(2) The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-traded options contracts from such markets and other entities. The Exchange is also able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine. The Exchange may obtain information regarding trading in the Shares and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.[24]

(3) All of the instruments held by the Fund, other than cash equivalents, will be U.S. exchange-listed and will trade on markets that are a member of the ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[25]

(4) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[26]

(5) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.[27]

(6) The Fund will not be listed on the Exchange until the Commission has issued an order granting exemptive relief to the Trust under the Investment Company Act of 1940 applicable to the activities of the Fund and any conditions contained therein are satisfied.[28]

Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[13] 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).

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Amendment No. 2, *supra* note 6, at 11.

[17] *See* BZX Rule 14.11(c)(3)(B)(ii)(a). The Exchange's ''Regular Trading Hours'' are between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BZX Rule 1.5(w).

[18] *See* BZX Rule 14.11(c)(3)(C).

[19] *See* BZX Rule 14.11(c)(1)(B)(iv).

[20] *See* Amendment No. 2, *supra* note 6, at 11.

[21] *See* BZX Rule 14.11(c)(9)(A)(ii).

[22] *See* BZX Rule 14.11(c)(1)(b)(iv).

[23] *See* Amendment No. 2, *supra* note 6, at 11.

[24] *See id.* at 11–12.

[25] *See id.* at 10, 15.

[26] *See id.* at 11.

[27] *See id.*

[28] *See id.* at 4 n.3.

All statements and representations made in this filing regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12. This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act [29] and Section 11A(a)(1)(C)(iii) of the Exchange Act [30] 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 Exchange Act,[31] that the proposed rule change (SR–BATSBZX–2017–58), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00533 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–50, OMB Control No. 3235–0060]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Form 8–K.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 8–K (17 CFR 249.308) is filed by issuers to satisfy their current reporting obligations pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)) in connection with the occurrence of significant corporate events. The purpose of Form 8–K is to provide investors with prompt disclosure of material information so that investors will be able to make investment and voting decisions better informed and receive information more timely. We estimate that Form 8–K takes 5 hours per response and is filed by 121,600 responses annually. We estimate that 75% of the 5 hours per response (3.75 hours) is prepared by the issuer for a total annual reporting burden of 456,000 hours (3.75 hours per response x 121,600 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00496 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82475; File No. SR–CboeBZX–2017–018]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for the BZX Depth Market Data Product

January 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2017, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage of BZX Depth.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage [5] of BZX Depth. BZX Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.[6] The Exchange currently charges subscribers to BZX Depth a fee of $5,000 per month for Non-Display Usage of BZX Depth by its Trading Platforms.[7] Non-Display Usage is defined as ''any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'' [8] Trading Platforms include registered National Securities Exchanges, Alternative Trading Systems (''ATSs''), and Electronic Communications Networks (''ECNs'') as those terms are defined in the Exchange Act and regulations and rules thereunder. Previously, subscribers of BZX Depth that used the feed for Non-Display purposes but did not utilize the feed within a Trading Platform were charged the existing Distributors fees.

Forms of Non-Display Use include, but are not limited to, algorithmic or automated trading, order routing, surveillance, order management, risk management, clearance and settlement activities, and account maintenance.[9] Non-Display Usage does not include any use of BZX Depth that relates solely to transportation, dissemination, and redistribution of BZX Depth, or that results in the output of BZX Depth solely for display. Non-display uses of data for non-trading purposes benefits data recipients by allowing users to automate functions, to achieve greater speed and accuracy, and to reduce costs of labor. While some non-trading uses do not directly generate revenues, they can substantially reduce a data recipient's costs by automating many functions. Those functions can be carried out in a more efficient and accurate manner, with reduced errors and labor costs.

The Exchange now proposes to adopt a separate fee of $2,000 per month to cover other forms of Non-Display Usage other than through a Trading Platform. The proposed fee would be assessed in addition to existing Distributor [10] fees and would supplement the existing Non-Display Usage fee for Trading Platforms. Specifically, subscribers who are subject to the Non-Display Usage by Trading Platform fee but also utilize BZX Depth for other Non-Display purposes would be subject to both fees. However, subscribers who utilize BZX Depth for other Non-Display purposes and not within a Trading Platform would be subject only to the proposed fee for Non-Display Use.

Certain subscribers that use an Exchange approved Managed Non-Display Service Provider would be exempt from proposed Non-Display Usage Fee. To be approved as Managed Non-Display Service Provider, the Distributor must host subscriber's applications that utilize BZX Depth must within the Managed Non-Display Service Provider's space/cage; fully manage and control access to BZX Depth, and not permit further redistribution of the Exchange Data internally or externally.[11] In order to qualify for the exemption, the subscriber must meet the following requirements:

- Any subscriber applications that utilize BZX Depth must be hosted within the Managed Non-Display Service Provider's space/cage;
- the subscriber's access to BZX Depth is fully managed and controlled by the Managed Non-Display Service Provider, and no further redistribution of the Exchange Data internally or externally is permitted; and
- the subscriber is supported solely by one Managed Non-Display Service Provider, is not hosted by multiple Managed Non-Display Service Providers, and does not have their own data center-hosted environment that also receives BZX Depth.

The Exchange intends to implement the proposed fee changes on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [14] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[15] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's

[5] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[6] *See* Exchange Rule 13.8(a).

[7] A Trading Platform is defined as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[8] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[9] *See e.g.,* Nasdaq Rule IM–7023–1(c), U.S. Non-Display Information.

[10] A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[11] *See e.g.,* Securities Exchange Act Release No. 76900 at fn. 8 (January 14, 2016), 81 FR 3506 (January 21, 2016) (SR–NYSE–2016–02). In this filing, the NYSE discontinued fees related to managed non-display for NYSE OpenBook. *Id.*

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78k–1.

[15] *See* 17 CFR 242.603.

subscribers will be subject to the proposed fees on an equivalent basis. BZX Depth is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to BZX Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute BZX Depth, prospective Users likely would not subscribe to, or would cease subscribing to, BZX Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[16]

The proposed Non-Display fee for usage other than through a Trading Platform for BZX Depth is equitable and reasonable as the Exchange believes the proposed fee represents the value of the data provided by the feed and its use by market participants. The proposed fee changes reflects changing trends in the ways in which the industry uses market data. The proposed fee comport with the proliferation of the use of data for various non-display purposes and by non-display trading applications. It recognizes industry changes that have evolved as a result of numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research. The Exchange believes the proposed fee reflects the value of the data provided.

The Exchange notes that fees for non-display use have become commonplace in the industry. Several exchanges impose them as does the UTP, CTA/CQ, and OPRA Plans. In addition, the fee proposed is less than similar fees currently charged by other exchanges for their depth-of-book data products. For example, NYSE Arca, Inc. (''NYSE Arca'') and the New York Stock Exchange, Inc. (''NYSE'') charge $5,000 and $6,000 per month, respectively, for its depth-of-book data used for non-display purposes.[17]

The proposed fee is also equitable and reasonable in that it ensures that heavy users of the BZX Depth pay an equitable share of the total fees. Currently, External Distributors pay higher fees than Internal Distributors based upon their assumed higher usage levels. The Exchange believes that non-display users are generally high users of the data, using it to power a trading algorithms and other trading relates systems for millions or even billions of trading messages per day.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price BZX Depth is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BZX Depth competes with a number of alternative products. For instance, BZX Depth does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and ECNs that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce depth-of-book information products, and many currently do, including Nasdaq, NYSE, and NYSE Arca.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not

[16] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[17] *See* the non-display fees for NYSE OpenBook and NYSE ArcaBook in the NYSE and NYSE Arca fee schedules *available at http://www.nyxdata.com/nysedata/default.aspx?tabid=518&folder=207656.*

considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BZX Depth, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

The Exchange believes the adoption of the fee for Non-Display Usage for BZX Depth would increase competition amongst the exchanges that offer depth-of-book products. In addition, the proposed Non-Display Usage fee is less than similar fees currently charged by the NYSE and NYSE Arca for their depth-of-book data.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2017–018 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 CboeBZX–2017–018. 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 website (*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 website 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 CboeBZX–2017–018 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00532 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra* note 17.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82474; File No. SR–Phlx–2017–75]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 1009 To Modify the Criteria for Listing an Option on an Underlying Covered Security

January 9, 2018.

I. Introduction

On September 27, 2017, Nasdaq PHLX LLC (''Phlx'' 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 amend the criteria for listing an option on an underlying covered security in Phlx Rule 1009, Commentary .01. The proposed rule change was published for comment in the **Federal Register** on October 11, 2017.[3] On November 15, 2017 the Exchange submitted a comment letter on the proposed rule change.[4] The Commission received no other comment letters. On November 22, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[6] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Phlx Rule 1009, Commentary .01 to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter ''covered security''). In particular, the Exchange proposes to modify Phlx Rule 1009, Commentary .01(4)(i) which currently requires that to list an option, the underlying covered security has to have a market price of at least $3.00 per share for the previous

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81814 (Oct. 4, 2017), 82 FR 47254 (''Notice'').

[4] *See* Letter to Brett J. Fields, Secretary, Commission, from Sun Kim, Assistant General Counsel, Exchange, dated November 15, 2017 (''Exchange Letter'').

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 82147, 82 FR 47254 (November 25, 2017). The Commission designated January 9, 2017, as the date by which it should approve, disapprove, or institute proceedings to determine whether the proposed rule change should be disapproved.

five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (''OCC'') for listing and trading. The Proposal would shorten the current ''look back'' period of five consecutive business days to three consecutive business days. The Exchange does not propose to amend any other criteria in Phlx Rule 1009 and the accompanying Commentary to list an option on the Exchange.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted above, although the Exchange proposes to shorten the look back period for listing options on the Exchange found in Phlx Rule 1009, Commentary .01(4)(i) from five consecutive business days [9] to three consecutive business days, it does not propose to change any other listing provision found in Phlx Rule 1009 and the accompanying Commentary, including the requirement of Phlx Rule 1009, Commentary .01(2) that the Exchange verify the number of shareholders of a security underlying an option. The Exchange states that the proposed look back period of three consecutive business days is intended to correspond to the securities industry's recent shortening of the settlement period from T+3 to the current T+2.[10] The Exchange represents that stock trades would clear within T+2 of their trade date (*i.e.,* within three consecutive business days) and therefore the number of shareholders could be verified within three consecutive business days.[11] This would facilitate options trading within four business days of an IPO (three consecutive business days plus the day the listing certificate is submitted to OCC).

The Exchange also represents that its surveillance technologies and procedures concerning manipulation provide adequate prevention or detection of rule or securities law violations in relation to the proposed shortened time frame, and specifically, that its existing trading surveillances are adequate to monitor the trading in the underlying security and subsequent trading of options.[12] The Commission notes the limited nature of the proposal to shorten the look back period of Phlx Rule 1009, Commentary .01(4)(i) from the current five consecutive business days to the proposed three consecutive business days. In addition, the Exchange represents that its surveillance program is comprehensive and adequate to monitor for manipulation of the underlying security and overlying option. The Commission also notes that it has not received any comments on the proposal, aside from the Exchange Letter.

The Commission finds that the proposal, coupled with the recent move to T+2 settlement, would facilitate transactions in securities, while providing customers safeguards comparable to those provided under the current five consecutive business day look back period. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act, specifically the requirements that the rules of an Exchange be designed to prevent fraudulent and manipulative acts and practices.

IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–2017–75), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00531 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62) (Order approving CBOE's proposal to, among other things, shorten the look back period from the majority of business days during the preceding three calendar months to the current five consecutive business days); 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR–Phlx–2003–27) (Notice and immediate effectiveness of the Exchange's filing adopting the same changes to its options listing standards).

[10] *See* Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (Securities Transaction Settlement Cycle) (File No. S7–22–16).

[11] In addition to confirming through large clearing agencies such as the Depository Trust and Clearing Corporation, the Exchange also represents that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele, and that it has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are able to provide these numbers within T+2 after an IPO.

[12] *See* Notice, *supra* note 3 at 47255–256; Exchange Letter, *supra* note 4 at 2–3.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–104, OMB Control No. 3235–0119]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 12g3–2

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 12g3–2 (17 CFR 240.12g3–2) under the Securities Exchange Act of 1934 (the ''Exchange Act'') provides an exemption from Section 12(g) of the Exchange Act (15 U.S.C. 78l(g)) for foreign private issuers. Rule 12g3–2 is designed to provide investors in foreign securities with information about such securities and the foreign issuer. The information filed under Rule 12g3–2 must be filed with the Commission and is publicly available. We estimate that it takes 8.95 hours per response to prepare and is filed by approximately 1,386 respondents. Each respondent files an estimated 12 times submissions pursuant to Rule 12g3–2 per year for a total of 16,632 respondents. We estimate that 25% of 8.95 hours per response (2.237 hours per response) to provide the information required under Rule

12g3–2 for a total annual reporting burden of 37,206 hours (2.237 hours per response × 16,632 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00502 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–270, OMB Control No. 3235–0292]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form F–6.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form F–6 (17 CFR 239.36) is a form used by foreign companies to register the offer and sale of American Depositary Receipts (ADRs) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. Form F–6 takes approximately 1.35 hour per response to prepare and is filed by 953 respondents annually. We estimate that 25% of the 1.35 hour per response (0.338 hours) is prepared by the filer for a total annual reporting burden of 322 hours (0.338 hours per response x 953 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 8, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00500 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–236, OMB Control No. 3235–0222]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17f–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17f–1 (17 CFR 270.17f–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that each fund makes 1 response and spends an average of 3.5 hours annually in complying with the rule's requirements. Commission staff estimates that on an annual basis it takes: (i) 0.5 hours for the board of directors [1] to review and ratify the custodial contracts; and (ii) 3 hours for the fund's controller to assist the fund's independent public auditors in verifying the fund's assets.

[1] Estimates of the number of hours are based on conversations with representatives of mutual funds that comply with the rule. The actual number of hours may vary significantly depending on individual fund assets. The hour burden for rule 17f–1 does not include preparing the custody contract because that would be part of customary and usual business practice.

Approximately 6 funds rely on the rule annually, with a total of 6 responses.[2] Thus, the total annual hour burden for rule 17f–1 is approximately 21 hours.[3]

Funds that rely on rule 17f–1 generally use outside counsel to prepare the custodial contract for the board's review and to transmit the contract to the Commission. Commission staff estimates the cost of outside counsel to perform these tasks for a fund each year is $800.[4] Funds also must have an independent public accountant verify the fund's assets three times each year and prepare the certificate of examination. Commission staff estimates the annual cost for an independent public accountant to perform this service is $8,500.[5] Therefore, the total annual cost burden for a fund that relies on rule 17f–1 would be approximately $9,300.[6] As noted above, the staff estimates that 4 funds rely on rule 17f–1 each year, for an estimated total annualized cost burden of $55,800.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. 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 control number.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00493 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[2] Based on a review of Form N–17f–1 filings over the last three years the Commission staff estimates that an average of 4 funds rely on rule 17f–1 each year.

[3] This estimate is based on the following calculation: (6 respondents × 3.5 hours = 21 hours). The annual burden for rule 17f–1 does not include time spent preparing Form N–17f–1. The burden for Form N–17f–1 is included in a separate collection of information.

[4] This estimate is based on the following calculation: (2 hours of outside counsel time × $400 = $800). The staff has estimated the average cost of outside counsel at $400 per hour, based on information received from funds, fund intermediaries, and their counsel.

[5] This estimate is based on information received from fund representatives estimating the aggregate annual cost of an independent public accountant's periodic verification of assets and preparation of the certificate of examination.

[6] This estimate is based on the following calculation: ($800 + $8,500 = $9,300).

[7] This estimate is based on the following calculation: (6 funds × $9,300 = $55,800).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Form 10–D, SEC File No. 270–544, OMB Control No. 3235–0604.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on this collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 10–D is a periodic report used by asset-backed issuers to file distribution and pool performance information pursuant to Rule 13a–17 (17 CFR 240.13a–17) or Rule 15d–17 (17 CFR 240.15d–17) of the Securities Exchange Act of 1934 (''Exchange Act'')(15 U.S.C.78a *et seq.*). The form is required to be filed within 15 days after each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The information provided by Form 10–D is mandatory and all information is made available to the public upon request. Form 10–D takes approximately 30 hours per response to prepare and is filed by approximately 2,169 respondents. Each respondent files an estimated 4.343 Form 10–Ds per year for a total of 9,420 responses. We estimate that 75% of the 30 hours per response (22.5 hours) is prepared by the company for a total annual reporting burden of 211,950 hours (22.5 hours per response × 9,420 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00497 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–429, OMB Control No. 3235–0480]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 9b–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the

Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 9b–1, Options Disclosure Document (17 CFR 240.9b–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document (''ODD'') and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments, prior to accepting an order to purchase or sell an option on behalf of that customer.

There are 15 options markets [1] that must comply with Rule 9b–1. These respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file approximately 3 amendments per year. The staff calculates that the preparation and filing of amendments should take no more than eight hours per options market. Thus, the total time burden for options markets per year is 360 hours (15 options markets x 8 hours per amendment × 3 amendments). The estimated cost for an in-house attorney is $412 per hour,[2] resulting in a total internal cost of compliance for these respondents of $148,320 per year (360 hours at $412 per hour).

In addition, approximately 1,144 broker-dealers [3] must comply with Rule 9b–1. Each of these respondents will process an average of 3 new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual time burden for each of these respondents of 78 minutes or 1.3 hours. Thus, the total time burden per year for broker-dealers is 1,487 hours (1,144 broker-dealers × 1.3 hours). The estimated cost for a general clerk of a broker-dealer is $62 per hour,[4] resulting in a total internal cost of compliance for these respondents of $92,194 per year (1,487 hours at $62 per hour).

The total time burden for all respondents under this rule (both options markets and broker-dealers) is 1,847 hours per year (360 + 1,487), and the total internal cost of compliance is $240,514 ($148,320 + $92,194).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00489 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[1] The fifteen options markets are as follows: The fifteen options markets are as follows: BOX Options Exchange LLC, Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Miami International Securities Exchange LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, the Nasdaq Options Market (NOM), NYSE Arca, Inc., and NYSE American LLC.

[2] SIFMA did its last annual survey in 2013 and will not resume the survey process. Accordingly, the $412 figure is based on the 2013 figure ($380) adjusted by the inflation rate calculated using the Bureau of Labor Statistics' CPI Inflation Calculator. The $380 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[3] The estimate of 1,144 broker-dealers required to comply with Rule 9b–1 is derived from Item 12 of the Form BD (OMB Control No. 3235–0012). This estimate may be high as it includes broker-dealers that engage in only a proprietary business, and as a result are not required to deliver an ODD, as well as those broker-dealers subject to Rule 9b–1.

[4] The $62 figure is based on the 2013 figure ($57) adjusted for inflation. *See supra* note 1. The $57 per hour figure for a General Clerk is from SIFMA's *Office Salaries in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff believes that the ODD would be mailed or electronically delivered to customers by a general clerk of the broker-dealer or some other equivalent position.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82477; File No. SR–CboeBYX–2017–005]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Transaction Fees

January 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2017, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-Members of the Exchange pursuant to BYX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

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 parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As further described below, the Exchange proposes to amend its fee schedule to: (i) Modify its standard rebate to remove liquidity yielding fee codes BB,[6] N,[7] and W; [8] (ii) modify its standard fee to add liquidity yielding fee codes B,[9] V [10] and Y; [11] and (iii) adopt a new tier under footnote 1, Add/Remove Volume Tiers.

Standard Rebates to Remove Liquidity

The Exchange currently provides a standard rebate of $0.0008 per share for orders that remove liquidity from the Exchange in securities priced at or above $1.00. The Exchange appends fee codes W, BB and N for orders removing liquidity in Tape A, Tape B, and Tape C securities, respectively. The Exchange proposes to reduce the standard rebate provided for orders yielding these fee codes to a rebate of $0.0005 per share. In connection with this change, the Exchange proposes to modify the Standard Rates chart contained on the fee schedule to reflect the new standard rebate of $0.0005 per share to remove liquidity.

Standard Fee To Add Liquidity

The Exchange currently charges a standard fee of $0.0018 per share for orders that add liquidity to the Exchange in securities priced at or above $1.00. The Exchange appends fee codes V, B, and Y for orders adding liquidity in Tape A, Tape B, and Tape C securities, respectively. The Exchange proposes to increase the standard fee charged for orders yielding these fee codes to a fee of $0.0019 per share. In connection with this change, the Exchange proposes to modify the Standard Rates chart contained on the fee schedule to reflect the new standard fee of $0.0019 per share to add liquidity.

New Remove Volume Tier

The Exchange currently offers six [sic] tiers under footnote 1 that offer reduced fees for displayed orders that add liquidity yielding fee codes B, V and Y, and an enhanced rebate for orders that remove liquidity yielding fee codes BB, N and W, as described above. The Exchange proposes to add a new tier under footnote 1, to be known as Tier 9, under which a Member would receive an enhanced rebate of $0.0017 per share on orders that yield fee codes BB, N and W, where a Member has: (i) A Step-Up Remove TCV[12] from December 2017 equal to or greater than 0.075%; and (ii) an ADAV [13] equal to or greater than 0.10% of the TCV.[14]

Implementation Date

The Exchange proposes to implement the above changes to its fee schedule on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[15] in general, and furthers the objectives of Section 6(b)(4),[16] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that proposed changes to fee codes BB, N, and W represent an equitable allocation of reasonable dues, fees, and other charges because the Exchange's standard rebate for removing liquidity continues to be higher than that provided by other exchanges. For example, Nasdaq BX, Inc. (''Nasdaq BX'') provides a standard rebate of $0.0001 per share for orders that remove liquidity.[17] The Exchange further believes that the standard rebate for fee codes BB, N, and W remains equitably allocated and not unreasonably discriminatory because such rebate is provided to all Members unless they qualify for enhanced rebates based on other factors.

The Exchange believes that proposed changes to fee codes B, V, and Y represent an equitable allocation of reasonable dues, fees, and other charges because the Exchange's standard fee for adding liquidity continues to be lower than that provided by other exchanges. For example, Nasdaq BX charges a standard fee of $0.0020 per share for orders that remove liquidity.[18] The Exchange further believes that the standard fee for fee codes B, V, and Y remains equitably allocated and not unreasonably discriminatory because such fee is provided to all Members unless they qualify for reduced fees based on other factors.

The Exchange believes that the proposed Tier 9 to be added to footnote 1 is equitably allocated and reasonable because it will reward a Member's growth pattern on the Exchange and such increased volume will allow the Exchange to continue to provide and potentially expand its incentive programs. The Exchange further believes that the proposed tier is reasonable, fair and equitable because the liquidity from the proposed change would benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes the proposed rebate of $0.0017 per share for Tier 9 is reasonable in that it is equivalent to the top tier rebate to remove liquidity provided by Nasdaq BX.[19] The proposed pricing structure is also not unfairly discriminatory in that it is available to all Members.

In addition, volume-based fees such as that proposed herein have been widely adopted by exchanges and are equitable because they are open to all Members on an equal basis and provide

[6] Fee code BB is appended to orders that remove liquidity from BYX (Tape B). *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[7] Fee code N is appended to orders that remove liquidity from BYX (Tape C). *Id.*

[8] Fee code W is appended to orders that remove liquidity from BYX (Tape A). *Id.*

[9] Fee code B is appended to displayed orders that add liquidity to BYX (Tape B). *Id.*

[10] Fee code V is appended to displayed orders that add liquidity to BYX (Tape A). *Id.*

[11] Fee code Y is appended to displayed orders that add liquidity to BYX (Tape C). *Id.*

[12] ''Step-Up Remove TCV'' means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV. *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[13] ''ADAV'' means average daily volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. *Id.*

[14] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] *See* the Nasdaq BX fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[18] *Id.*

[19] *Id.*

additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

(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 does not believe that this change represents a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposed rates would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Further, excessive fees would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CboeBYX–2017–005 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–CboeBYX–2017–005. 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 website (*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 website 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–CboeBYX–2017–005 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00534 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–638, OMB Control No. 3235–0690]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form SF–3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form SF–3 (17 CFR 239.45) is a short form registration statement used for non-shelf issuers of asset-backed securities to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form SF–3 takes approximately 1,380 hours per response and is filed by approximately 71 issuers annually. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information in the asset-backed securities market. We estimate that 25% of the 1,380 hours per response (345 hours) is prepared by the issuer for a total annual reporting burden of 24,495 hours (345 hours per response × 71 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00503 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–002, OMB Control No. 3235–0071]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Regulation S–K.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–K (17 CFR 229.101—*et seq.*) specifies the non-financial disclosure requirements applicable to registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); and registration statements, periodic reports, going-private transaction and tender offer statements, proxy and information statements, and any other documents required to be filed under Sections 12, 13, 14, and 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l,* 78m, 78n, 78o(d)). Regulation S–K is assigned one burden hour for administrative convenience.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00514 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–321, OMB Control No. 3235–0358]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 11a–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 11(a) of the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a–11(a)) provides that it is unlawful for a registered open-end investment company (''fund'') or its underwriter to make an offer to the fund's shareholders or the shareholders of any other fund to exchange the fund's securities for securities of the same or another fund on any basis other than the relative net asset values (''NAVs'') of the respective securities to be exchanged, ''unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers.'' Section 11(a) was designed to prevent ''switching,'' the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a–3 (17 CFR 270.11a–3) under the Act is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

The staff estimates that there are approximately 1,606 active open-end investment companies registered with the Commission as of September 2017.

The staff estimates that 25 percent (or 402) of these funds impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time per fund, for a total of 402 hours for all funds.

The staff estimates that 5 percent of these 1,606 funds (or 80) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time and 2 hours of clerical time per fund, for a total of approximately 240 hours for all funds to comply with the notice requirement.[1] The staff estimates that such notices will be enclosed with other written materials sent to shareholders, such as annual shareholder reports or account statements, and therefore any burdens associated with mailing required notices are accounted for in the burdens associated with Form N–1A registration statements for funds. The recordkeeping and notice requirements together therefore impose a total burden of 642 hours on all funds.[2] The total number of respondents is 482, each responding once a year.[3] The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. 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 control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00491 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based on the following calculations: (1,606 (funds) × 5% = 80 funds); (80 × 1 (attorney hour) = 80 total attorney hours); (80 (funds) × 2 (clerical hours) = 160 total clerical hours); (80 (attorney hours) + 160 (clerical hours) = 240 total hours).

[2] This estimate is based on the following calculations: (240 (notice hours) + 402 (recordkeeping hours) = 642 total hours).

[3] This estimate is based on the following calculation: (402 funds responding to recordkeeping requirement + 80 funds responding to notice requirement = 482 total respondents).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–610, OMB Control No. 3235–0707]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form SF–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form SF–1 (17 CFR 239.44) is the registration statement for non-shelf issuers of assets-backed securities register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information in the asset-backed securities market. Form SF–1 takes approximately 1,380 hours per response and is filed by approximately 6 respondents. We estimate that 25% of the 1,380 hours per response (345 hours) is prepared by the registrant for a total annual reporting burden of 2,070 hours (345 hours per response × 6 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00504 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82471; File No. SR–CboeBYX–2017–003]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for the BYX Depth Market Data Product

January 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2017, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage of BYX Depth.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage [5] of BYX Depth. BYX Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.[6] The Exchange currently charges subscribers to BYX Depth a fee of $2,000 per month for Non-Display Usage of BYX Depth by its Trading Platforms.[7] Non-Display Usage is defined as ''any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'' [8] Trading Platforms include registered National Securities Exchanges, Alternative Trading Systems (''ATSs''), and Electronic Communications Networks (''ECNs'') as those terms are defined in the Exchange Act and regulations and rules thereunder. Previously, subscribers of BYX Depth that used the feed for Non-Display purposes but did not utilize the feed within a Trading Platform were charged the existing Distributors fees.

Forms of Non-Display Use include, but are not limited to, algorithmic or automated trading, order routing, surveillance, order management, risk management, clearance and settlement activities, and account maintenance.[9] Non-Display Usage does not include any use of BYX Depth that relates solely to transportation, dissemination, and redistribution of BYX Depth, or that results in the output of BYX Depth solely for display. Non-display uses of data for non-trading purposes benefits data recipients by allowing users to automate functions, to achieve greater speed and accuracy, and to reduce costs of labor. While some non-trading uses do not directly generate revenues, they can substantially reduce a data recipient's costs by automating many functions. Those functions can be carried out in a more efficient and accurate manner, with reduced errors and labor costs.

The Exchange now proposes to adopt a separate fee of $1,000 per month to cover other forms of Non-Display Usage other than through a Trading Platform.[10] The proposed fee would be assessed in addition to existing Distributor [11] fees and would supplement the existing Non-Display Usage fee for Trading Platforms. Specifically, subscribers who are subject to the Non-Display Usage by Trading Platform fee but also utilize BYX Depth for other Non-Display purposes would be subject to both fees. However, subscribers who utilize BYX Depth for other Non-Display purposes and not within a Trading Platform would be subject only to the proposed fee for Non-Display Use.

Certain subscribers that use an Exchange approved Managed Non-Display Service Provider would be exempt from proposed Non-Display Usage Fee. To be approved as Managed Non-Display Service Provider, the Distributor must host subscriber's applications that utilize BYX Depth must within the Managed Non-Display Service Provider's space/cage; fully manage and control access to BYX Depth, and not permit further redistribution of the Exchange Data internally or externally.[12] In order to qualify for the exemption, the subscriber must meet the following requirements:

- Any subscriber applications that utilize BYX Depth must be hosted within the Managed Non-Display Service Provider's space/cage;
- the subscriber's access to BYX Depth is fully managed and controlled by the Managed Non-Display Service Provider, and no further redistribution of the Exchange Data internally or externally is permitted; and
- the subscriber is supported solely by one Managed Non-Display Service Provider, is not hosted by multiple Managed Non-Display Service Providers, and does not have their own data center-hosted environment that also receives BYX Depth.

The Exchange intends to implement the proposed fee changes on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[6] *See* Exchange Rule 13.8(a).

[7] A Trading Platform is defined as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[8] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[9] *See e.g.,* Nasdaq Rule IM–7023–1(c), U.S. Non-Display Information.

[10] The Exchange also proposes a non-substantive change to the description of the BYX Depth Enterprise Fee to remove the word ''External'' before ''Distributor'' in the first and second sentences. This amendment does not change the application of the Enterprise Fee as the Exchange previously filed a proposed rule change to offer the Enterprise fee to both Internal and External Distributors. *See* Securities Exchange Act Release No. 79623 (December 20, 2016), 81 FR 95226 (December 27, 2016) (SR–BatsBYX–2016–39).

[11] A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.*

[12] *See e.g.,* Securities Exchange Act Release No. 76900 at fn. 8 (January 14, 2016), 81 FR 3506 (January 21, 2016) (SR–NYSE–2016–02). In this filing, the NYSE discontinued fees related to managed non-display for NYSE OpenBook. *Id.*

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [15] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[16] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's subscribers will be subject to the proposed fees on an equivalent basis. BYX Depth is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to BYX Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute BYX Depth, prospective Users likely would not subscribe to, or would cease subscribing to, BYX Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[17]

The proposed Non-Display fee for usage other than through a Trading Platform for BYX Depth is equitable and reasonable as the Exchange believes the proposed fee represents the value of the data provided by the feed and its use by market participants. The proposed fee changes reflects changing trends in the ways in which the industry uses market data. The proposed fee comport with the proliferation of the use of data for various non-display purposes and by non-display trading applications. It recognizes industry changes that have evolved as a result of numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research. The Exchange believes the proposed fee reflects the value of the data provided.

The Exchange notes that fees for non-display use have become commonplace in the industry. Several exchanges impose them as does the UTP, CTA/CQ, and OPRA Plans. In addition, the fee proposed is less than similar fees currently charged by other exchanges for their depth-of-book data products. For example, NYSE Arca, Inc. (''NYSE Arca'') and the New York Stock Exchange, Inc. (''NYSE'') charge $5,000 and $6,000 per month, respectively, for its depth-of-book data used for non-display purposes.[18]

The proposed fee is also equitable and reasonable in that it ensures that heavy users of the BYX Depth pay an equitable share of the total fees. Currently, External Distributors pay higher fees than Internal Distributors based upon their assumed higher usage levels. The Exchange believes that non-display users are generally high users of the data, using it to power a trading algorithms and other trading relates systems for millions or even billions of trading messages per day.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price BYX Depth is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

[15] 15 U.S.C. 78k–1.

[16] *See* 17 CFR 242.603.

[17] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[18] *See* the non-display fees for NYSE OpenBook and NYSE ArcaBook in the NYSE and NYSE Arca fee schedules *available at http://www.nyxdata.com/nysedata/default.aspx?tabid=518&folder=207656.*

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BYX Depth competes with a number of alternative products. For instance, BYX Depth does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and ECNs that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce depth-of-book information products, and many currently do, including Nasdaq, NYSE, and NYSE Arca.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BYX Depth, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

The Exchange believes the adoption of the fee for Non-Display Usage for BYX Depth would increase competition amongst the exchanges that offer depth-of-book products. In addition, the proposed Non-Display Usage fee is less than similar fees currently charged by the NYSE and NYSE Arca for their depth-of-book data.[19]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and paragraph (f) of Rule 19b–4 thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CboeBYX–2017–003 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 CboeBYX–2017–003. 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 website (*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 website 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 CboeBYX–2017–003 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00528 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[19] *See supra* note 18.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–170, OMB Control No. 3235–0167]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form 15

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of

Management and Budget for extension and approval.

Form 15 (17 CFR 249.323) is a certification of termination of a class of security under Section 12(g) or notice of suspension of duty to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). We estimate that approximately 1,302 issuers file Form 15 annually and it takes approximately 1.5 hours per response to prepare for a total of 1,953 annual burden hours (1.5 hours per response × 1,302 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00498 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82465; File No. SR–ISE–2017–113]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees at Chapter VIII, Section J, Entitled ''Nasdaq ISE Trades Feed''

January 9, 2018.

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 December 26, 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Schedule of Fees at Chapter VIII, Section J, entitled ''Nasdaq ISE Trades Feed,'' to introduce a monthly fee of $1,000 for unlimited internal and/or external distribution of the Nasdaq ISE Trade Feed,[3] as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://ise.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 the proposed rule change is to amend the Exchange's Schedule of Fees at Chapter VIII, Section J, entitled ''Nasdaq ISE Trades Feed,'' to introduce a monthly fee of $1,000 for unlimited internal and/or external distribution of the ISE Trade Feed.

The Nasdaq ISE Trade Feed is a direct data feed product that displays last sale information about trades that occur in the Exchange's execution system, along with opening price, cumulative volume, and high and low prices for the day. The data provided for each instrument includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and trading status. Access to real-time last sale options data from the Exchange increases transparency and enables firms to provide dynamically updated tickers, portfolio trackers and price/time charts.

The Exchange presently offers subscriptions to the Nasdaq ISE Trade Feed for free. The Exchange proposes to amend Section J to charge a fee of $1,000 per month (for unlimited internal and external distribution) for a subscription to the Nasdaq ISE Trade Feed. Upon effectiveness of the proposal, this monthly fee will apply to all firms that choose to subscribe to the Nasdaq ISE Trade Feed, including firms that currently receive it for free.

Although the Exchange proposes to offer the Nasdaq ISE Trade Feed for a fee on a standalone basis, it notes that the Trade Feed is a purely optional product and a subscription to it is not required to receive the data that it provides. The same ISE trade information that is available on the Nasdaq ISE Trade Feed is also broadcast on two other Nasdaq ISE data feeds: the ISE Top Quote Feed and the ISE Depth of Market Feed.

The Exchange's proposal to charge a fee for the Nasdaq ISE Trade Feed reflects the value of the investments that the Exchange has made in developing, maintaining, and upgrading the ISE Trade Feed product and the Exchange trading facility that supports it, which include the following:

• *Exchange Re-Platform and Harmonization of Specifications.* In connection with its recent acquisition by Nasdaq, Inc. and the associated efforts to re-platform and integrate the Exchange into the Nasdaq, Inc. family of exchanges, the Exchange upgraded the ISE Trade Feed so that it is consistent with the specifications and formats of the other Nasdaq, Inc. data feeds. The re-platforming and associated upgrades will render connection to and consumption of the ISE Trade Feeds and other data products easier for customers to manage. Having one harmonized specification document format that is standardized across six exchanges makes initial onboarding and implementation of the data feeds into customers' systems more efficient than having multiple documents in disparate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As part of this proposal, the Exchange proposes to correct a typographical error by renaming the Nasdaq ISE Trades Feed the ''Nasdaq ISE Trade Feed.'' The Exchange hereinafter refers to the product by its corrected name.

formats across different platforms. Furthermore, any updates or enhancements that are introduced across any of the six exchanges will now be more cost effective for customers to implement because of the standardized message format. In addition, the migration to the Nasdaq Inet technology allows customers to seamlessly conduct business across multiple exchanges by leveraging Nasdaq's standard messaging protocols to interact with ISE data feeds as well as all Nasdaq options data feeds. Moreover, the hardware efficiencies provide a highly-distributed and efficient system for the Exchange to operate from.

• *Geographic Diversity.* In connection with the Exchange's integration into the Nasdaq, Inc. family of exchanges, the Exchange moved its disaster recovery system to the site utilized by the other Nasdaq, Inc. exchanges in Chicago, Illinois. Customers can both receive market data and send orders through the Chicago facility, potentially reducing overall networking costs. Additionally, this new disaster recovery location enables firms to easily connect to a multitude of multi-asset class engines currently housed in or near this Chicago facility, which also may reduce networking costs. Adding such geographic diversity helps protect the market in the event of a catastrophic event impacting the entire East Coast. Lastly, the new facility has new equipment that will offer improved performance and resiliency.

The Exchange notes while it and its sister exchange, Nasdaq GEMX, LLC, are unique among their competitors in offering a standalone Trade Feed, the Exchange proposes to price the product at or below the prices that competing exchanges charge for their data feeds. The Exchange notes that although fees for external distribution of data feeds are typically higher than internal distribution fees, the Exchange proposes to charge the same price for both internal and external distribution of the Trade Feed as a means of incentivizing external distribution.

The Exchange also notes that it proposes to price its Trade Feed higher than that of the Nasdaq GEMX product. The Exchange believes that this price differential is reasonable given the fact that the Exchange has more listings, strike volume, and market makers than does Nasdaq GEMX, such that the Exchange's Trade Feed product has greater potential value to customers than does the Nasdaq GEMX product. Specifically, the ISE market has 3,788 listed options on its platform, totaling 732,000 strikes. Comparatively, GEMX has 2,642 listed options and 619.000 [sic] strikes. ISE also has 33% more market makers providing liquidity than does GEMX.

Finally, offering valuable trade data as a standalone feed allows for a much lower bandwidth option that customers can utilize instead of having to subscribe to other ISE feeds that may include quotes and orders and require much more system effort to consume and utilize due to the larger number of messages required for processing.

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 Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''SRO'') revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [7] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[8] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [9]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [10] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal is reasonable to charge a monthly fee for all subscriptions to the Nasdaq ISE Trade Feed because this product provides valuable data to firms. As noted above, access to real-time last sale options data from the Exchange increases transparency and enables firms to provide dynamically updated tickers, portfolio trackers and price/time charts.

Moreover, the Exchange believes its proposal to charge a monthly fee of $1,000 for a subscription to the Nasdaq ISE Trade Feed is a reasonable reflection of the Exchange's costs in producing, maintaining, and upgrading the product to provide value to subscribers. The Exchange notes, for example, that in connection with its recent acquisition by Nasdaq, Inc. and the associated efforts to re-platform and integrate the Exchange into the Nasdaq, Inc. family of exchanges, the Exchange upgraded the Trade Feed so that it is consistent with the specifications and formats of the other Nasdaq, Inc. data feeds. The re-platforming and associated upgrades will render connection to and consumption of the Trade Feeds and other data products easier for customers to manage.

Moreover, the Exchange's integration into Nasdaq, Inc. has also resulted in its migration to a more robust and geographically diverse disaster recovery facility, located in Chicago, IL. Customers can both receive market data and send orders through the Chicago facility, potentially reducing overall networking costs. Adding such geographic diversity helps protect the market in the event of a catastrophic event impacting the entire East Coast.

The Exchange notes that while it and its sister exchange, Nasdaq GEMX, LLC, are unique among its competitors in offering a standalone Trade Feed, the Exchange proposes to price the product

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[7] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[8] *See NetCoalition,* at 534–535.

[9] *Id.* at 537.

[10] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

at or below the prices that competing exchanges charge for their data feeds. The Exchange notes that although fees for external distribution of data feeds are typically higher than internal distribution fees, the Exchange proposes to charge the same price for both internal and external distribution of the ISE Trade Feed as a means of incentivizing external distribution.

The Exchange also notes that it proposes to price its Trade Feed higher than that of the Nasdaq GEMX product. The Exchange believes that this price differential is reasonable given the fact that the Exchange has more listings, strike volume, and market makers than does Nasdaq GEMX, such that the Exchange's Trade Feed product has greater potential value to customers than does the Nasdaq GEMX product.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all, regardless of membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed establishment of the Nasdaq ISE Trade Feed fee does not impose an undue burden on competition because a subscription to the Nasdaq ISE Trade Feed is completely voluntary and subject to extensive competition from other exchanges. In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] 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–2017–113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 website 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–2017–113 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00522 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–614, OMB Control No. 3235–0682]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 13h–1 and Form 13H

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for Rule 13h–1 (17 CFR 240.13h–1) and Form 13H—registration of large traders [1] submitted pursuant to

[1] Rule 13h–1(a)(1) defines ''large trader'' as any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the

Section 13(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13h–1 and Form 13H under Section 13(h) of the Exchange Act established a large trader reporting framework.[2] The framework assists the Commission in identifying and obtaining certain baseline information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets.

The identification, recordkeeping, and reporting framework provides the Commission with a mechanism to identify large traders and obtain additional information on their trading activity. Specifically, the system requires large traders to identify themselves to the Commission and make certain disclosures to the Commission on Form 13H. Upon receipt of Form 13H, the Commission issues a unique identification number to the large trader, which the large trader then provides to its registered broker-dealers. Certain registered broker-dealers are required to maintain transaction records for each large trader, and are required to report that information to the Commission upon request.[3] In addition, certain registered broker-dealers are required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the rule.

The respondents to the collection of information are large traders. There are currently approximately 6,300 large traders and 300 registered broker-dealers. Based on its experience collecting initial Forms 13H in previous years, the Commission estimates that approximately 600 new large traders will register each year and thus be subject to quarterly and annual reporting requirements over the next three years.

Each new large trader respondent files one response, which takes approximately 20 hours to complete. The average internal cost of compliance per response is $5,615, calculated as follows: (3 hours of compliance manager time at $307 per hour) + (7 hours of legal time at $362 per hour) + (10 hours of paralegal time at $212 per hour) = $5,615. Additionally, on average, each large trader respondent (including new respondents) files 2 responses per year, which take approximately 6 hours to complete. The average internal cost of compliance per response is $1,770, calculated as follows: (2 hours of compliance manager time at $307 per hour) + (2 hours of legal time at $362 per hour) + (2 hours of paralegal time at $212 per hour) = $1,770.

Each registered broker-dealer's monitoring requirement takes approximately 15 hours per year. The average internal cost of compliance is $5,430, calculated as follows: 15 hours of legal time at $362 per hour = $5,430. The Commission estimates that it may send 100 requests specifically seeking large trader data per year to each registered broker-dealer subject to the rule, and it would take each registered broker-dealer 2 hours to comply with each request. Accordingly, the annual reporting hour burden for a broker-dealer is estimated to be 200 burden hours (100 requests × 2 burden hours/request = 200 burden hours). The average internal cost of compliance per response is $432, calculated as follows: 2 hours of paralegal time at $212 per hour = $432.

Compliance with Rule 13h–1 is mandatory. The information collection under proposed Rule 13h–1 is considered confidential subject to the limited exceptions provided by the Freedom of Information Act.[4]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela C. Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00492 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

identifying activity level or voluntarily registers as a large trader by filing electronically with the Commission Form 13H.

[2] *See* Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46959 (August 3, 2011).

[3] The Commission, pursuant to Rule 17a–25 (17 CFR 240.17a–25), currently collects transaction data from registered broker-dealers through the Electronic Blue Sheets (''EBS'') system to support its regulatory and enforcement activities. The large trader framework added two new fields, the time of the trade and the identity of the trader, to the EBS system.

[4] *See* 5 U.S.C. 552 and 15 U.S.C. 78m(h)(7).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82468; File No. SR–CboeEDGA–2017–003]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for the EDGA Depth Market Data Product

January 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2017, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage of EDGA Depth.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage [5] of EDGA Depth. EDGA Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.[6] The Exchange currently charges subscribers to EDGA Depth a fee of $2,000 per month for Non-Display Usage of EDGA Depth by its Trading Platforms.[7] Non-Display Usage is defined as ''any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'' [8] Trading Platforms include registered National Securities Exchanges, Alternative Trading Systems (''ATSs''), and Electronic Communications Networks (''ECNs'') as those terms are defined in the Exchange Act and regulations and rules thereunder. Previously, subscribers of EDGA Depth that used the feed for Non-Display purposes but did not utilize the feed within a Trading Platform were charged the existing Distributors fees.

Forms of Non-Display Use include, but are not limited to, algorithmic or automated trading, order routing, surveillance, order management, risk management, clearance and settlement activities, and account maintenance.[9] Non-Display Usage does not include any use of EDGA Depth that relates solely to transportation, dissemination, and redistribution of EDGA Depth, or that results in the output of EDGA Depth solely for display. Non-display uses of data for non-trading purposes benefits data recipients by allowing users to automate functions, to achieve greater speed and accuracy, and to reduce costs of labor. While some non-trading uses do not directly generate revenues, they can substantially reduce a data recipient's costs by automating many functions. Those functions can be carried out in a more efficient and accurate manner, with reduced errors and labor costs.

The Exchange now proposes to adopt a separate fee of $1,000 per month to cover other forms of Non-Display Usage other than through a Trading Platform. The proposed fee would be assessed in addition to existing Distributor [10] fees and would supplement the existing Non-Display Usage fee for Trading Platforms. Specifically, subscribers who are subject to the Non-Display Usage by Trading Platform fee but also utilize EDGA Depth for other Non-Display purposes would be subject to both fees. However, subscribers who utilize EDGA Depth for other Non-Display purposes and not within a Trading Platform would be subject only to the proposed fee for Non-Display Use.

Certain subscribers that use an Exchange approved Managed Non-Display Service Provider would be exempt from proposed Non-Display Usage Fee. To be approved as Managed Non-Display Service Provider, the Distributor must host subscriber's applications that utilize EDGA Depth must within the Managed Non-Display Service Provider's space/cage; fully manage and control access to EDGA Depth, and not permit further redistribution of the Exchange Data internally or externally.[11] In order to qualify for the exemption, the subscriber must meet the following requirements:

- Any subscriber applications that utilize EDGA Depth must be hosted within the Managed Non-Display Service Provider's space/cage;
- the subscriber's access to EDGA Depth is fully managed and controlled by the Managed Non-Display Service Provider, and no further redistribution of the Exchange Data internally or externally is permitted; and
- the subscriber is supported solely by one Managed Non-Display Service Provider, is not hosted by multiple Managed Non-Display Service Providers, and does not have their own data center-hosted environment that also receives EDGA Depth.

The Exchange intends to implement the proposed fee changes on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [14] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[15] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the

[5] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edga/.*

[6] *See* Exchange Rule 13.8(a).

[7] A Trading Platform is defined as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edga/.*

[8] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edga/.*

[9] *See e.g.,* Nasdaq Rule IM–7023–1(c), U.S. Non-Display Information.

[10] A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edga/.*

[11] *See e.g.,* Securities Exchange Act Release No. 76900 at fn. 8 (January 14, 2016), 81 FR 3506 (January 21, 2016) (SR–NYSE–2016–02). In this filing, the NYSE discontinued fees related to managed non-display for NYSE OpenBook. *Id.*

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78k–1.

[15] *See* 17 CFR 242.603.

Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's subscribers will be subject to the proposed fees on an equivalent basis. EDGA Depth is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGA Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute EDGA Depth, prospective Users likely would not subscribe to, or would cease subscribing to, EDGA Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[16]

The proposed Non-Display fee for usage other than through a Trading Platform for EDGA Depth is equitable and reasonable as the Exchange believes the proposed fee represents the value of the data provided by the feed and its use by market participants. The proposed fee changes reflects changing trends in the ways in which the industry uses market data. The proposed fee comport with the proliferation of the use of data for various non-display purposes and by non-display trading applications. It recognizes industry changes that have evolved as a result of numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research. The Exchange believes the proposed fee reflects the value of the data provided.

The Exchange notes that fees for non-display use have become commonplace in the industry. Several exchanges impose them as does the UTP, CTA/CQ, and OPRA Plans. In addition, the fee proposed is less than similar fees currently charged by other exchanges for their depth-of-book data products. For example, NYSE Arca, Inc. (''NYSE Arca'') and the New York Stock Exchange, Inc. (''NYSE'') charge $5,000 and $6,000 per month, respectively, for its depth-of-book data used for non-display purposes.[17]

The proposed fee is also equitable and reasonable in that it ensures that heavy users of the EDGA Depth pay an equitable share of the total fees. Currently, External Distributors pay higher fees than Internal Distributors based upon their assumed higher usage levels. The Exchange believes that non-display users are generally high users of the data, using it to power a trading algorithms and other trading relates systems for millions or even billions of trading messages per day.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGA Depth is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGA Depth competes with a number of alternative products. For instance, EDGA Depth does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and ECNs that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce depth-of-book information products, and many currently do, including Nasdaq, NYSE, and NYSE Arca.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees.

[16] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[17] *See* the non-display fees for NYSE OpenBook and NYSE ArcaBook in the NYSE and NYSE Arca fee schedules *available at http://www.nyxdata.com/nysedata/default.aspx?tabid=518&folder=207656.*

The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGA Depth, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

The Exchange believes the adoption of the fee for Non-Display Usage for EDGA Depth would increase competition amongst the exchanges that offer depth-of-book products. In addition, the proposed Non-Display Usage fee is less than similar fees currently charged by the NYSE and NYSE Arca for their depth-of-book data.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGA–2017–003 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 CboeEDGA–2017–003. 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 website (*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 website 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 CboeEDGA–2017–003 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00525 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra* note 17.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82466; File No. SR–GEMX–2017–63]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees at Chapter V, Section H, Entitled "Nasdaq GEMX Trades Feed"

January 9, 2018.

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 December 26, 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Schedule of Fees at Chapter V, Section H, entitled ''Nasdaq GEMX Trades Feed,'' to introduce a monthly fee of $500 for unlimited internal and/or external distribution of the Nasdaq GEMX Trade Feed,[3] as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As part of this proposal, the Exchange proposes to correct a typographical error by renaming the Nasdaq GEMX Trades Feed the ''Nasdaq GEMX Trade Feed.'' The Exchange hereinafter refers to the product by its corrected name.

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 the proposed rule change is to amend the Exchange's Schedule of Fees at Chapter V, Section H, entitled ''Nasdaq GEMX Trades Feed,'' to introduce a monthly fee of $500 for unlimited internal and/or external distribution of the GEMX Trade Feed.

The Nasdaq GEMX Trade Feed is a direct data feed product that displays last sale information about trades that occur in the Exchange's execution system, along with opening price, cumulative volume, and high and low prices for the day. The data provided for each instrument includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and trading status. Access to real-time last sale options data from the Exchange increases transparency and enables firms to provide dynamically updated tickers, portfolio trackers and price/time charts.

The Exchange presently offers subscriptions to the Nasdaq GEMX Trade Feed for free, but subscriptions are available only to those firms that subscribe to other fee-liable Nasdaq GEMX data products—*i.e.,* the Nasdaq GEMX Real-time Depth of Market Raw Data Feed, the Nasdaq GEMX Order Feed, or the Nasdaq GEMX Top Quote Feed.

The Exchange now proposes to amend Section H to offer the Nasdaq GEMX Trade Feed on a standalone basis, including to firms that do not currently subscribe to another fee-liable GEMX data feed. For this standalone subscription to the Nasdaq GEMX Trade Feed, the Exchange proposes to charge a fee of $500 per month (for unlimited internal and external distribution). Upon effectiveness of the proposal, this monthly fee will apply to all firms that choose to subscribe to the Nasdaq GEMX Trade Feed, including firms that currently subscribe to or that subsequently become subscribers to the Nasdaq GEMX Real-time Depth of Market Raw Data Feed, the Nasdaq GEMX Order Feed, or the Nasdaq GEMX Top Quote Feed.

Although the Exchange proposes to offer the Nasdaq GEMX Trade Feed for a fee on a standalone basis, it notes that the Trade Feed is a purely optional product and a subscription to it is not required to receive the data that it provides. The same GEMX trade information that is available on the Nasdaq GEMX Trade Feed is also broadcast on two other Nasdaq GEMX data feeds: the GEMX Top Quote Feed and the GEMX Depth of Market Feed.

The Exchange's proposal reflects the value of the investments that the Exchange has made in developing, maintaining, and upgrading the GEMX Trade Feed product and the Exchange trading facility that supports it, which include the following:

• *Exchange Re-Platform and Harmonization of Specifications.* In connection with its recent acquisition by Nasdaq, Inc. and the associated efforts to re-platform and integrate the Exchange into the Nasdaq, Inc. family of exchanges, the Exchange upgraded the GEMX Trade Feed so that it is consistent with the specifications and formats of the other Nasdaq, Inc. trade data feeds. The re-platforming and associated upgrades will render connection to and consumption of the GEMX Trade Feeds and other data products easier for customers to manage. Having one harmonized specification document format that is standardized across six exchanges makes initial onboarding and implementation of the data feeds into customers' systems more efficient than having multiple documents in disparate formats across different platforms. Furthermore, any updates or enhancements that are introduced across any of the six exchanges will now be more cost effective for customers to implement because of the standardized message format. In addition, the migration to the Nasdaq Inet technology allows customers to seamlessly conduct business across multiple exchanges by leveraging Nasdaq's standard messaging protocols to interact with GEMX data feeds as well as all Nasdaq options data feeds. Moreover, the hardware efficiencies provide a highly-distributed and efficient system for the Exchange to operate from.

• *Geographic Diversity.* In connection with the Exchange's integration into the Nasdaq, Inc. family of exchanges, the Exchange moved its disaster recovery system to the site utilized by the other Nasdaq, Inc. exchanges in Chicago, Illinois. Customers can both receive market data and send orders through the Chicago facility, potentially reducing overall networking costs. Additionally, this new disaster recovery location enables firms to easily connect to a multitude of multi-asset class engines currently housed in or near this Chicago facility, which also may reduce networking costs. Adding such geographic diversity helps protect the market in the event of a catastrophic event impacting the entire East Coast. Lastly, the new facility has new equipment that will offer improved performance and resiliency.

The Exchange notes that while it and its sister exchange, Nasdaq ISE, LLC, are unique among theirs [sic] competitors in offering a standalone Trade Feed, the Exchange proposes to price the product at or below the prices that competing exchanges charge for their data feeds. The Exchange notes that although fees for external distribution of data feeds are typically higher than internal distribution fees, the Exchange proposes to charge the same price for both internal and external distribution of the Trade Feed as a means of incentivizing external distribution.

The Exchange also notes that it proposes to price its Trade Feed lower than that of the Nasdaq ISE product. The Exchange believes that this price differential is reasonable given the fact that Nasdaq ISE has more listings, strike volume, and market makers than does Nasdaq GEMX, such that the Nasdaq ISE Trade Feed product has greater potential value to customers than does the Exchange's product. Specifically, the ISE market has 3,788 listed options on its platform, totaling 732,000 strikes. Comparatively, GEMX has 2,642 listed options and 619.000 [sic] strikes. ISE also has 33% more market makers providing liquidity than does GEMX.

Finally, offering valuable trade data as a standalone feed allows for a much lower bandwidth option that customers can utilize instead of having to subscribe to other GEMX feeds that may include quotes and orders and require much more system effort to consume and utilize due to the larger number of messages required for processing.

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 Sections 6(b)(4) and 6(b)(5)

[4] 15 U.S.C. 78f(b).

of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''SRO'') revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [7] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[8] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [9]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [10] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal is reasonable because it expands the availability of the Nasdaq GEMX Trade Feed to all firms that wish to subscribe to it, rather than by limiting its availability to only those firms that subscribe to other fee-liable Nasdaq GEMX data products. Even though certain firms presently receive trade data for free as part of their other paid data feeds, the Exchange believes that such firms may prefer to receive a standalone Trade Feed because it will provide them with pure trade data and no longer require them to sift through their other paid feeds to isolate it. The Exchange also believes that its proposal is reasonable to charge a monthly fee for all subscriptions to the Nasdaq GEMX Trade Feed because this product provides valuable data to firms. As noted above, access to real-time last sale options data from the Exchange increases transparency and enables firms to provide dynamically updated tickers, portfolio trackers and price charts.

Moreover, the Exchange believes its proposal to charge a monthly fee of $500 for a subscription to the Nasdaq GEMX Trade Feed is a reasonable reflection of the Exchange's costs in producing, maintaining, and upgrading the product to provide value to subscribers. The Exchange notes, for example, that in connection with its recent acquisition by Nasdaq, Inc. and the associated efforts to re-platform and integrate the Exchange into the Nasdaq, Inc. family of exchanges, the Exchange upgraded the Trade Feed so that it is consistent with the specifications and formats of the other Nasdaq, Inc. data feeds. The re-platforming and associated upgrades will render connection to and consumption of the Trade Feeds and other data products easier for customers to manage.

Moreover, the Exchange's integration into Nasdaq, Inc. has also resulted in its migration to a more robust and geographically diverse disaster recovery facility, located in Chicago, IL. Customers can both receive market data and send orders through the Chicago facility, potentially reducing overall networking costs. Adding such geographic diversity helps protect the market in the event of a catastrophic event impacting the entire East Coast.

The Exchange notes that while it and its sister exchange, Nasdaq ISE, LLC, are unique among its competitors in offering a standalone Trade Feed, it proposes to price the product at or below the prices that competing exchanges charge for their data feeds. The Exchange notes that although fees for external distribution of data feeds are typically higher than internal distribution fees, the Exchange proposes to charge the same price for both internal and external distribution of the GEMX Trade Feed as a means of incentivizing external distribution.

The Exchange also notes that it proposes to price its Trade Feed lower than that of the Nasdaq ISE product. The Exchange believes that this price differential is reasonable given the fact that Nasdaq ISE has more listings, strike volume, and market makers than does Nasdaq GEMX, such that the Nasdaq ISE Trade Feed product has greater potential value to customers than does the Exchange's product.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all, regardless of membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed establishment of the Nasdaq GEMX Trade Feed fee does not impose an undue burden on competition because a subscription to the Nasdaq GEMX Trade Feed is completely voluntary and subject to extensive competition both [sic] other exchanges. In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

---

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[7] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[8] *See NetCoalition,* at 534–535.

[9] *Id.* at 537.

[10] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] 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–2017–63 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–2017–63. 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 website (*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 website 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–2017–63, and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00523 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82467; File No. SR–NASDAQ–2017–134]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 7037

January 9, 2018.

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 December 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 Amend Exchange Rule 7037 to reflect substantial enhancements to the data feeds underlying FilterView since the current fees were set in 2006. Specifically, the Exchange proposes to modify the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. The proposal is described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2018.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adjust the fee schedule for FilterView to reflect substantial enhancements to its underlying data feeds since the current fee was set in 2006.[3] Specifically, the Exchange proposes to change the monthly subscription fee for FilterView from $500 to $750 per month per subset of data.

FilterView

FilterView allows market data Distributors to receive a subset of any other real-time data feed offered by the Exchange, allowing Distributors to control information processing costs by lowering the bandwidth required to process Exchange data. FilterView is commonly purchased in two types: NLS FilterView and Nasdaq NOIView. NLS FilterView separates Nasdaq Last Sale (''NLS'')[4] data into two distinct data

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54286 (August 8, 2006), 71 FR 46955 (August 15, 2006) (SR–NASDAQ–2006–028).

[4] NLS is a market data product that contains real-time last sale information for trades executed on the

Continued

streams: (i) NLS data from the Nasdaq execution system, and (ii) NLS data from the FINRA/Nasdaq Trade Trade [sic] Reporting Facility (''TRF'') system. Nasdaq NOIView distributes order imbalance information from Nasdaq TotalView [5] in the minutes leading up to the Nasdaq Opening and Closing Crosses. This includes an indicative clearing price and net order imbalance in the Nasdaq execution system.

Proposed Change

As a result of substantial enhancements to the data feeds underlying FilterView since the current fee was set in 2006, the Exchange proposes to change its monthly subscription fee from $500 to $750 per month per subset of data.

The value of Nasdaq FilterView, a subset of other market data feeds, is inextricably connected to trade execution: Market data feeds require trade orders to provide useful information, and investors utilize such data to make trading decisions. Over the eleven years that have elapsed since the current distribution fees were set,[6] the Exchange has invested in an array of upgrades to both its trade execution and market information services, increasing the overall value of these services, including FilterView.[7] These upgrades include:

• *Enhanced Services.* In 2013 [sic], the Exchange enhanced its data feeds by: (i) Converting to binary codes to make more efficient use of bandwidth and to provide greater timestamp granularity; (ii) adding a symbol directory message to identify a security and its key characteristics; (iii) adding a new IPO message for Nasdaq-listed securities for quotation release time and IPO price; and (iv) adding the Market Wide Circuit Breaker (''MWCB'') Decline Level message to inform recipients of the setting for MWCB breach points for the trading day, and an MWCB Status Level Message to inform data recipients when an MWCB has breached an established level.[8]

• *Exchange Traded Managed Funds (''ETMFs'').* In 2015, the Exchange modified its data feeds to accommodate ETMFs, a type of investment vehicle that combines the features of an open-end mutual funds [sic] and an Exchange Traded Fund (''ETF'') to support an actively managed-investment strategy.[9] ETF [sic] trading differs from other types of equity trading in that it uses a trading protocol called ''Net Asset Value-Based Trading,'' in which all bids, offers, and execution prices are expressed as a premium or discount to the ETMF's next-determined Net Asset Value (''NAV''). This distinct pricing format requires an entirely new set of data fields in which to distribute information related to prices and trades, and the Exchange modified Nasdaq Basic to accommodate that format.[10]

• *Nanosecond Granularity.* In 2016, Nasdaq introduced a new version of QBBO [sic] which allows for timestamp granularity to the nanosecond.[11]

• *Geographic Diversity.* In 2015, all of the Nasdaq Exchanges moved their Disaster Recover [sic] (''DR'') center from Ashburn, Virginia, to Chicago Illinois. As a result, customers can both receive market data and send orders through the Chicago facility, potentially reducing overall networking costs. Adding such geographic diversity helps protect the market in the event of a catastrophic event impacting the entire East Coast.[12]

• *Chicago ''B'' Feeds.* In 2017, all of the Nasdaq exchanges added a multicast IP address for proprietary equity and options data feeds in Chicago, allowing firms the choice of having additional redundancy to ensure data continuity.[13]

• *Adjusted Closing Price.* In 2013, Nasdaq introduced the adjusted closing price as a field to reflect a security's previous day official closing price, adjusted for corporate actions. For Nasdaq-listed securities, the Nasdaq Official Closing Price is used,[14] and the consolidated close from the security's listing exchange is used for non-Nasdaq securities.[15]

• *New System Event Messages.* In 2013, Nasdaq began disseminating event messages to indicate the start and end of system hours.[16]

While these many changes were in the process of implementation, fees for Nasdaq FilterView were falling in real terms. Indeed, the proposed increase from $500 to $750 per month is at least partially offset by inflation,[17] and represents only an approximately 3.75 percent annual increase over the course of the eleven years that elapsed between 2006 and 2017. The Exchange believes that the remaining increase is more than justified by the substantial upgrades described above.

As a result of these upgrades, the Exchange proposes to change the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. Given these specific enhancements to the data feeds underlying FilterView, and to the Exchange's systems generally, and given the fact that the Exchange has not increased the subscription fee since 2006, the Exchange believes that the proposed fee increase is appropriate.

Nasdaq FilterView is optional in that the Exchange is not required to offer it and broker-dealers are not required to purchase it. Firms can discontinue use at any time and for any reason, including an assessment of the fees charged.

The proposed change does not change the cost of any other Exchange product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory

Exchange or reported to the FINRA/Nasdaq Trade Reporting Facility.

[5] TotalView is the Exchange's complete Depth-of-Book data feed for Nasdaq-listed securities as well as securities listed by other exchanges, and provides every eligible order at each price level for all Nasdaq members. TotalView includes the Net Order Imbalance Indicator (''NOII''), which provides data relating to buy and sell interest at the open and close of the trading day, in the context of an Initial Public Offering, and after a trading halt.

[6] *See* Securities Exchange Act Release No. 54286 (August 8, 2006), 71 FR 46955 (August 15, 2006) (SR–NASDAQ–2006–028).

[7] Many of these upgrades are common to several Nasdaq-affiliated exchanges, as improvements to the products and services of one exchange are reproduced in other exchanges.

[8] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-45* and *http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-33.*

[9] *See* Securities Exchange Act Release No. 73562 (November 7, 2014), 79 FR 68309 (November 14, 2014) (SR–NASDAQ–2014–020) (approving the listing and trading of Exchange-Traded Managed Fund Shares).

[10] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-7.*

[11] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2016-03.*

[12] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2015-17.*

[13] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2017-02.*

[14] Nasdaq's closing cross process produces a tradable closing price that represents either the closing cross or the best available price at the time of the transaction.

[15] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-25.*

[16] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2013-20.*

[17] The Consumer Price Index increased by approximately 21 percent between August 2006 and November 2017. *See https://data.bls.gov/cgi-bin/cpicalc.pl*

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) and (5).

intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [21] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[22] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [23]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [24]

The Exchange proposes to change the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. The Exchange believes that the proposed fee increase is reasonable. While the Exchange has not increased such fees since 2006, the Exchange has added a number of enhancements to the data feeds underlying FilterView, as well as to the Exchange systems in general supporting FilterView. These enhancements, which are described in greater detail above, correspondingly enhance the value of FilterView. The proposed fee increase is therefore reflective of, and closely aligned to, these enhancements and the correspondingly increased value of the data feed. The proposed changes are equitable allocations of reasonable dues, fees and other charges because all recipients will be charged the same fee for the same service. The proposed changes do not permit unfair discrimination between customers, issuers, brokers, or dealers because this service will be available on a non-discriminatory basis to all similarly-situated recipients.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[25]

The Commission was speaking to the question of whether BDs should be subject to a regulatory requirement to purchase data, such as depth-of-book data, that is *in excess of* the data provided through the consolidated tape feeds, and the Commission concluded that the choice should be left to them. Accordingly, Regulation NMS removed unnecessary regulatory restrictions on the ability of exchanges to sell their own data, thereby advancing the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well. Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [26]

The proposed fees, like all market data fees, are constrained by the Exchange's need to compete for order flow, as discussed below, and are subject to competition from other exchanges and among broker-dealers for customers. If Nasdaq is incorrect in its assessment of price, it will lose market share as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As noted above, Nasdaq FilterView most commonly includes elements of NLS and TotalView, which are both types of ''non-core'' data that provide subsets of the ''core'' quotation and last sale data provided by securities information processors under the CTA Plan and the Nasdaq UTP Plan. In 2016, an Administrative Law Judge in an application for review by the Securities Industry and Financial Markets Association of actions taken by Self-Regulatory Organizations examined whether another ''non-core'' product, Depth-of-Book data, is constrained by competitive forces.[27] After a four-day hearing and presentation of substantial evidence, the administrative law judge stated that ''competition plays a significant role in restraining exchange pricing of depth-of-book products'' [28]

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[22] *See NetCoalition,* at 534–535.

[23] *Id.* at 537.

[24] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[26] *Id.* [sic]

[27] *See Securities Industry and Financial Markets Association,* Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (A.L.J. June 1, 2016).

[28] *Id.* at *92.

because ''depth-of-book products from different exchanges function as substitutes for each other,'' [29] and, as such, ''the threat of substitution from depth-of-book customers constrains their depth-of-book prices.'' [30] As a result, ''[s]hifts in order flow and threats of shifting order flow provide a significant competitive force in the pricing of . . . depth-of-book data.'' [31] The judge concluded that ''[u]nder the standards articulated by the Commission and DC Circuit, the Exchanges have shown that they are subject to significant competitive forces in setting fees for depth-of-book data: The availability of alternatives to the Exchanges' depth-of-book products, and the Exchanges' need to attract order flow from market participants constrains prices.'' [32] In addition, the administrative law judge stated that ''[s]hifts in order flow and threats of shifting order flow provide a significant competitive force in the pricing of . . . depth-of-book data.'' [33] As such, Nasdaq's depth-of-book fees are ''constrained by significant competitive forces.'' [34]

Market forces constrain the price of Nasdaq FilterView, just as they do other market data fees, in the competition among exchanges and other entities to attract order flow and in the competition among Distributors for customers. Order flow is the ''life blood'' of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including self-regulatory organization (''SRO'') markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[35]

In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing more orders will become correspondingly more valuable.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.[36]

[29] *Id.*

[30] *Id.* at *93

[31] *Id.* at *104.

[32] *Id.* at *86.

[33] *Id.* at *37. [sic]

[34] *Id.* at *43. [sic]

[35] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

[36] Moreover, the level of competition and contestability in the market is evident in the

The proposed change is to increase the monthly subscription fee for FilterView from $500 to $750 per month per subset of data. The proposal will not impose any burden on competition because it is simply a price change that will not alter the overall market structure. Because the proposed fees will become one aspect of the total cost of interacting with the Exchange, the Exchange will lose revenue if these total costs prove to be excessive. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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: (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.

numerous alternative venues that compete for order flow, including SRO markets, internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, IEX, and BATS/Direct Edge.

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2017–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–134. 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 website (*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 website 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–2017–134 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00524 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82472; File No. SR–ISE–2018–03]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Price Level Protection Rule

January 9, 2018.

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 January 2, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 714(b)(4) (Price Level Protection) to clarify the operation of the Price Level Protection.

The text of the proposed rule change is available on the Exchange's website at *http://ise.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

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 the proposed rule change is to amend Rule 714(b)(4) (Price Level Protection) to specify that the Price Level Protection: (1) Only applies when there is no away market best bid or offer (''ABBO''), (2) does not apply to quotes on the complex order book, which are not eligible to trade with bids and offers for the component legs, and (3) determines the maximum number of price levels by reference to the component leg(s) where the protection has been triggered. The proposed changes will increase transparency around the operation of the Exchange with respect to the Price Level Protection, and no changes to the Exchange's trading or other systems are being proposed.

Currently, Rule 714(b)(4), which applies to complex orders executed on the Exchange, provides that ''[t]here is a limit on the number of price levels at which an incoming order or quote to sell (buy) will be executed automatically with the bids or offers of each component leg.'' Furthermore, as currently written, Rule 714(b)(4) also provides that ''orders and quotes are executed at each successive price level until the maximum number of price levels is reached, and any balance is canceled.'' The number of price levels for the component leg, which may be between one (1) and ten (10), is determined by the Exchange from time-to-time on a class-by-class basis.[3]

Previously, this rule, which applied to both simple and complex orders executed on the Exchange, provided additionally that the protection applied ''when there are no bids (offers) from other exchanges at any price for the options series.'' This language was inadvertently removed in SR–ISE–2017–03, when the Exchange adopted its Acceptable Trade Range (''ATR'') protection for simple orders and retained the Price Level Protection for complex orders in connection with the migration of the Exchange's trading system to Nasdaq INET.[4] The Exchange proposes to re-introduce this language to clarify that the trading system continues to apply this protection only when there is no ABBO available.

Furthermore, Rule 714(b)(4) also contains references to quotes that were not removed when the Exchange filed SR–ISE–2017–03 to apply the Price Level Protection solely to complex orders. Although the previous version of the Price Level Protection for simple orders applied to both orders and quotes, quotes have never been included in the Price Level Protection for complex orders. Specifically, quotes are excluded from the Price Level Protection for complex orders because quotes are not permitted to leg into the regular market to trade with bids and offers on the Exchange for the individual legs of the complex strategy.[5] Because quotes on the complex order book do not leg into the regular market, they are excluded from the Price Level Protection, which applies when a complex order is executed with bids and offers for the component legs of the complex strategy. The Exchange therefore proposes to amend Rule 714(b)(4) by removing outdated references to quotes. In addition, to further reinforce that the Price Level Protection applies to complex orders and not simple orders, the Exchange also proposes to add the word ''complex'' before references to orders contained in Rule 714(b)(4).

Finally, the Exchange proposes to add language to the rule that specifies that complex orders are executed at each successive price level until the maximum number of price levels is reached *on a component leg where the protection has been triggered.* For example, assume a member enters a complex order to buy 20 contracts of series A and 20 contracts of series B. If there is no ABBO at any price in series B and the complex order legs into the regular order book, the complex order would be able to trade up to five price levels in series B (*e.g.,* $1.00, $1.05, $1.10, $1.15, and $1.20 but not $1.25 or greater).[6]

The complex order would also trade with the corresponding number of contracts of series A but there would be no restriction on the number of price levels that could be traded in series A if there is sufficient quantity available at the five price levels permitted to trade in series B and the executions in series A are at or inside the ABBO for the series (*e.g.,* if the ABBO in series A is $1.30 and all 20 contracts can be traded at permitted prices in series B, the corresponding 20 contracts in series A could be executed at $0.95, $1.00, $1.05, $1.10, $1.15, $1.20, $1.25, and $1.30 without triggering the protection). Although currently implied by the rule, the Exchange believes that it is appropriate to explicitly reference that the number of price levels is determined based on a component leg where the protection has been triggered to avoid any potential member confusion. Although a complex order that legs into the regular market must trade with all component legs to satisfy the complex order, the Price Level Protection is applied solely on component legs that trigger the protection—*i.e.,* where there is no away market as discussed earlier in this proposed rule change. As such, the maximum number of price levels discussed in Rule 714(b)(4) is computed by reference to component legs where the protection has been triggered.

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. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it will increase transparency around the operation of the Exchange and, in particular, the Price Level Protection for complex orders.

The Price Level Protection is designed to ensure that complex orders that leg into the regular order book and trade against bids and offers for the component legs are protected from trading at unreasonable prices when there is no away market. Thus, this protection only applies when there are no bids (offers) from other exchanges at any price for the options series, as stated in the previous version of the rule. The Exchange believes that applying this protection when there is no away market promotes just and equitable principles of trade as executions are prevented only when there is no ABBO to establish reasonable execution bounds. When there is an away market, the Exchange believes that this

[3] Currently, this limit is set to five price levels. The Exchange will provide at least a two week notice to members via an Options Trader Alert prior to changing the price level limit to allow members the opportunity to perform any system changes. Any change to the price level limit would be subject to consultations with members.

[4] *See* Securities Exchange Act Release No. 80432 (April 11, 2017), 82 FR 18191 (April 17, 2017) (SR–ISE–2017–03) (Approval Order).

[5] *See* Supplementary Material .03 to Rule 722.

[6] *See* footnote 3 supra.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

protection is not necessary, as executions on the regular order book, including the execution of complex orders that leg in to access liquidity on the bids and offers for the individual legs, must occur at or inside the ABBO. The Exchange believes that it is appropriate to re-introduce the proposed language described above so that members are properly apprised of when the Price Level Protection will prevent the execution of complex orders that leg into the regular order book.

The proposed rule change also clarifies that the Price Level Protection applies only to complex orders and not to quotes entered on the complex order book. The Exchange believes that this change is consistent with the protection of investors and the public interest because quotes are not permitted to leg into the regular market [9] and therefore are not eligible to trigger the Price Level Protection, which only affects complex orders that trade with bids and offers for the component legs. The Exchange therefore believes that this change better reflects functionality offered on the Exchange and will increase transparency for members.

Finally, the proposed rule change makes clear that the maximum number of price levels described in Rule 714(b)(4) is determined by reference to component leg(s) where the protection is triggered. Although all legs of a complex order must be executed in order for the complex order to be traded, the Price Level Protection is designed to prevent executions at unreasonable prices when there is no away market in one or more component legs. As such, the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection by virtue of there being no away market prices to constrain executions in that particular options series. Once this limit has been exceeded on a component leg where the protection has been triggered, no further executions can take place, and any remaining balance of the complex order is cancelled. The Exchange believes that adding the proposed language will increase transparency and avoid potential confusion about when a complex order that legs into the regular market will trigger the Price Level Protection. The Exchange therefore believes that this change is consistent with the protection of investors and the public interest.

[9] *See* Supplementary Material .03 to Rule 722.

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 proposed rule change would increase transparency around the operation of the Exchange and, in particular, the Price Level Protection by re-introducing inadvertently deleted language about when the protection is triggered, eliminating outdated references to quotes, and reinforcing that the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection. The Exchange therefore believes that the proposed rule change will have no impact on competition.

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 [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) under the Act [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has asked the Commission to waive the 30-day operative delay so that it may implement the proposed rule change immediately. In support of its request, ISE notes that the proposed rule change would clarify the operation of the Exchange by re-introducing inadvertently deleted rule language indicating that the Price Level Protection only applies when there is no away market, eliminating outdated references to quotes, and reinforcing that the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. By re-introducing inadvertently deleted rule language indicating that the Price Level Protection applies only when there is no ABBO, eliminating references to quotes, which do not execute against the individual legs of a complex strategy, and indicating that the maximum number of price levels is determined by reference to the component leg(s) that trigger the protection, the proposal will correct errors and provide additional clarity to the rule, thereby helping to assure that ISE's rule clearly and accurately describes the operation of the Price Level Protection. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[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–2018–03 on the subject line.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2018–03. 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 website (*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 website 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–2018–03, and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00529 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12) and (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82469; File No. SR–CboeEDGX–2017–006]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for the EDGX Depth Market Data Product

January 9, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2017, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage of EDGX Depth.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to introduce new fees for Non-Display Usage[5] of EDGX Depth. EDGX Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.[6] The Exchange currently charges subscribers to EDGX Depth a fee of $5,000 per month for Non-Display Usage of EDGX Depth by its Trading Platforms.[7] Non-Display Usage is defined as ''any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.''[8] Trading Platforms include registered National Securities Exchanges, Alternative Trading Systems (''ATSs''), and Electronic Communications Networks (''ECNs'') as those terms are defined in the Exchange Act and regulations and rules thereunder. Previously, subscribers of EDGX Depth that used the feed for Non-Display purposes but did not utilize the feed within a Trading Platform were charged the existing Distributors fees.

Forms of Non-Display Use include, but are not limited to, algorithmic or automated trading, order routing, surveillance, order management, risk management, clearance and settlement activities, and account maintenance.[9] Non-Display Usage does not include any use of EDGX Depth that relates solely to transportation, dissemination, and redistribution of EDGX Depth, or that results in the output of EDGX Depth solely for display. Non-display uses of data for non-trading purposes benefits data recipients by allowing users to automate functions, to achieve greater

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[6] *See* Exchange Rule 13.8(a).

[7] A Trading Platform is defined as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[8] *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[9] *See e.g.,* Nasdaq Rule IM–7023–1(c), U.S. Non-Display Information.

speed and accuracy, and to reduce costs of labor. While some non-trading uses do not directly generate revenues, they can substantially reduce a data recipient's costs by automating many functions. Those functions can be carried out in a more efficient and accurate manner, with reduced errors and labor costs.

The Exchange now proposes to adopt a separate fee of $2,000 per month to cover other forms of Non-Display Usage other than through a Trading Platform. The proposed fee would be assessed in addition to existing Distributor [10] fees and would supplement the existing Non-Display Usage fee for Trading Platforms. Specifically, subscribers who are subject to the Non-Display Usage by Trading Platform fee but also utilize EDGX Depth for other Non-Display purposes would be subject to both fees. However, subscribers who utilize EDGX Depth for other Non-Display purposes and not within a Trading Platform would be subject only to the proposed fee for Non-Display Use.

Certain subscribers that use an Exchange approved Managed Non-Display Service Provider would be exempt from proposed Non-Display Usage Fee. To be approved as Managed Non-Display Service Provider, the Distributor must host subscriber's applications that utilize EDGX Depth must within the Managed Non-Display Service Provider's space/cage; fully manage and control access to EDGX Depth, and not permit further redistribution of the Exchange Data internally or externally.[11] In order to qualify for the exemption, the subscriber must meet the following requirements:

- Any subscriber applications that utilize EDGX Depth must be hosted within the Managed Non-Display Service Provider's space/cage;
- the subscriber's access to EDGX Depth is fully managed and controlled by the Managed Non-Display Service Provider, and no further redistribution of the Exchange Data internally or externally is permitted; and
- the subscriber is supported solely by one Managed Non-Display Service Provider, is not hosted by multiple Managed Non-Display Service Providers, and does not have their own data center-hosted environment that also receives EDGX Depth.

The Exchange intends to implement the proposed fee changes on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [14] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[15] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's subscribers will be subject to the proposed fees on an equivalent basis. EDGX Depth is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGX Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute EDGX Depth, prospective Users likely would not subscribe to, or would cease subscribing to, EDGX Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[16]

[10] A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *See* the Exchange's fee schedule *available at http://markets.cboe.com/us/equities/membership/fee_schedule/edgx/*.

[11] *See e.g.,* Securities Exchange Act Release No. 76900 at fn. 8 (January 14, 2016), 81 FR 3506 (January 21, 2016) (SR–NYSE–2016–02). In this filing, the NYSE discontinued fees related to managed non-display for NYSE OpenBook. *Id.*

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78k–1.

[15] *See* 17 CFR 242.603.

[16] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at *http://*

Continued

The proposed Non-Display fee for usage other than through a Trading Platform for EDGX Depth is equitable and reasonable as the Exchange believes the proposed fee represents the value of the data provided by the feed and its use by market participants. The proposed fee changes reflects changing trends in the ways in which the industry uses market data. The proposed fee comport with the proliferation of the use of data for various non-display purposes and by non-display trading applications. It recognizes industry changes that have evolved as a result of numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, decimalization, internationalization and developments in portfolio analysis and securities research. The Exchange believes the proposed fee reflects the value of the data provided.

The Exchange notes that fees for non-display use have become commonplace in the industry. Several exchanges impose them as does the UTP, CTA/CQ, and OPRA Plans. In addition, the fee proposed is less than similar fees currently charged by other exchanges for their depth-of-book data products. For example, NYSE Arca, Inc. (''NYSE Arca'') and the New York Stock Exchange, Inc. (''NYSE'') charge $5,000 and $6,000 per month, respectively, for its depth-of-book data used for non-display purposes.[17]

The proposed fee is also equitable and reasonable in that it ensures that heavy users of the EDGX Depth pay an equitable share of the total fees. Currently, External Distributors pay higher fees than Internal Distributors based upon their assumed higher usage levels. The Exchange believes that non-display users are generally high users of the data, using it to power a trading algorithms and other trading relates systems for millions or even billions of trading messages per day.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGX Depth is constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGX Depth competes with a number of alternative products. For instance, EDGX Depth does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and ECNs that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce depth-of-book information products, and many currently do, including Nasdaq, NYSE, and NYSE Arca.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGX Depth, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

The Exchange believes the adoption of the fee for Non-Display Usage for EDGX Depth would increase competition amongst the exchanges that offer depth-of-book products. In addition, the proposed Non-Display Usage fee is less than similar fees currently charged by the NYSE and NYSE Arca for their depth-of-book data.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2017–006 on the subject line.

www.sec.gov/rules/concept/s72899/buck1.htm. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[17] *See* the non-display fees for NYSE OpenBook and NYSE ArcaBook in the NYSE and NYSE Arca fee schedules *available at http://www.nyxdata.com/nysedata/default.aspx?tabid=518&folder=207656.*

[18] *See supra* note 17.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

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 CboeEDGX–2017–006. 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 website (*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 website 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 CboeEDGX–2017–006 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00526 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82473; File No. SR–OCC–2017–011]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Model Risk Management Policy

January 9, 2018.

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 December 28, 2017, The Options Clearing Corporation (''OCC'') 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by OCC would formalize and update OCC's Model Risk Management Policy (''MRM Policy'' or ''Policy'') in connection with multiple requirements applicable to OCC under Rule 17Ad–22, including Rules 17Ad–22(b)(2) concerning margin requirements and (b)(4) concerning model validation as well as Rules 17Ad–22(e)(2) concerning governance, (e)(3) concerning frameworks for the comprehensive management of risks, and (e)(4)(vii), (e)(6)(vii) and (e)(7)(vii) concerning model validation.[3] The MRM Policy is included as confidential Exhibit 5 of the filing. The Policy is being is submitted without marking to improve readability as it is being submitted in its entirety as new rule text.

The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.17Ad–22(b)(2), (b)(4), (e)(2)–(4), and (e)(6)–(7).

[4] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

OCC's use of models inherently exposes OCC to model risk.[5] To help manage this risk, OCC is proposing to formalize and update its MRM Policy, which sets forth the general framework for OCC's model risk management practices. The MRM Policy would apply to all Risk Models[6] used by OCC to determine, quantify or measure actual or potential risk exposures or risk mitigating actions. The purpose of the MRM Policy is to ensure that OCC appropriately manages its model risks by clearly outlining the roles and responsibilities of OCC's (1) Quantitative Risk Management department (''QRM''), (2) Model Validation Group (''MVG''), and (3) Model Risk Working Group (''MRWG'') in model development, implementation, use, monitoring, and validation. The provisions of the MRM Policy addressing these core elements are described in greater detail below and are designed to ensure that OCC uses an appropriate approach to managing model risk. OCC notes that the MRM Policy is part of a broader framework regarding model risk management that is designed to further the appropriate

[5] Under the proposed Policy, ''Model Risk'' would be defined as the potential for adverse consequences from decisions based on incorrect or misused model outputs.

[6] Under the proposed Policy, ''Risk Models'' would be defined as any quantitative method or approach that applies statistical, economic, financial, or mathematical theories, techniques, and/or assumptions to process inputs into quantitative estimates, forecasts, or projections. A Risk Model may also be a quantitative method with inputs that are qualitative or based on business judgment. Under the Policy, the term Risk Models would be used specifically in the context of credit risk models, margin system and related models, and liquidity risk models.

design, validation and operation of OCC's Risk Models.[7]

Model Risk Management Policy

Introduction

The MRM Policy would apply to all Risk Models used by OCC to determine, quantify or measure actual or potential risk exposures or risk mitigating actions. As noted above, Risk Models are defined under the Policy to be credit risk models (*e.g.,* models concerning OCC's Clearing Fund), margin system and related models (*e.g.,* OCC's System for Theoretical Analysis and Numerical Simulations or ''STANS''), and liquidity risk models.

The MRM Policy also would clarify that OCC considers a Risk Model to be any quantitative method or approach that applies statistical, economic, financial, or mathematical theories, techniques, and/or assumptions to process inputs into quantitative estimates, forecasts, or projections. A Risk Model can also be a quantitative method with inputs that are qualitative or based on business judgment.[8] The MRM Policy also would define ''Methodology'' to mean a collection of Risk Models used to estimate financial risk exposures.

To guide activities in this part of OCC's model risk framework, OCC shall primarily follow the *Supervisory Guidance on Model Risk Management* issued by the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency (April 4, 2011), as well as any applicable regulatory requirements.[9]

The MRM Policy sets forth a governance structure for the allocation of roles and responsibilities for Risk Model development, implementation, use, monitoring, and validation among different groups and individuals, including OCC's Board, the Risk Committee of the Board (''Risk Committee''), management, and other OCC staff. These roles and responsibilities are described in further detail below.

Quantitative Risk Management

Under the proposed Policy, the Executive Vice President of OCC's Financial Risk Management department (''EVP–FRM'') would be responsible for (i) having staff with the requisite knowledge, skills, and expertise to perform model risk management activities necessary to the staffs' responsibilities and (ii) overseeing Risk Model development, implementation, monitoring, and use.

Risk Model Development

Under the proposed Policy, Risk Model development and implementation shall be conducted by QRM unless a third-party is otherwise engaged by QRM to develop a Risk Model. Where QRM does not develop a Risk Model, it shall oversee the development, implementation, and monitoring in accordance with the Risk Model Development Procedure.

The design, theory, and logic of each Risk Model used by OCC shall be described in a document maintained by QRM and shall take into consideration published literature and industry best practice, where it is available. The document shall include a description of the Risk Model, the intended purpose of the Risk Model, the motivation of the Risk Model assumptions, the test data supporting the Risk Model, the Risk Model limitations, and other details as outlined in OCC's Maintenance and Periodic Review of Methodology Procedure. QRM also would be responsible for describing each Risk Model Methodology in a Methodology document. Requirements for Methodology documentation shall be contained in the Maintenance and Periodic Review of Methodology Procedure. The EVP–FRM also shall review and, if appropriate, approve the Risk Model documentation. The EVP–FRM may delegate the responsibility for reviewing and approving such Risk Model documentation to the First Vice President, Quantitative Risk Management, who shall provide notice of any approval to the EVP–FRM.

Risk Model Implementation

Under the proposed MRM Policy, QRM would review, evaluate, and propose model changes (to include Model Defects,[10] enhancements, and/or Decommissioning [11] of a Risk Model) in accordance with the Model Implementation Procedure and OCC's Legal Services Policy (and related procedures). New products that are non-standard equity options/futures shall be reviewed by QRM according to the Model Implementation Procedure for determination as to whether or not a new Risk Model is required or if the use of an existing Risk Model is fit for purpose. QRM shall recommend approval to OCC's Model Risk Working Group (''MRWG'') [12] in accordance with the Model Risk Working Group Procedure subsequent to effective challenge and approval by MVG.

Under the Policy, QRM shall seek Legal department (''Legal'') review to determine if a new Risk Model or change to an existing Risk Model requires regulatory filing prior to implementation and use in accordance with OCC's Legal Services Policy and related procedures. OCC shall not implement or use such Risk Model until Legal provides a written notice to QRM and MVG that the Risk Model does not require any additional regulatory action prior to implementation and use or, if a regulatory filing is required, that all requisite filing and approvals are complete.

Under the proposed Policy, QRM shall implement new Risk Models and changes to existing Risk Models in accordance with the Risk Model Development Procedure and the Model Implementation Procedure. QRM shall be responsible for overseeing the quality assurance and related testing procedures required for implementation and/or Decommissioning of a Risk Model. Reporting and escalation to the MRWG shall be performed in accordance with the Model Risk Working Group Procedure. The MRWG shall review and, if appropriate, approve all new Risk Models, Material Changes [13] to Risk

[7] For example, OCC's Margin Policy is also part of OCC's framework regarding model risk management in that it is designed to be consistent with the requirement in Rule 17Ad–22(e)(6)(vii) that OCC's policies and procedures provide for a risk-based margin system that requires a margin model validation not less than annually. *See* 17 CFR 240.17Ad–22(e)(6)(vii). OCC recently filed a proposed rule change with the Commission concerning the formalizing and updating of its Margin Policy, which is currently pending Commission review. *See* Securities Exchange Act Release No. 82355 (December 19, 2017), 82 FR 61060 (December 26, 2017) (SR–OCC–2017–007).

[8] *See* SR Letter 11–7, ''Guidance on Model Risk Management,'' Board of Governors of the Federal Reserve System (April 4, 2011), and OCC Bulletin 2011–12, ''Sound Practices for Model Risk Management,'' The Office of the Comptroller of the Currency (April 4, 2011).

[9] *Id.*

[10] Under the proposed Policy, ''Risk Model Defect'' would be defined as an error, flaw, failure, or fault in a computer program or system that causes a Risk Model to produce an incorrect or unexpected result, or to behave in unintended ways.

[11] Under the proposed Policy, ''Decommissioned Model'' would be defined as a Risk Model that has been approved by the Risk Committee to no longer be used to estimate margin or Clearing Fund exposures.

[12] The MRWG is responsible for assisting OCC's Management Committee in overseeing and governing OCC's model-related risk issues and consists of representatives from Financial Risk Management, QRM, MVG and Enterprise Risk Management.

[13] Under the proposed Policy, ''Material Change'' would be defined as a change to a Risk Model that, as deemed by the MRWG, requires Risk Committee approval due to its anticipated effect on margin or Clearing Fund requirements, impact to Clearing Members, volume or open interest, backtesting performance, etc. Material Changes may be quantitative or qualitative in nature and take into account the likelihood, impact, and context of the change relative to Risk Model.

Models, and proposals for Decommissioning Risk Models prior to submitting to the Management Committee for approval.

Under the Policy, the Management Committee would be responsible for reviewing and approving each new Risk Model and each Material Change to a Risk Model prior to implementation and use. The Management Committee also would review and approve each proposal for Decommissioning a Risk Model. Each approval shall constitute a recommendation and be reported to the Risk Committee for further review and approval. The Risk Committee shall review and, if appropriate, approve each new Risk Model and each Material Change prior to implementation and use, except that Material Changes to OCC's margin and Clearing Fund methodologies shall be referred to the Board for review and, if appropriate, final approval, upon a recommendation from the Risk Committee. The Risk Committee also shall review and, if appropriate, approve the Decommissioning of a Risk Model prior to removing it from the Model Inventory.[14]

Risk Model Monitoring

Pursuant to the proposed Policy, QRM shall monitor the use and performance of Risk Models according to the Model Backtesting Procedure, the Business Backtesting Procedure, and the Margin Model Parameter Review and Sensitivity Analysis Procedure. Monitoring shall be reasonably designed to determine if the Risk Model is accurate, reliable and robust, and to identify limitations. The results of monitoring also shall be used to evaluate the behavior of a Risk Model over a range of input values. Risk tolerance and associated key risk indicators would be maintained by QRM to measure and monitor model risk. These risk measures, in addition to monthly Risk Model parameter reviews shall be reported to the MRWG and escalated to the Management Committee and/or Risk Committee as necessary in accordance with the Model Risk Working Group Procedure.

Model Validation Group

Under the proposed Policy, the First Vice President of MVG shall have qualified staff with the requisite knowledge, skills, and expertise to perform validations in accordance with the Model Validation Procedure. MVG personnel responsible for validation shall be independent from, shall not report to, and shall otherwise be free from influence from OCC business areas involved in the development, implementation and operation of such Risk Models.

Annual Model Validation Plan

The First Vice President of MVG shall develop and maintain an Annual Model Validation Plan (''Annual Plan''). The Annual Plan, as defined in the Annual Model Validation Plan Procedure, is a schedule of Risk Model validations performed for all Risk Models on the Model Inventory. MVG's Annual Plan shall require all Risk Models on the Model Inventory to be validated no less than annually (where annually is defined as 12 months, or 365 days).

Pursuant to the proposed Policy, the Risk Committee shall review and approve the Annual Model Validation Plan and any removals or deferrals from the previously approved Annual Model Validation Plan based on recommendations from the Chief Risk Officer (''CRO''). In addition, the CRO shall provide a quarterly report to the Risk Committee that provides information on progress against the Annual Model Validation Plan.

Model Inventory

Pursuant to the proposed Policy, MVG shall maintain a complete and accurate inventory of Risk Models according to the Model Inventory Procedure. To ensure the Model Inventory is complete and accurate, MVG shall perform a firm-wide assessment on an annual basis in accordance with the Model Identification Procedure.

Independent Model Validation

Under the proposed Policy, MVG would be responsible for evaluating the performance of each Risk Model by performing Independent Model Validations[15] in accordance with the Model Validation Procedure. Validations shall be performed according to the Model Validation Procedure, and shall include a review of Risk Model performance, parameters, and assumptions. Conclusions shall be formulated in the form of a ''Model Assessment Report'' and shall be reviewed by QRM upon conclusion of the report. MVG shall perform performance monitoring of Risk Models according to the Model Performance Monitoring Procedure. Findings from validations and performance monitoring shall be identified, monitored, remediated, and reported according to the Model Findings Management Procedure and presented to the Management Committee and Risk Committee in the form of a Model Risk Management Findings Dashboard.

Pursuant to the proposed Policy, MVG shall validate all Risks Models prior to implementation and use in accordance with the Model Validation Procedure. Additionally, MVG shall review Material Changes to Risk Models prior to implementation of the Material Change and in accordance with the Model Implementation Procedure. MVG shall assign a model rating and model risk level to each Risk Model on the Model Inventory. The effectiveness of each Risk Model shall be reported by the CRO to the Risk Committee on a quarterly basis.

In the event a third-party validator is used to validate a Risk Model or in the event that OCC uses a third-party to develop a Risk Model, MVG shall oversee/perform the validation in accordance with the Model Validation Procedure. The CRO shall report results of third party validations of OCC's Risk Models and results of validations of third-party Risk Models to the Management Committee and Risk Committee along with any recommended actions and remediation plans associated with such validations.

Model Risk Working Group

Under the proposed Policy, the MRWG would be responsible for assisting OCC's Management Committee in overseeing and governing OCC's model-related risk issues. The MRWG consists of representatives from Financial Risk Management, QRM, MVG and Enterprise Risk Management as well as representatives from Legal to provide adequate support and Legal expertise as it relates to Model Risk. The MRWG shall serve as a resource by overseeing model risk, which includes, without limitation, ongoing model risk monitoring activities, approving, or recommending approval of new Risk Models and Material Changes to Risk Models, and tracking Model Defects and remediation activities as stipulated in the Model Risk Working Group Procedure.

Policy Updates Exceptions and Violations

Finally, pursuant to the proposed Policy, OCC's Management Committee shall review and approve the Policy on an annual basis and recommend approval of the Policy to the Risk

[14] Under the proposed Policy, ''Model Inventory'' would be defined as OCC's database of in-use Risk Models and Methodologies.

[15] Under the proposed Policy, ''Independent Model Validation'' would be defined as the evaluation of the performance of a Risk Model performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.

Committee. The Management Committee also shall review and approve any material changes to the Policy and recommend further approval to the Risk Committee.

The MRM Policy also would contain OCC's standard policy language concerning the policy exception and violation processes. Specifically, any request for an exception to the Policy must be made in writing to a member of the Office of the Executive Chairman,[16] who is then responsible for reviewing the exception request and providing a decision in writing to the person requesting the exception. OCC's CRO, Chief Compliance Officer, or Chief Audit Executive may also request an exception to the Policy directly to the Board. All requests for exceptions and their dispositions would be reported to the Board or Risk Committee as appropriate no later than its next regularly scheduled meeting, in a format approved by the Chair of the Board or Risk Committee. In addition, Policy violations shall be reported to OCC's Chief Compliance Officer, or, if the violation involves the Compliance Department, to the head of Internal Audit or a member of the Office of the Executive Chairman.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act[17] requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. As described in more detail above, OCC believes that formalizing the MRM Policy would help to ensure that OCC maintains policies and procedures that are reasonably designed to provide for a robust model risk management framework, which includes controls pertaining to the governance, development, implementation, use, monitoring, and Independent Model Validation of OCC's Risk Models. In this way, the Policy is intended to further the appropriate design, validation and operation of Risk Models within OCC's performance of clearance and settlement services. The MRM Policy thereby promotes, for example, the development, use and monitoring of appropriately conservative margin and Clearing Fund requirements. As a result, OCC believes the proposed rule change is designed to assure the safeguarding of securities and funds at OCC and, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.[18]

Rule 17Ad–22(e)(2)[19] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things: (i) Are clear and transparent; (ii) clearly prioritize safety and efficiency of the covered clearing agency; (iii) support the public interest requirements in Section 17A of the Act[20] applicable to clearing agencies, and the objectives of owners and participants; and (iv) specify clear and direct lines of responsibility. The proposed Policy would describe, in detail, OCC's overall framework for Risk Model governance. This includes establishing clear, transparent, and direct responsibilities for OCC's Board, Risk Committee, management, and other OCC staff in connection with OCC's model risk management framework and how the relevant groups and individuals interact. In particular, the proposed Policy is designed to establish appropriate governance arrangements for the development, implementation, use, monitoring, and Independent Model Validation of OCC's Risk Models. OCC believes that these governance arrangements prioritize the safety and efficiency of OCC and support the public interest requirements of the Act by describing specifies roles, responsibilities and requirements for OCC's model testing, monitoring, validation, and review processes, thereby helping to ensure that OCC maintains a robust framework for managing its model risk.

Rule 17Ad–22(e)(3)(i)[21] requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, maintain a sound risk management framework for comprehensively managing its risks, which includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage such risks and that are subject to review on a specified periodic basis and approved by its Board annually. OCC believes the proposed Policy is consistent with Rule 17Ad–22(e)(3)(i)[22] because it is an essential component of OCC's overall framework for comprehensively managing its risks, which includes model risk. Specifically, OCC believes the proposed Policy is reasonably designed to identify, measure, monitor, and manage model risks by providing a sound framework for defining, developing, maintaining, and validating OCC's Risk Models and for making any changes necessary to ensure those Risk Models continue to address relevant risks appropriately. As noted above, the proposed Policy provides that OCC's QRM staff, as part of model risk management and model development, are responsible for monitoring model performance on a continuous basis. Specifically, QRM staff would monitor OCC's Risk Models to determine whether such models perform as intended and are accurate, reliable and robust and to identify any Risk Model limitations. The results of monitoring also shall be used to evaluate the behavior of a Risk Model over a range of input values. Moreover, the proposed Policy describes MVG's obligations for the independent validation of new Risk Models, Material Changes to Risk Models, and the annual validation of Risk Models.

Rules 17Ad–22(e)(4)(vii), (e)(6)(vii) and (e)(7)(vii)[23] require a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to perform independent model validations on its credit risk models, margin models, and liquidity risk models not less than annually or more frequently as may be contemplated by the clearing agency's risk management framework. OCC believes the proposed rule change is consistent with Rules 17Ad–22(e)(4)(vii), (e)(6)(vii) and (e)(7)(vii)[24] because the Policy would require OCC to perform an Independent Model Validation of its Risk Models on at least an annual basis, or more frequently as needed, and prior to the implementation of new Risk Models or Material Changes to Risk Models. OCC also believes that the proposed rule change is consistent with the requirement in Rule 17Ad–22(b)(4)[25] that OCC's policies and procedures be reasonably designed to provide for an annual model validation of OCC's margin models, that evaluates their performance and the related

[16] OCC's Office of the Executive Chairman currently consists of the Executive Chairman and Chief Executive Officer, President and Chief Operating Officer, and Chief Administrative Officer.

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] *Id.*

[19] 17 CFR 240.17Ad–22(e)(2).

[20] 15 U.S.C. 78q–1. The public interest requirements in Section 17A of the Act include that the ''prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating and acting on behalf of investors.'' *See* 15 U.S.C. 78q–1(a)(1)(A).

[21] 17 CFR 240.17Ad–22(e)(3)(i).

[22] *Id.*

[23] 17 CFR 240.17Ad–22(e)(4)(vii), (e)(6)(vii) and (e)(7)(vii).

[24] *Id.*

[25] 17 CFR 240.17Ad–22(b)(4).

parameters and assumptions, by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. As noted above, the proposed Policy provides that OCC's model validation staff reviews each Risk Model in OCC's inventory, including margin models, at least annually and such staff is removed from the primary development path of a model to preserve its ability to provide an independent assessment.

Finally, Rule 17Ad–22(b)(2) [26] requires, in part, that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to use risk-based models and parameters to set margin requirements. OCC believes that the proposed Policy would provide for clear identification of its risk-based models and thereby promote compliance with the requirement in Rule 17Ad–22(b)(2) [27] that OCC's policies and procedures be reasonably designed to use risk-based models and parameters to set margin requirements.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [28] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition. The proposed rule change addresses OCC's internal framework surrounding the governance, development, implementation, use, monitoring, and validation of Risk Models. Under this framework, OCC's controls regarding the design, use, implementation and validation of models, as set forth in the proposed Policy, insofar as they affect margin or Clearing Fund requirements, would have an equal impact on all Clearing Members. Consequently, the proposed Policy does not provide any Clearing Member with a competitive advantage over any other Clearing Member. Further, the proposed rule change would not affect any Clearing Member's access to OCC's services or impose any direct burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2017–011 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–OCC–2017–011. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_011.pdf.*

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–OCC–2017–011 and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00530 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 240.17Ad–22(b)(2).

[27] *Id.*

[28] 15 U.S.C. 78q–1(b)(3)(I).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–135, OMB Control No. 3235–0176]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rules 8b–1 to 8b–33

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments

on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rules 8b–1 to 8b–33 (17 CFR 270.8b–1 to 8b–33) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') set forth the procedures for preparing and filing a registration statement under the Investment Company Act. These procedures are intended to facilitate the registration process. These rules generally do not require respondents to report information.[1]

The Commission believes that it is appropriate to estimate the total respondent burden associated with preparing each registration statement form rather than attempt to isolate the impact of the procedural instructions under Section 8(b) of the Investment Company Act, which impose burdens only in the context of the preparation of the various registration statement forms. Accordingly, the Commission is not submitting a separate burden estimate for rules 8b–1 through 8b–33, but instead will include the burden for these rules in its estimates of burden for each of the registration forms under the Investment Company Act. The Commission is, however, submitting an hourly burden estimate of one hour for administrative purposes.

The collection of information under rules 8b–1 to 8b–33 is mandatory. The information provided under rules 8b–1 to 8b–33 is not kept confidential. 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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00494 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[1] Although the rules under Section 8(b) of the Investment Company Act are generally procedural in nature, two of the rules require respondents to disclose some limited information. Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control. The information required by both of these rules is necessary to insure that investors have clear and complete information upon which to base an investment decision.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82470; File No. SR–Phlx–2018–05]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend a Cross-Reference in Rule 1017 (Openings in Options)

January 9, 2018.

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 January 5, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend a cross-reference in Rule 1017, entitled ''Openings in Options.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 a cross-reference in Rule 1017, entitled ''Openings in Options.'' Specifically, the Exchange proposes to amend 1017(h) which currently states, ''In addition, paragraphs (i)(iii) and (j)(5)–(7) below contain additional provisions related to Potential Opening Price.'' The first citation is incomplete and contains a non-existent reference. The Exchange proposes to amend the sentence to state, ''In addition, paragraphs (i)(A)(iii) and (j)(5)–(7) below contain additional provisions related to Potential Opening Price.'' The reference is to the phrase, ''The Exchange will open the option series for trading with a trade on Exchange interest only at the Opening Price, if any of these conditions occur where there is no ABBO, the Potential Opening Price is at or within the Pre-Market BBO which is also a Quality Opening Market.'' The reference was intended to act as a roadmap within the rule to direct the reader to the possible outcomes in the Opening Process.

The Exchange believes that this non-substantive rule change will bring greater clarity to the rule text by providing the intended guidance concerning the manner in which the Exchange could calculate the Potential Opening Price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] 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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general to protect investors and the public interest, by correcting a citation within Rule 1017 which is currently inaccurate. Rule 1017(h) contains a sentence which was intended to act as a roadmap within the rule to direct the reader to the possible outcomes in the Opening Process. The Exchange believes that the amendment is consistent with the Act because it will amend the rule text to properly specify the intended guidance concerning the manner in which the Exchange could calculate the Potential Opening Price.

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 this non-substantive rule change will not impose an undue burden on competition, rather it will bring greater clarity to the rule text [sic]

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[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[7] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any novel issues and waiver will allow the Exchange to correct the erroneous cross-reference without delay. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–05 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–Phlx–2018–05. 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 website (*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 website 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–2018–05, and should be submitted on or before February 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00527 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 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.

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82478; File No. SR–NASDAQ–2017–087]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Listing Requirements Related to Special Purpose Acquisition Companies Listing Standards To Reduce Round Lot Holders on Nasdaq Capital Market for Initial Listing From 300 to 150 and Eliminate Public Holders for Continued Listing From 300 to Zero, Require $5 Million in Net Tangible Assets for Initial and Continued Listing on Nasdaq Capital Market, and Impose a Deadline To Demonstrate Compliance With Initial Listing Requirements on All Nasdaq Markets Within 30 Days Following Each Business Combination

January 9, 2018.

I. Introduction

On September 20, 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 modify the listing requirements for Special Purpose Acquisition Companies (''SPACs'') [3] listed on the Nasdaq Capital Market by reducing the number of round lot holders required for initial listing from 300 to 150, and eliminating the continued listing requirement for a minimum number of holders, which is also currently 300, that applies until the SPAC completes one or more business combinations.[4] Nasdaq also proposes to require that a SPAC listed on the Nasdaq Capital Market maintain at least $5 million net tangible assets for initial and continued listing. Finally, Nasdaq is proposing to allow SPACs listed on any of its three listing tiers (Nasdaq Global Select, Nasdaq Global, and Nasdaq Capital Market) 30 days to demonstrate compliance with initial listing requirements following each business combination.[5]

The proposed rule change was published for comment in the **Federal Register** on October 11, 2017.[6] On November 22, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to January 9, 2018.[7] The Commission received six comments on the proposal.[8] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposal.

II. Description of Proposal

A. Background on SPACs

A SPAC is a special purpose company whose business plan is to raise capital in an initial public offering (''IPO'') and, within a specific period of time, engage in a merger or acquisition with one or more unidentified companies. Among other things, a SPAC must keep 90% of the gross proceeds of its IPO in an escrow account through the date of a business combination.[9] The SPAC must complete one or more business combinations, having an aggregate market value of at least 80% of the value of the deposit account at the time of the agreement to enter into the initial combination, within 36 months of the effectiveness of the IPO registration statement.[10] Additionally, public shareholders who object to a business combination have the right to convert their common stock into a pro rata share of the funds held in escrow.[11] Following each business combination the combined company must meet the Exchange's requirements for initial listing of an operating company, including the requirement to maintain a minimum of 300 holders.[12]

B. Description of Proposed Changes to SPAC Listing Standards

The Exchange has proposed to reduce the number of round lot holders required for SPACs initially listing on the Nasdaq Capital Market from 300 to 150.[13] The Exchange also proposed to completely eliminate the current continued listing requirement that there be a minimum of 300 holders until such time as the SPAC completes one or more business combinations.[14] In support of this proposal, as set forth in more detail in the Notice, Nasdaq states that SPACs often have difficulty demonstrating compliance with these initial and continued listing standards. Based on conversations with market participants, Nasdaq believes this is due to the unique nature of SPACs, and asserts that this limits the number of interested retail investors and encourages owners to hold their shares until an acquisition is announced, which can be as long as three years after the IPO. Nasdaq believes that these same features limit the benefit to investors of having a shareholder requirement, the purpose of which, according to Nasdaq, is ''to help ensure that a stock has an investor following and liquid market necessary for trading.'' [15] Among other things, Nasdaq asserted that ''the potential for distorted prices occurring as a result of there being few shareholders or illiquidity is less of a concern for [a SPAC's] investors'' because, in the period prior to the business

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that throughout this order we have used the term ''SPAC'' or ''SPACs.'' These terms have the same meaning as ''Acquisition Company'' which is the term used by Nasdaq in its current proposed rule filing.

[4] *See* Nasdaq Rule IM–5101–2(b), and *infra* note 10 and accompanying text which describes the requirements for the value of the business combination(s).

[5] The Exchange also proposes to delete a duplicative paragraph from the rule text and alter the paragraphs formatting within certain provisions in order to enhance the rule's readability. *See* proposed rule text to Nasdaq Rule IM–5101–2 in Exhibit 5 to Nasdaq–2017–087.

[6] *See* Securities Exchange Act Release No. 81816 (October 4, 2017), 82 FR 47269 (''Notice'').

[7] *See* Securities Exchange Act Release No. 82142, 82 FR 56293 (November 28, 2017).

[8] *See* Letters to Brent J. Fields, Secretary, Commission, from Jeffrey M. Solomon, Chief Executive Officer, Cowen and Company, LLC, dated October 19, 2017 (''Cowen Letter''); Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated October 25, 2017 (''CII Letter''); Sean Davy, Managing Director, Capital Markets Division, SIFMA, dated October 31, 2017 (''SIFMA Letter''); Akin Gump Strauss Hauer & Feld LLP, dated November 1, 2017 (''Akin Gump Letter''); Steven Levine, Chief Executive Officer, EarlyBirdCapital, Inc., dated November 3, 2017 (''EarlyBird Letter''); and Christian O. Nagler and David A. Curtiss, Kirkland & Ellis LLP, dated November 9, 2017 (''Kirkland Letter'').

[9] *See* Nasdaq Rule IM–5101–2(a).

[10] *See* Nasdaq Rule IM–5101–2(b). For purposes of this rule, in calculating the 80% value of the deposit account any deferred underwriter fees and taxes payable on the income earned on the deposit account are excluded.

[11] *See* Nasdaq Rule IM–5101–2(d) & Nasdaq Rule IM–5101–2(e). If a shareholder vote is taken however, under Nasdaq Rule IM–5101–2(d), the right of shareholders voting against a business combination to redeem their shares for cash may be subject to a limit established by the SPAC (that can be set no lower than 10% of the shares sold in the IPO).

[12] *See* Nasdaq Rule IM–5101–2(d) & Nasdaq Rule IM–5101–2(e) and Nasdaq Rules 5505(a)(3) and 5550(a)(3).

[13] *See* proposed rule text to Nasdaq Rule 5505(a)(3) in Exhibit 5 to Nasdaq–2017–087.

[14] *See* proposed rule text to Nasdaq Rule 5550(a)(3) in Exhibit 5 to Nasdaq–2017–087. Nasdaq Rule 5550(a)(3) currently requires 300 public holders for continued listing of a primary equity security listed on Nasdaq Capital Markets. ''Public Holders'' is defined to mean holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an executive officer, director, or the beneficial holder of more than 10% of the total shares outstanding. *See* Nasdaq Rule 5005(a)(35).

[15] *See* Notice at 47269.

combination, ''the value of [a SPAC] is based primarily on the value of the funds it held in trust,'' and ''shareholders have the right to redeem their shares for a pro rata share of that trust in conjunction with the business combination.'' [16] As a result, according to Nasdaq, SPACs generally ''have historically traded close to the value in the trust, even when they have had few shareholders, which suggests that their lack of shareholders has not resulted in distorted prices and the associated concerns.'' [17] Nasdaq notes that SPACs ''must undergo a transformative transaction within 36 months of listing, at which time they must meet all listing requirements, including the shareholder requirement.'' [18] In Nasdaq's view, ''[t]his provides an additional protection to shareholders, assuring that any liquidity issues are only temporary.'' [19] Finally, Nasdaq observes that ''it can be difficult for a company, once listed, to obtain evidence demonstrating the number of its shareholders because many accounts are held in street name'' and that this process ''is particularly burdensome for [SPACs] because most operating expenses are typically borne by the [SPAC's] sponsors due to the requirement that the gross proceeds of the initial public offering remain in the trust account until the closing of the business combination.'' [20]

The Exchange also proposed to add a new requirement for SPACs to list, and remain listed, on the Nasdaq Capital Market that would require SPACs to maintain at least $5 million in net tangible assets.[21] This requirement is being proposed by Nasdaq as an alternative exception to the Commission's penny stock rule, Rule 3a51–1 under the Act, because Nasdaq's proposed changes to the minimum number of holders would result in SPACs listed on the Nasdaq Capital Market no longer qualifying for the current penny stock rule exception that requires listed companies to have 300 round lot holders.[22] The $5 million net tangible assets requirement is an alternative exception to the penny stock rule, and ''Nasdaq believes that all [SPACs] currently listed satisfy this alternative.'' [23] The Exchange stated that it will monitor listed SPACs for compliance with this requirement and, to assist broker-dealers in complying with the penny stock rule, will publish on Nasdaq's website a daily list of any SPAC that no longer meets the net tangible assets requirement, and which does not satisfy any other penny stock exception. Further, if a SPAC does not meet the net tangible assets requirement, the Exchange would initiate delisting proceedings under the Nasdaq Rule 5800 Series.[24]

Finally, the Exchange proposed to add a requirement, applicable to all of its listing tiers (Nasdaq Global Select, Nasdaq Global, and Nasdaq Capital Market),that a listed SPAC must demonstrate that it meets all initial listing requirements within 30 days following each business combination. The Exchange notes that, under its existing rules, following a business combination with a SPAC, ''the resulting company must satisfy all initial listing requirements.'' [25] The Exchange takes the position that ''[t]he rule does not provide a timetable for the company to demonstrate that it satisfies those requirements,'' so ''Nasdaq proposes to codify that a company must demonstrate that it meets the initial listing requirements within 30 days following a business combination.'' [26] If the SPAC has not demonstrated that it meets all of the initial listing requirements within 30 days following a business combination, then Nasdaq staff would issue a Delisting Determination under the Nasdaq Rule 5800 Series.[27]

III. Summary of Comments

The Commission received six comment letters on the proposal.[28] Five commenters expressed support for the proposed rule change,[29] and one commenter did not.[30]

The commenters supporting the proposed rule change generally discussed the importance of SPACs as an alternative to a traditional IPO as a path for a company to go public,[31] and expressed the view that the proposal would reduce burdens on SPACs and facilitate their ability to go public, without undermining investor protections.[32] With respect to the proposed changes to the required minimum number of holders, two commenters indicated that reducing these requirements would lessen the costs and administrative burdens on SPACs, which operate with limited funds not held in escrow, to monitor the number of holders.[33] Two commenters asserted that SPACs generally are marketed to institutions, and not retail investors, so that the proposed changes would not harm retail investors.[34] Another commenter expressed the view that it can be difficult for SPACs to meet the existing minimum number of holders requirements ''due to the high demand from institutional investors in the IPO allocation process.'' [35] Two commenters believed that, given the unique characteristics of SPACs (*e.g.,* the requirement to complete a business combination within a specified time period, the right of shareholders to a pro rata share of the funds held in escrow, and the tendency to hold shares until a business combination is announced), the minimum number of holder

[16] *See* Notice at 47269. *See also, supra* note 11, that refer to possible limits on the amount of shares that can be redeemed on a pro rata basis.

[17] *See* Notice at 47269.

[18] *See* Notice at 47269–70.

[19] *See* Notice at 47270.

[20] *Id.*

[21] Net Tangible Assets is defined as total assets less intangible assets and liabilities. *See* proposed Nasdaq Rule IM–5101–2(f). Under the proposal, if a company is listed prior to approval of the Exchange's proposal it will not need to satisfy this net tangible asset requirement if it has a least 300 public holders.

[22] Rule 15g–1 through 15g–9 under the Act impose certain disclosure and additional requirements on brokers and dealers when effecting transactions in penny stocks. *See* 17 CFR 240.15g–1 to 15g–9. Rule 3a51–1 includes an exception from the definition of penny stock for securities registered on a national securities exchange that has initial listing standards, among others, that requires at least 300 round lot holders. Rule 3a51–1 also has an exception from the penny stock definition if a company has $5 million in net tangible assets. *See* 17 CFR 240.3a51–1(a) and 17 CFR 240.3a51–1(g).

[23] *See* Notice at 47270 in footnote 16.

[24] The SPAC is able to request review of the Staff Delisting Determination which would allow it to remain listed for a maximum of 180 calendar days. *See* Nasdaq Rule 5815. The Exchange states that this limitation will only allow for a SPAC to remain listed for a short period of time and that the process would provide notice to the public. *See* Notice at 47271.

[25] *See* Notice at 47271. *See also* Nasdaq Rule IM–5101–2 (d).

[26] *See* Notice at 47271.

[27] *See* Notice at 47271. Nasdaq also proposed other non-substantive changes in its proposal. *See also supra* note 5.

[28] *See supra* note 8.

[29] *See* Cowan Letter at 1; CII Letter at 4; SIFMA Letter at 2; Akin Gump Letter at 3; EarlyBird Letter at 1; Kirkland Letter at 1.

[30] *See* CII Letter at 1 (requesting more fulsome information and analysis on both proposed holder changes and the proposal to adopt as a listing standard the net tangible assets penny stock exemption).

[31] *See* Cowan Letter at 1; SIFMA Letter at 2 (stating 20 percent of public offerings in the first three quarters of 2017 came from SPACs); EarlyBird Letter at 1; Kirkland Letter at 1.

[32] *See* SIFMA Letter at 2; EarlyBird Letter at 1; Akin Gump Letter at 3.

[33] *See* SIFMA Letter at 3 (stating the proposed change would ''reduce costs and burdens on [SPACs]'' which ''have limited funds not held in escrow''); Akin Gump Letter at 2 (arguing the holder requirement ''creates significant administrative burden on SPACs'' which are ''operating with limited funds outside of the trust account'').

[34] *See* Cowen Letter at 1 and EarlyBird Letter at 1.

[35] *See* Akin Gump Letter at 2.

requirements did not provide significant investor protection benefits.[36]

Two commenters specifically supported the $5 million net tangible assets requirement, noting that this requirement should help SPACs avoid being designated a ''penny stock.'' [37] One commenter noted the proposal by Nasdaq to publish a daily list of SPACs that do not meet the requirement for an exception to the penny stock rules will ensure proper notice is provided to market participants.[38]

Finally, three of the commenters supporting the proposed rule change also specifically supported the proposal to establish a 30-day period for a listed SPAC to demonstrate compliance with initial listing requirements following a business combination.[39] One commenter believed that this ''strikes a balance of providing the company with necessary time to manage its limited resources while protecting investors in the same way [Nasdaq] protects investors in operating companies that are conducting their initial public offerings.'' [40] Another commenter expressed the view that the 30-day compliance period ''would be important to allow [SPACs] time to satisfy the listing requirements after the closing of an initial business combination,'' given ''the uncertainty in stock ownership that redemption elections can bring.'' [41]

One commenter did not support the proposed rule change, noting that ''it does not provide sufficient information for us to make a determination as to whether our members and the capital markets would benefit from the proposed rule changes.'' [42] Areas where this commenter believed more evidence was necessary include: (1) The assertion that price distortions or illiquidity are a lesser concern for SPACs; (2) the analysis that SPACs trade close to the redemption value of the assets held in trust; (3) the number of companies constrained by existing listing standards; and (4) the difficulties demonstrating compliance with existing listing standards, including determining the number of holders.[43]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2017–087 and Ground for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.[44] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act [45] and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of free and open market and a national market system, and, in general, to protect investors and the public interest.[46]

The Commission has consistently recognized the importance of the minimum number of holders and other similar requirements in exchange listing standards.[47] Among other things, such listing standards help ensure that exchange listed companies have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[48]

Nasdaq proposes to lower the minimum number of holders required for initial listing of a SPAC from 300 to 150, and to eliminate the continued listing requirement to have a minimum number of holders until the SPAC completes a business acquisition. In support of its proposal, Nasdaq asserts that SPACs often have difficulty demonstrating compliance with the minimum number of holders requirements because many accounts are held in street name, so that this information must be obtained from broker-dealers and other third parties. Nasdaq states that this effort is particularly burdensome for SPACs because most of the expenses incurred in determining the number of holders must be borne by the SPAC's sponsors. The Commission notes that the vast majority of shares of most listed companies are held in street name, and it is not clear from Nasdaq's proposal how the burdens on SPACs in determining the number of holders are different than for listed companies generally, other than the fact that the SPAC's sponsor bears most of the costs. In addition, as noted by a commenter, it is not clear from Nasdaq's proposal the extent to which SPACs actually have had difficulties complying with the existing minimum number of holders requirements.[49]

Nasdaq also takes the position that the benefits of the minimum number of holders requirements are less with SPACs because their value is based primarily on the value of the funds held in trust. Nasdaq notes that SPACs historically have traded close to the value of the funds held in trust, and concludes that a lack of shareholders has not resulted in distorted prices and the associated concerns. The Commission, however, does not believe it is clear from Nasdaq's proposal how these historic trading patterns bear on the role of the minimum number of holders requirements in maintaining fair and orderly markets, particularly since

[36] *See* SIFMA Letter at 3 (stating the pro rata right to funds held in the escrow account, the limited amount of time that the SPAC has to complete a business combination and the unique trading fundamentals indicate why a lower or no holder requirement should be required). *See also* Akin Gump Letter at 2 (asserting that ''SPAC investors have further protection from illiquidity because a SPAC must undergo a business combination within the allotted time period or liquidate and return the pro rata share of the trust assets to public investors.'').

[37] *See* SIFMA Letter at 4; and Akin Gump Letter at 3.

[38] *See* Akin Gump Letter at 3.

[39] *See* SIFMA Letter at 4; Akin Gump Letter at 3; Kirkland Letter at 1.

[40] *See* SIFMA Letter at 4.

[41] *See* Kirkland Letter at 1.

[42] *See* CII Letter at 1.

[43] *See* CII Letter at 2. This commenter specifically indicated, however, that it did support the proposal to allow listed companies 30 days to demonstrate compliance with the initial listing standards after the consummation of the SPAC's business combination.

[44] 15 U.S.C. 78s(b)(2)(B).

[45] 15 U.S.C. 78f(b)(5).

[46] *Id.*

[47] For example, the Commission has repeatedly stated in approving exchange listing requirements, including Nasdaq's original SPAC listing standards, that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. *See e.g.,* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (stating also that the distribution standards, which include exchange holder requirements, ''. . . should help to ensure that the [SPACs] securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets''); Securities Exchange Act Release No. 58228 (July 25, 2008), 73 FR 44794 (July 31, 2008).

[48] *Id.* The Commission has further stated that once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See e.g.,* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) also stating that the continued listing standards for SPACs, which include the holder requirements, protect investors and promote fair and orderly markets.

[49] *See supra* note 43.

Nasdaq's observations were made while the current minimum number of holder requirements were in place.

Finally, Nasdaq proposes to allow a listed SPAC an additional 30 days following a business combination to demonstrate compliance with all initial listing standards, including the holder requirement. Nasdaq acknowledges that, following a business combination, the SPAC should meet all applicable listing requirements for operating companies, including the requirement to maintain a minimum of 300 holders on an initial and continued basis. Nasdaq takes the position that it is proposing the 30-day transition period because the current rule ''does not provide a timetable'' for the SPAC to demonstrate compliance. The Commission notes that initial listing standards, absent an explicit exception, apply upon initial listing. Further, the Commission notes that, because the same number of holders today (*i.e.,* 300) applies to SPACs listed on Nasdaq before and after a business combination,[50] the issue of a post-combination transition period has not been raised. Nasdaq proposes to eliminate the continued listing requirement for SPACs, so that a listed SPAC with very few holders may need to have at least 300 holders a short time after a business combination. The Commission does not believe it is clear from Nasdaq's proposal that such a structure is workable, or how a listed SPAC would ensure it is in a position to sufficiently increase its number of holders.

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[51]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 6, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 20, 2018. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment, including where relevant, any specific data, statistics, or studies, on the following:

1. Would the proposal ensure that a sufficient liquid market exists for the shares of SPACs on the Nasdaq Capital Market? Why or why not?

2. Without any continued listing holder requirement, would the shares of SPACs still trade close to their redemption value, as the Exchange has stated? If yes, would that trading pattern continue after an announcement of a business combination?

3. Without any continued listing holder requirement, could shares of SPACs be more prone to manipulation, either post-IPO or at the time of the business combination announcement (but before consummation of the business combination)?

4. Has the Exchange demonstrated with specific data, analysis, and studies that the shares of SPACs trade consistently as stated in the proposal, and does the analysis support the proposed reductions in the holder initial and continued listing standards? If not, what data should be reviewed and analyzed? For example, in the Exchange's examination of SPACs that were below the continued public holder listing requirement, how few shareholders did these SPACs have?

5. The Exchange asserted that it is time consuming and burdensome for a SPAC to obtain a list of shareholders to demonstrate the number of holders, because many shares are held in street name with broker-dealers. The Commission notes that the process of obtaining number of shareholders is similar for all listed companies. Do commenters think SPACs are particularly burdened by this process and the costs? Is the fact the costs are usually borne by the sponsors relevant?

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–2017–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–087. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–087 and should be submitted on or before February 6, 2018.

[50] The Commission recognizes that the initial holder requirement is 300 round lot holders while the continued listing requirement is 300 public holders. Therefore, when a SPAC transitions to listing as an operating company after a business combination, it should have at least 300 public holders, many of which may also be round lot holders.

[51] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00535 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–609, OMB Control No.3235–706]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form ABS–EE.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ABS–EE (17 CFR 249.1401) is filed by asset-backed issuers to provide asset-level information for registered offerings of asset-backed securities at the time of securitization and on an ongoing basis required by Item 1111(h) of Regulation AB (17 CFR 229.1111(h)). The purpose of the information collected on Form ABS–EE is to implement the disclosure requirements of Section 7(c) of the Securities Act of 1933 (15 U.S.C. 77g(c)) to provide information regarding the use of representations and warranties in the asset-backed securities markets. We estimate that approximately 13,374 securitizers will file Form ABS–EE annually at estimated 170,089 burden hours per response. In addition, we estimate that 25% of the 50.87152 hours per response (12.71788 hours) is carried internally by the securitizers for a total annual reporting burden of 170,089 hours (12.71788 hours per response x 13,374 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00499 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–61, OMB Control No. 3235–0073]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form S–3.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–3 (17 CFR 239.13) is a short form registration statement used by domestic issuers to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form S–3 takes approximately 472.49 hours per response and is filed by approximately 2,092 issuers annually. We estimate that 25% of the 472.49 hours per response (118.12 hours) is prepared by the issuer for a total annual reporting burden of 247,107 hours (118.12 hours per response x 2,092 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00501 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–125, OMB Control No. 3235–0104]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form 3.

Notice is hereby given that pursuant, to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

[52] 17 CFR 200.30–3(a)(12).

Exchange Act Forms 3 is filed by insiders of public companies that have a class of securities registered under Section 12 of the Exchange Act. Form 3 is an initial statement beneficial ownership of securities. Approximately 28,877 insiders file Form 3 annually and it takes approximately 0.50 hours to prepare for a total of 14,439 annual burden hours (0.50 hours per response x 28,877 responses).

Written comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00495 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–418, OMB Control No. 3235–0485]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Rule 15c2–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c2–1, (17 CFR 240.15c2–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c2–1 (17 CFR 240.15c2–1) prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the re-hypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the re-hypothecation of customer securities in contravention of the rule, issue and retain copies of notices of hypothecation of customer securities in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule and to advise customers of the rule's protections.

There are approximately 79 respondents (*i.e.,* broker-dealers that conducted business with the public, filed Part II or Part IICSE of the FOCUS Report, did not claim an exemption from the Rule 15c3–3 reserve formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 1,778 hours to comply with the rule. Each of these approximately 79 registered broker-dealers makes an estimated 45 annual responses. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 1,778 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 9, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00490 Filed 1–12–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0286]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 40 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) operating a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0286 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 40 individuals listed in this notice have requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population.

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

II. Qualifications of Applicants

Kyle A. Bernard

Mr. Bernard, 29, has had ITDM since 1994. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bernard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bernard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

Zachary R. Brigham

Mr. Brigham, 30, has had ITDM since 1997. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Brigham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brigham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Carolina.

Kenneth D. Chitwood

Mr. Chitwood, 53, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of

consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Chitwood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chitwood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Tony M. Damesworth

Mr. Damesworth, 75, has had ITDM since 2005. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Damesworth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Damesworth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Tennessee.

Walter Dudiak

Mr. Dudiak, 74, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Dudiak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dudiak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Pennsylvania.

Mark T. Feldmann

Mr. Feldmann, 26, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Feldmann understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Feldmann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

John H. Fritz

Mr. Fritz, 72, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Fritz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fritz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Scott T. Fry

Mr. Fry, 46, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Fry understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

Richard E. Henderson

Mr. Henderson, 63, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Henderson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Henderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Arizona.

Leah M. Hennes

Ms. Hennes, 23, has had ITDM since 2007. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Hennes understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Hennes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds an operator's license from Minnesota.

Gerard M. Hubert

Mr. Hubert, 54, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hubert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Hubert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Gregory L. Humphrey

Mr. Humphrey, 50, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Humphrey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Humphrey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Parkinson B. James

Mr. James, 57, has had ITDM since 2009. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. James understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. James meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable proliferative diabetic retinopathy. He holds a Class B CDL from New York.

John M. Jessup

Mr. Jessup, 59, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Jessup understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jessup meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Michigan.

Kevin A. Kirker

Mr. Kirker, 54, has had ITDM since 2011. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kirker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kirker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Ryan A. Knutson

Mr. Knutson, 38, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Knutson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Knutson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Benjamin T. Lamoreaux

Mr. Lamoreaux, 42, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Lamoreaux understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lamoreaux meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

Joseph W. Latawiec

Mr. Latawiec, 63, has had ITDM since 2004. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Latawiec understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Latawiec meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Tommy Leyva

Mr. Leyva, 61, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Leyva understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leyva meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from California.

Melvin Lumpkins, III

Mr. Lumpkins, 50, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic

reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Lumpkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lumpkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Louisiana.

Craig E. Lynn

Mr. Lynn, 58, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Lynn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lynn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Charles E. Madenford, III

Mr. Madenford, 51, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Madenford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Madenford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

David R. Meddows

Mr. Meddows, 55, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Meddows understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meddows meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Kevin L. Miller

Mr. Miller, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Charles A. Moerer

Mr. Moerer, 50, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Moerer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moerer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Cirilo M. Nunez

Mr. Nunez, 64, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Nunez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nunez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

LaVonda B. Pearson

Ms. Pearson, 52, has had ITDM since 2009. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Pearson understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Pearson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds an operator's license from North Carolina.

Andrea N. Pressley

Ms. Pressley, 48, has had ITDM since 2012. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Pressley understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Pressley meets the requirements of the

vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds an operator's license from New Jersey.

Darby J. Russo

Mr. Russo, 57, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Russo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Russo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Louisiana.

Gary S. Schreiner

Mr. Schreiner, 63, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Schreiner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schreiner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Nicholas A. Scialanca

Mr. Scialanca, 23, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Scialanca understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scialanca meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Robert C. Scott

Mr. Scott, 43, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Scott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Thermond D. Smith

Mr. Smith, 58, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Edward D. Smith

Mr. Smith, 52, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Jeffrey W. Stamper

Mr. Stamper, 51, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Stamper understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stamper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Wayne R. Steffler

Mr. Steffler, 60, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Steffler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steffler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Thomas J. Stylc

Mr. Stylc, 59, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in

the last five years. His endocrinologist certifies that Mr. Stylc understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stylc meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Todd A. Vanwinkle

Mr. Vanwinkle, 53, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Vanwinkle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vanwinkle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Jacob W. Williams

Mr. Williams, 41, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Kevin A. Wiswell

Mr. Wiswell, 59, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Wiswell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wiswell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maine.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0286 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0286 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00561 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0023]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 25 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on October 19, 2017. The exemptions expire on October 19, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

II. Background

On September 18, 2017, FMCSA published a notice announcing receipt of applications from 25 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (82 FR 43647). The public comment period ended on October 18, 2017, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received three comments in this proceeding. Mr. Cory Manthei commented however his comments are out of scope for this office. Mr. Ryan Pitre commented that FMCSA should revisit the vision qualifications and stated that these are new regulations. In July 1992, the Agency first published the criteria for the Vision Waiver Program, and are therefore not new regulations. Mr. Brian Weaver commented that he believes that if a driver is able to back a trailer in a safe manner then those drivers are okay to obtain a vision exemption. FMCSA has established program criteria drivers must meet in order to obtain a Federal vision exemption, functional testing is not one of them.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 18, 2017, **Federal Register** notice (82 FR 43647) and will not be repeated in this notice.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 25 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, aphakia, cataract, chorioretinal scar, complete loss of vision, fibrotic scarring, macular coloboma, phthisis bulbi, prosthetic eye, retinal detachment, retinal neovascularization, and retinal scarring. In most cases, their eye conditions were not recently developed. Nineteen of the applicants were either born with their vision impairments or have had them since childhood. The six individuals that sustained their vision conditions as adults have had it for a range of four to 45 years. Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for five to 56 years. In the past three years, one driver was involved in a crash, and two drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10) and (b) by a certified Medical Examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this

exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 25 exemption applications, FMCSA exempts the following drivers from the vision requirement, 49 CFR 391.41(b)(10), subject to the requirements cited above:

Paul A. Bartels (WI)
Harold J. Bartley, Jr. (KY)
Charles C. Berns (IA)
Eric L. Boyle, Jr. (MD)
Jeremiah E. Casey (MO)
Leonard M. Cassieri (CA)
Randy J. Conrad (IA)
Jimmie E. Curtis (NM)
Daniel E. Delano (VA)
Jonathan P. Edwards (PA)
James A. Green (IL)
Richard Healy (MD)
Tommy G. Hillis (TX)
Richard A. Honstad (MN)
Stephen M. Lovell (TX)
Thomas P. Maio (ME)
Carlos Marquez (WI)
Jason L. McBride (MI)
Dennis M. Olson (WI)
Kameron W. Quinalty (AR)
Daniel C. Sagert (WI)
Robert D. Steele (WA)
Richard C. Strassburg (NY)
Jeremy E. Studebaker (IN)
Daniel D. Woodworth (LA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00599 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0116]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from two individuals treated with Implantable Cardioverter Defibrillators (ICDs) who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

II. Background

On May 4, 2017, FMCSA published a FR notice (82 FR 20961) announcing receipt of applications from two individuals treated with ICDs and requested comments from the public. These two individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on June 5, 2017, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the May 4, 2017, **Federal Register** notice and will not be repeated in this notice.

In reaching the decision to deny these exemption requests, the Agency considered information from the Cardiovascular Medical Advisory Criteria, the April 2007 Evidence Report ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety, a December 2014 focused research report ''Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.'' Copies of the reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [Appendix A to Part 391—Medical Advisory Criteria, section D, paragraph 4.] The advisory criteria for 49 CFR 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope.

III. Discussion of Comments

FMCSA received two comments in this proceeding. Each of the comments was favorable towards the applicants continuing to drive CMV's with ICD's citing their ICDs have not deployed and their medical and physical conditions are stable. FMCSA acknowledges the commenters' responses concerning stable medical histories with ICDs. Based on the available medical literature cited above, however, FMCSA believes that a driver with an ICD is at risk for incapacitation if the device discharges. This risk is combined with the risks associated with the underlying cardiovascular condition for which the

ICD has been implanted as a primary or secondary preventive measure.

IV. Basis for Exemption Determination

Under 49 U.S.C.31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater then, the level that would be achieved absent such an exemption.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information provided by the applicant, available medical and scientific data concerning ICDs, and public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope (a transient loss of consciousness) or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. See the April 2007 Evidence Report on Cardiovascular Disease and Commercial Motor vehicle Driver Safety, April 2007.[1] A focused research report on Implantable Cardioverter Defibrillators and the Impact of a Shock on a Patient When Deployed completed for the FMCSA December 2014 indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety and upholds the findings of the April 2007 report.

V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following two applicants have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(4):

Justin D. Dale (IA)
Raymond M. Loffredo (PA)

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00560 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

[1] Now available at *http://ntl.bts.gov/lib/30000/30100/30123/Final_CVD_Evidence_Report_v2.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0027]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 14 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0027 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 14 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if

that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

II. Qualifications of Applicants

Jordan N. Bean

Mr. Bean, 31, has macular scarring in his right eye due to a traumatic incident in 2009. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my medical opinion, Jordan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bean reported that he has driven straight trucks for seven years, accumulating 14,000 miles, and tractor-trailer combinations for five years, accumulating 10,000 miles. He holds a Class A CDL from North Dakota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Robert J. Bower

Mr. Bower, 45, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, count fingers. Following an examination in 2017, his ophthalmologist stated, ''There is sufficient vision to perform the driving tasks required to operate a commercial vehicle with proper mirrors.'' Mr. Bower reported that he has driven straight trucks for 29 years, accumulating 870,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

James E. Bragg

Mr. Bragg, 54, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''James Bragg has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bragg reported that he has driven straight trucks for one year, accumulating 26,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.9 million miles. He holds a Class A CDL from West Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Lee S. Brown, Jr.

Mr. Brown, 36, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/80. Following an examination in 2017, his optometrist stated, ''I certify that Mr. Lee's best corrected vision in his right eye only meets the requirement provided by the Vision Exemption Program.'' Mr. Lee reported that he has driven straight trucks for six years, accumulating 120,000 miles. He holds a Class B CDL from Maine. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Thomas Buker

Mr. Buker, 57, has had retinal scarring in his left eye since 1992. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his optometrist stated, ''In my opinion, he has sufficient vision to continue to drive a commercial vehicle, which he has done for years.'' Mr. Buker reported that he has driven tractor-trailer combinations for 28 years, accumulating 2.6 million miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last three years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Robert A. Dicker

Mr. Dicker, 60, has had glaucoma in his right eye since 2009. The visual acuity in his right eye is 20/100, and in

his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''It is my medical opinion that Mr. Dicker's visual function is sufficient to operate a commercial vehicle in all circumstances.'' Mr. Dicker reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.3 million miles. He holds a Class A CDL from Maine. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

James D. Evans

Mr. Evans, 60, has had a prosthetic right eye due to a traumatic incident in 1987. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''The examination and testing reveal that Mr. Evans has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely.'' Mr. Evans reported that he has driven straight trucks for 40 years, accumulating 320,000 miles, and tractor-trailer combinations for 30 years, accumulating 360,000 miles. He holds an operator's license from Maryland. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Spencer L. Goard

Mr. Goard, 79, has had optic atrophy in his right eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, counting fingers. Following an examination in 2017, his optometrist stated, ''He meets the visual acuity requirements. I find Mr. Goard to be a quality and reliable person, I hope you will give him every opportunity to prove himself within the bounds of the federal guidelines.'' Mr. Goard reported that he has driven tractor-trailer combinations for 30 years, accumulating three million miles. He holds a Class DA CDL from Kentucky. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Gregory C. Grubb

Mr. Grubb, 26, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2017, his optometrist stated, ''In my professional opinion, Mr. Grubb has sufficient vision to perform the driving tasks associated with operating a commercial vehicle.'' Mr. Grubb reported that he has driven tractor-trailer combinations for five years, accumulating 104,000 miles. He holds a Class DA CDL from Kentucky. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Charles K. Klinglesmith

Mr. Klinglesmith, 56, has had a retinal detachment in his right eye since 2008. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''The patient has sufficient vision to operate a commercial motor vehicle.'' Mr. Klinglesmith reported that he has driven straight trucks for 35 years, accumulating 350,000 miles, and tractor-trailer combinations for 34 years, accumulating 238,000 miles. He holds a Class DA CDL from Kentucky. His driving record for the last three years shows no crashes and one conviction for speeding in a CMV; he exceeded the speed limit by five mph.

Freddy E. Parker

Mr. Parker, 70, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/300. Following an examination in 2017, his optometrist stated, ''It is my opinion that Mr. Parker has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Parker reported that he has driven straight trucks for 54 years, accumulating 2.16 million miles, and tractor-trailer combinations for 24 years, accumulating 1.32 million miles. He holds a Class A CDL from Nevada. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Douglas E. Porter

Mr. Porter, 52, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/25. Following an examination in 2017, his optometrist stated, ''Patient appears to have sufficient vision, to perform driving tasks in order to operate a commercial vehicle.'' Mr. Porter reported that he has driven straight trucks for 16 years, accumulating 480,000 miles. He holds a Class CB CDL from Michigan. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Roy E. Robertson

Mr. Robertson, 49, has had a retinal vein occlusion in his right eye since 2009. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''I certify in my medical opinion that Mr. Roy Robertson has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely.'' Mr. Robertson reported that he has driven straight trucks for four years, accumulating 300,000 miles, and tractor-trailer combinations for 25 years, accumulating 2.5 million miles. He holds a Class A CDL from Georgia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Daniel E. Sharp

Mr. Sharp, 48, has a macular scar in his right eye due to a traumatic incident in 2009. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In summary his vision with both eyes has been and continues to be sufficient for his driving requirements for a commercial vehicle.'' Mr. Sharp reported that he has driven straight trucks for 14 years, accumulating 280,000 miles, and tractor-trailer combinations for 12 years, accumulating 96,000 miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0027 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and

provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0027 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00601 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25751; FMCSA–2011–0193; FMCSA–2011–0194; FMCSA–2013–0183; FMCSA–2013–0186; FMCSA–2013–0189; FMCSA–2015–0067; FMCSA–2015–0068; FMCSA–2015–0069]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 169 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2006–25751; FMCSA–2011–0193; FMCSA–2011–0194; FMCSA–2013–0183; FMCSA–2013–0186; FMCSA–2013–0189; FMCSA–2015–0067; FMCSA–2015–0068; FMCSA–2015–0069 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

The 169 individuals listed in this notice have requested renewal of their exemptions from the diabetes standard in 49 CFR 391.41(b)(3), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 169 applicants has satisfied the renewal conditions for obtaining an exemption from the diabetes requirement (71 FR 58464; 71 FR 67201; 76 FR 61140; 76 FR 63295;

76 FR 71111; 76 FR 76400; 78 FR 50482; 78 FR 55460; 78 FR 56988; 78 FR 65754; 78 FR 67459; 78 FR 69795; 80 FR 59237; 80 FR 62155; 80 FR 63863; 80 FR 68895; 80 FR 79401; 81 FR 6329; 81 FR 6330). They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of November and are discussed below:

As of November 1, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 50482; 78 FR 65754; 80 FR 68895):

John K. Abels (IL)
Dean A. Bacon (IN)
Philip E. Banks (OH)
Anthony M. Brida (NJ)
Charles E. Dailey (AL)
Kenneth D. Denny (WA)
Adam M. Hogue (MS)
Greg P. Mason (NY)
Thomas D. Miller (MT)
Douglas A. Mulligan (KY)
David G. Peters (PA)
Gregory F. Wendt (NE)

The drivers were included in docket number FMCSA–2013–0183. Their exemptions are applicable as of November 1, 2017, and will expire on November 1, 2019.

As of November 3, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 37 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 59237; 80 FR 79401):

Melvin S. Adams, Jr. (MD)
Kevin R. Arnett (MO)
David A. Ash (KS)
Louis Barrios (WA)
Robert W. Brown (TN)
Amanda K. Burke (IA)
Gallaspy C. Chapman (CO)
Fredrick R. Conner (PA)
Charles A. Culler (OH)
Allan E. Dover (ID)
Larry D. Everett (CA)
James Ferrone (PA)
Kenneth C. Fosdick (OH)
Todd E. Gross (WI)
Ricky V. Hoffman (KS)
Gary A. Jackson (PA)
Wayne O. Jennings (KS)
Larian A. Koger (NC)
Richard C. Lakas (MO)
Amondo D. Lark (FL)
Deborah C. Neece (NC)
Paul Neville (NJ)
Thomas M. Nicolaus (IA)
James D. Rast, III (SC)
Jason K. Riley (WV)
David C. Ripley (WA)
Joseph D. Shehan (NC)
Michael Shuler (DC)
Joseph A. Sitarchyk (PA)
Max F. Smith (IA)
Vann H. Smith (AL)
Donald Snead (GA)
John L. Stauffer (IA)
David L. Stephenson (SD)
Connie E. Wideman (FL)
Gary W. Wood (AR)
Willard Zylstra (CA)

The drivers were included in docket number FMCSA–2015–0067. Their exemptions are applicable as of November 3, 2017, and will expire on November 3, 2019.

As of November 9, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 55460; 78 FR 69795; 80 FR 68895):

Mark A. Blanton (IN)
Howard T. Cash (IL)
Heath J. Chesser (AL)
Kevin F. Connacher (PA)
Darryl A. Daniels (OH)
Carrie L. Frisby (CA)
Dean M. Keeven (MI)
Christopher A. Labudde (IL)
Brian A. Mankowski (IL)
Robert E. Welling (OH)
Keith Weymouth (ME)

The drivers were included in docket number FMCSA–2013–0193. Their exemptions are applicable as of November 9, 2017, and will expire on November 9, 2019.

As of November 12, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 19 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 56988; 78 FR 67459; 80 FR 68895):

Philip B. Blythe (IL)
Ryan T. Byndas (AZ)
Winfred G. Clemenson (WA)
Chad P. Colligan (NY)
James D. Crosson, Jr. (MN)
Bruce E. Feltenbarger (MI)
Charles A. Fleming (VA)
Brian W. Hannah (UT)
Michael P. Huck (MI)
Van K. Jarrett (KY)
Keith W. Lewis (MO)
Ronny J. Moreau (NH)
James M. O'Rourke (MA)
Joshua T. Paumer (MT)
Vladimir B. Petkov (MO)
Robert J. Pulliam (AZ)
Daniel C. Theis (FL)
Richard A. White (TN)
Mark A. Winning (IL)

The drivers were included in docket number FMCSA–2013–0186. Their exemptions are applicable as of November 12, 2017, and will expire on November 12, 2019.

As of November 16, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 61140; 76 FR 71111; 80 FR 68895):

Mark D. Andersen (IA)
David A. Basher (MA)
Brian H. Berthiaume (VT)
Eric D. Blocker, Sr. (NC)
Barry W. Campbell (WI)
Raymond A. Jack (WA)
Kenny B. Keels, Jr. (SC)
Jason M. Pritchett (MI)
Steven R. Sibert (MN)
Cassie J. Silbernagel (SD)
Lewis B. Taylor (IL)
James A. Terilli (NY)

The drivers were included in docket number FMCSA–2011–0194. Their exemptions are applicable as of November 16, 2017, and will expire on November 16, 2019.

As of November 17, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 28 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 62155; 81 FR 6329):

Robert G. Chadwick (UT)
Brian D. Correll (PA)
Thomas W. Feely (NY)
Jeffrey S. Gurick (NJ)
Robert Hackey, Jr. (NJ)
Lawrence D. Hastings (WI)
Michael P. Haun (RI)
Anthony G. Hill (GA)
Charles H. Hillman (OR)
Alan L. Hodge (MN)
Nicholas C. Huber (IA)

Joseph S. Hurlburt (NY)
Robert J. Johnson (WA)
Robert L. Lawson (SC)
Leroy Madison (SC)
Mark L. Martin (WA)
Wendell J. Matthews (MO)
Peter G. Mattos (VT)
Michael J. Murray, Jr. (CA)
Joseph K. Niesen (IL)
Herman Powell, Jr. (TX)
William H. Riley, Jr. (IL)
Thomas H. Smith (SC)
James W. Smith (IL)
Michael J. Swanson (IL)
Patrick J. Sweeney (NJ)
Mark A. Turley (PA)
Jon T. Webster (MN)

The drivers were included in docket number FMCSA–2015–0069. Their exemptions are applicable as of November 17, 2017, and will expire on November 17, 2019.

As of November 20, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 20 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (71 FR 58464; 71 FR 67201; 80 FR 68895):

John N. Anderson (MN)
Allan C. Boyum (MN)
Terry L. Brantley (NC)
Steven E. Brechting (MI)
Scott A. Carlson (WI)
Joseph L. Coggins (SC)
Stephanie D. Fry (WY)
Robert W. Gaultney, Jr. (MD)
Paul T. Kubish (WI)
David M. Levy (NY)
David F. Morin (CA)
Jeffrey J. Morinelli (NE)
Ronald D. Murphy (WV)
Charles B. Page (PA)
John A. Remaklus (OH)
Michael D. Schooler (IN)
Arthur L. Stapleton, Jr. (OH)
Jeffrey M. Thew (WA)
Barney J. Wade
Dennis D. Wade (IL)

The drivers were included in docket number FMCSA–2006–25751. Their exemptions are applicable as of November 20, 2017, and will expire on November 20, 2019.

As of November 21, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 29 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 63863; 81 FR 6330):

Leonel Barrera, Jr. (TX)
Alfred T. Benelli (PA)
Rickie J. Burgess (NC)
Edson M. Chick (VT)
Jerome E. Collins (LA)
Alvah R. Daniel, Jr. (WY)
John M. Fisher (VA)
Kent E. Fry (IL)
Stanley M. Garrison (AR)
Eric T. Herron (NV)
Lyle E. Hinspeter, Jr. (IA)
Burton W. Holliday (AL)
Justin L. Howe (IL)
Robert M. Manko (NY)
Clarance McNeill (NC)
Joe R. Minga (MS)
Tyna M. Murphy (PA)
Jose A. Ortega (IL)
Troy D. Ostrowski (MN)
Terry G. Parker (OR)
Anthony T. Quaglieri (NJ)
Antonio Ramos (RI)
Robert N. Ruhs (IA)
Ford J. Stevens, Jr. (MA)
Donald T. Streich (WA)
Dale A. Stydinger (PA)
Raymond E. Thomason (CA)
Robert M. Wright (PA)
Joe L. Zamora (TX)

The drivers were included in docket number FMCSA–2015–0068. Their exemptions are applicable as of November 21, 2017, and will expire on November 21, 2019.

As of November 22, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, Steven R. Auger (NH) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 63295; 76 FR 76400; 80 FR 68895).

This driver was included in docket number FMCSA–2013–0189. The exemption is applicable as of November 22, 2017, and will expire on November 22, 2019.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must submit an annual ophthalmologist's or optometrist's report; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 169 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00580 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0050; FMCSA–2012–0294; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0216; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0117]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 12 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals

who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 12, 2017. The exemptions expire on September 12, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

II. Background

On October 11, 2017, FMCSA published a notice announcing its decision to renew exemptions for 12 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (82 FR 47314). The public comment period ended on November 13, 2017, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based upon its evaluation of the 12 renewal exemption applications, FMCSA announces its' decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41 (b)(8):

As of September 12, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (82 FR 47314):

Ronald Boogay (NJ)
Todd W. Brock (CO)
Matthew J. Chizek (WI)
Paul E. Granger (MI)
Jason C. Kirkham (WI)
Michael K. Lail (NC)
Ivan M. Martin (PA)
Charles A. McCarthy III (MA)
Douglas S. Slagel (OH)
William L. Swann (MD)
Cory R. Wagner (IL)
Timothy M. Zahratka (MN)

The drivers were included in docket numbers FMCSA–2012–0050; FMCSA–2012–0294; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0216; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0117. Their exemptions are applicable as of September 12, 2017, and will expire on September 12, 2019.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00598 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0253]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from four individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0253 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the

docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The four individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8),* paragraphs 3, 4, and 5.]

The advisory criteria states the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Before certification is considered, it is suggested that a six-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a five-year period or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders, (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since the January 15, 2013 notice, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (MEP) (78 FR 3069).

II. Qualifications of Applicants

Anthony Anello, III

Mr. Anello, 32, has a history of epilepsy and has been seizure free since 2006. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2007. His physician states that he is supportive of Mr. Anello receiving an exemption.

Anthony J. Kornuszko, Jr.

Mr. Kornuszko, Jr. 47, has a history of a seizure disorder and has been seizure free since 2009. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2011. His physician states that he is supportive of Mr. Kornuszko receiving an exemption.

Jeffrey W. Mills

Mr. Mills, 56, has a history of a seizure disorder and has been seizure

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

free since 2001. He takes anti-seizure medication, with the dosage and frequency remaining the same since 2001. His physician states that he is supportive of Mr. Mills receiving an exemption.

Jaime D. Paggen.

Ms. Paggen, 40, has a history of epilepsy and has been seizure free since 2008. She takes anti-seizure medication, with the dosage and frequency remaining the same since 2008. Her physician states that she is supportive of Ms. Paggen receiving an exemption.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0253 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0253 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00603 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0287]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 39 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) operating a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0287 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 39 individuals listed in this notice have requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding diabetes found in

49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population.

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

II. Qualifications of Applicants

Rodney C. Adams

Mr. Adams, 55, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Adams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Connecticut.

Craig A. Ballard

Mr. Ballard, 52, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ballard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ballard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

David E. Bauman

Mr. Bauman, 61, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bauman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bauman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Ryan C. Bayless

Mr. Bayless, 22, has had ITDM since 2005. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bayless understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bayless meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Missouri.

Dennis E. Bellerive

Mr. Bellerive, 68, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bellerive understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bellerive meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Hampshire.

Billy G. Boren, Jr.

Mr. Boren, 43, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Boren understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boren meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class D CDL from Kentucky.

Joseph H. Bove

Mr. Bove, 50, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bove understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bove meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Gary W. Brooks

Mr. Brooks, 61, has had ITDM since 2001. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Brooks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brooks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

Carl E. Bryant

Mr. Bryant, 72, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bryant understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bryant meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Vernon C. Buchanan

Mr. Buchanan, 58, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Buchanan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Buchanan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Phillip L. Butler

Mr. Butler, 36, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Butler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Tyler H. Cardwell

Mr. Cardwell, 34, has had ITDM since 2006. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Cardwell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cardwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Arleigh D. Chapman

Mr. Chapman, 65, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Chapman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chapman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Richard J. Dinzeo

Mr. Dinzeo, 48, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Dinzeo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dinzeo meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Mark A. Donahoo

Mr. Donahoo, 52, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Donahoo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Donahoo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

James W. Felske

Mr. Felske, 49, has had ITDM since 1989. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Felske understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Felske meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Christopher L. Fleming

Mr. Fleming, 45, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Fleming understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fleming meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Jason R. Gassaway

Mr. Gassaway, 43, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Gassaway understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gassaway meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Owen D. Gibbons

Mr. Gibbons, 41, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Gibbons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gibbons meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

James L. Goodwin, 3rd

Mr. Goodwin, 38, has had ITDM since 2009. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Goodwin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goodwin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Richard J. Grenvik

Mr. Grenvik, 60, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Grenvik understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Grenvik meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Michael K. Gunn

Mr. Gunn, 64, has had ITDM since 2004. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Gunn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gunn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

Kermit F. Hicks, Jr.

Mr. Hicks, 49, has had ITDM since 2006. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or

more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hicks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hicks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Raymond D. Hill

Mr. Hill, 67, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hill understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Rob D. Karaus

Mr. Karaus, 41, has had ITDM since 1994. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Karaus understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Karaus meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Indiana.

Garnie T. Mauk, Jr.

Mr. Mauk, 58, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Mauk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mauk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Tennessee.

Jose Medelez

Mr. Medelez, 59, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Medelez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Medelez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Oregon.

Alexander P. Paice

Mr. Paice, 37, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Paice understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Paice meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Utah.

Charles Petit-Homme

Mr. Petit-Homme, 59, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Petit-Homme understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petit-Homme meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Phillip G. Putzke

Mr. Putzke, 37, has had ITDM since 1988. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Putzke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Putzke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from South Dakota.

James A. Smit

Mr. Smit, 52, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Smit understands diabetes management and monitoring and has stable control of his diabetes using insulin. Mr. Smit meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Gregory E. Sorenson

Mr. Sorenson, 54, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Sorenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sorenson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Sharon P. Soucy

Ms. Soucy, 68, has had ITDM since 2017. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Soucy understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Soucy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Alaska.

Robin T. Spence

Ms. Spence, 61, has had ITDM since 2015. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Spence understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Spence meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2017 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Oklahoma.

Anthony P. Sweeney

Mr. Sweeney, 52, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Sweeney understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sweeney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Maryland.

Richard A. Sweeting

Mr. Sweeting, 50, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Sweeting understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sweeting meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Steven J. Voorhees

Mr. Voorhees, 62, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Voorhees understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Voorhees meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Montana.

Jeffery E. Wall

Mr. Wall, 46, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Wall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Samuel E. Ward

Mr. Ward, 67, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ward understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ward meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Kansas.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the **DATES** section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing

address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0287 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0287 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00562 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No.; FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–0276; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2014–0303; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 109 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No.; FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–9258; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2007–27897; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–0276; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2014–0303; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, ET, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 109 individuals listed in this notice have requested renewal of their exemptions from the vision standard in 49 CFR 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 109 applicants has satisfied the renewal conditions for obtaining an exemption from the vision requirement (64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 66 FR 17743; 66 FR 33990; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 67 FR 68719; 68 FR 2629; 68 FR 35772; 68 FR 52811; 68 FR 61857; 68 FR 61860; 68 FR 64944; 68 FR 69434; 68 FR 75715; 69 FR 19611; 70 FR 33937; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 71 FR 646; 72 FR 32705; 72 FR 39879; 72 FR 40360; 72 FR 52419; 72 FR 62897; 72 FR 64273; 72 FR 71993; 72 FR 71998; 73 FR 46973; 73 FR 54888; 74 FR 11988; 74 FR 21427; 74 FR 26464; 74 FR 34632; 74 FR 37295; 74 FR 41971; 74 FR 43217; 74 FR 48343; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 62632; 74 FR 65846; 76 FR 25766; 76 FR 29026; 76 FR 34135; 76 FR 34136; 76 FR 37885; 76 FR 44652; 76 FR 49528; 76 FR 49531; 76 FR 53708; 76 FR 54530; 76 FR 55463; 76 FR 61143; 76 FR 64169; 76 FR 64171; 76 FR 66123; 76 FR 67248; 76 FR 70210; 76 FR 70215; 76 FR 75942; 76 FR 75943; 76 FR 78729; 76 FR 79761 ;78 FR 20376; 78 FR 24798; 78 FR 27281; 78 FR 30954; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64274; 78 FR 64280; 78 FR 65032; 78 FR 66099; 78 FR 67452; 78 FR 67454; 78 FR 67460; 78 FR 67462; 78 FR 68137; 78 FR 76395; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477; 79 FR 4531; 79 FR 4803; 80 FR 14240; 80 FR 31640; 80 FR 33007; 80 FR 33324; 80 FR 37718; 80 FR 44185; 80 FR 44188; 80 FR 48402; 80 FR 48411; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 81 FR 11642; 81 FR 1284; 81 FR 15404; 81 FR 16265). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of December and are discussed below:

As of December 3, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 48 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404; 64 FR 66962; 66 FR 17743; 66 FR 33990; 66 FR 63289; 67 FR 68719; 68 FR 2629; 68 FR 35772; 68 FR 52811; 68 FR 61860; 68 FR 64944; 70 FR 33937; 70 FR 48797; 70 FR 61165; 70 FR 61493; 70 FR 67776; 72 FR 39879; 72 FR 40360; 72 FR 52419; 72 FR 64273; 73 FR 46973; 73 FR 54888; 74 FR 11988; 74 FR 21427; 74 FR 34632; 74 FR 37295; 74 FR 41971; 74 FR 48343; 74 FR 53581; 74 FR 62632; 76 FR 25766; 76 FR 29026; 76 FR 34136; 76 FR 37885; 76 FR 44652; 76 FR 49531; 76 FR 53708; 76 FR 54530; 76 FR 55463; 76 FR 64171; 76 FR 70215; 78 FR 20376; 78 FR 24798; 78 FR 27281; 78 FR 30954; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 63307; 78 FR 64280; 78 FR 68137; 78 FR 77782; 78 FR 78477; 79 FR 4531; 80 FR 14240; 80 FR 31640; 80 FR 33007; 80 FR 33324; 80 FR 37718; 80 FR 44185; 80 FR 44188; 80 FR 48402; 80 FR 48411; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 81 FR 11642; 81 FR 1284; 81 FR 15404):

Charles R. Airey (MD)
Thomas E. Adams (IN)
Christopher L. Bagby (VA)
Joseph A. Batista (PA)
Rickie L. Boone (NC)
Jerry A. Bordelon (LA)
Timothy V. Burke (CO)
Wescott Clarke (MA)
Gene B. Clyde (NY)
Joseph Coelho (RI)
Duane C. Conway (NV)
William J. Corder (NC)
Jose C. Costa (WA)
Jon K. Dale (UT)
Thomas P. Davidson (NJ)
Elhadji M. Faye (CA)
Jason R. Gast (MO)
Edward J. Genovese (IN)
Nirmal S. Gill (CA)
Roger J. Hansen (WI)
Bradley O. Hart (UT)
Dean M. Hobson (IL)
Jesus J. Huerta (NV)
Elmer G. Isenhart (OH)
Nathan H. Jacobs (NM)
Donald L. Jensen (SD)
Darrell W. Knorr (IL)
Dale R. Knuppel (CO)
Carmelo A. Lana (NJ)
Michael Lancette (WI)
Keith A. Lang (TX)
Larry W. Lunde (WA)
Rodney M. Mimbs (GA)
Michael A. Mitchell (MS)
Dennis L. Morgan (WA)
Clarence L. Ogle (SD)
Dennis R. Ohl (MO)

James A. Parker (PA)
Chris A. Ritenour (MI)
Danilo A. Rivera (MD)
Steven L. Roberts (AR)
Michael J. Schmelzle (KS)
Ralph J. Schmitt (CO)
Wesley C. Slattery (KS)
Mark R. Stevens (IA)
Gerry W. Talbott (VA)
Daniel R. Viscaya (NC)
Paul B. Williams (NY)

The drivers were included in docket numbers FMCSA–1999–5748; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2007–27897; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2014–0303; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071). Their exemptions are applicable as of December 3, 2017, and will expire on December 3, 2019.

As of December 5, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (66 FR 17743; 66 FR 33990; 68 FR 35772; 70 FR 33937; 72 FR 32705; 74 FR 26464; 74 FR 43217; 74 FR 57551; 76 FR 34135; 76 FR 64169; 76 FR 66123; 76 FR 75943; 78 FR 62935; 78 FR 65032; 78 FR 76395; 78 FR 77782; 80 FR 67481):

Kevin G. Clem (SD)
Rocky J. Lachney (LA)
Chase L. Larson (WA)
Herman G. Lovell (OR)
Robert E. Smith (CT)
Fred L. Stotts (OK)
Randell K. Tyler (AL)

The drivers were included in docket numbers FMCSA–2001–9258; FMCSA–2009–0206; FMCSA–2011–26690; FMCSA–2013–0166. Their exemptions are applicable as of December 5, 2017, and will expire on December 5, 2019.

As of December 6, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (70 FR 57353; 70 FR 72689; 72 FR 62897; 74 FR 60021; 76 FR 70210; 78 FR 66099; 80 FR 67481):

Thomas C. Meadows (NC)
David A. Morris (TX)
Richard P. Stanley (MA)
Scott A. Tetter (IL)

The drivers were included in docket number FMCSA–2005–22194. Their exemptions are applicable as of December 6, 2017, and will expire on December 6, 2019.

As of December 15, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (80 FR 70060; 81 FR 16265):

Stephen W. Barrows (OR)
Charles W. Bradley (SC)
Ricky A. Bray (AR)
Jerry W. Gibson (TX)
Michael D. Judy (KS)
Joel H. Kohagen (IA)
Kelly K. Kremer (OR)
Edward R. Lockhart (MS)
Rodolfo Martinez (TX)
Tobias G.E. Olsen (ND)
Gregory A. Woodward (OR)
Alton R. Young (MS)

The drivers were included in docket number FMCSA–2015–0072. Their exemptions are applicable as of December 15, 2017, and will expire on December 15, 2019.

As of December 17, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (78 FR 62935; 78 FR 76395; 80 FR 67481):

Herbert R. Brenner (ME)
Henry D. Smith (NC)
Kolby W. Strickland (WA)

The drivers were included in docket number FMCSA–2013–0166. Their exemptions are applicable as of December 17, 2017, and will expire on December 17, 2019.

As of December 22, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (76 FR 49528; 76 FR 61143; 76 FR 67248; 76 FR 79761; 78 FR 67460; 80 FR 67481): Robert E. Morgan, Jr. (GA), David M. Taylor (MO).

The drivers were included in docket numbers FMCSA–2013–0168; FMCSA–2013–0169. Their exemptions are applicable as of December 22, 2017, and will expire on December 22, 2019.

As of December 24, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (78 FR 63302; 78 FR 64274; 78 FR 77778; 78 FR 77780; 80 FR 67481):

Lawrence A. Angle (MO)
Ernest J. Bachman (PA)
Wayne Barker (OK)
Eugene R. Briggs (MI)
Matthew S. Burns (OH)
Lee A. DeHaan (SD)
Bradley R. Dishman (KY)
Thomas G. Gholston (MS)
Chad A. Miller (IA)
William L. Paschall (MD)
Kerry R. Powers (IN)
Eugene D. Self, Jr. (NC)
Mark P. Thiboutot (NH)
Robert Thomas (PA)
Herman D. Truewell (FL)
Janusz K. Wis (IL)

The drivers were included in docket numbers FMCSA–2013–0168; FMCSA–2013–0169. Their exemptions are applicable as of December 24, 2017, and will expire on December 24, 2019.

As of December 27, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 68 FR 64944; 68 FR 69434; 69 FR 19611; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 74 FR 37295; 74 FR 48343; 74 FR 60021; 76 FR 75942; 78 FR 67452; 80 FR 67481):

Stanley E. Elliott (UT)
Elmer E. Gockley (PA)
Glenn T. Hehner (KY)
Vladimir M. Kats (NC)
Randall B. Laminack (TX)
Robert W. Lantis (MT)
Jerry L. Lord (PA)
Eldon Miles (IN)
Neal A. Richard (LA)
Rene R. Trachsel (OR)
Stanley W. Tyler, Jr. (NC)
Kendle F. Waggle, Jr. (IN)
DeWayne Washington (NC)

The drivers were included in docket numbers FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2009–0154. Their exemptions are applicable as of December 27, 2017, and will expire on December 27, 2019.

As of December 31, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (66 FR 53826; 66 FR 66966; 68 FR 61857; 68 FR 69434; 68 FR 75715; 70 FR 74102; 71 FR 646; 72 FR 71993; 72 FR 71998; 74 FR 65846; 76 FR 78729; 78 FR 67454; 78 FR 67462; 79 FR 4803; 80 FR 67481):

Martiniano L. Espinosa (FL)
Dustin K. Heimbach (PA)
Lonni Lomax, Jr. (IL)
John H. Voigts (AZ)

The drivers were included in docket numbers FMCSA–2001–10578;

FMCSA–2003–16241. Their exemptions are applicable as of December 31, 2017, and will expire on December 31, 2019.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified Medical Examiner, as defined by 49 CFR 390.5, who attests that the driver is otherwise physically qualified under 49 CFR 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self- employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 109 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00600 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2000–7165; FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–25246; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 86 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

II. Background

On October 11, 2017, FMCSA published a notice announcing its decision to renew exemptions for 86 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (82 FR 47312). The public comment period ended on November 13, 2017, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to driver a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this preceding.

VI. Conclusion

Based upon its evaluation of the 86 renewal exemption applications and comments received, FMCSA confirms its' decision to exempt the following drivers from the vision requirement in 49 CFR 391.41 (b)(10):

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of October and are discussed below:

As of October 3, 2017, and in accordance with 49 U.S.C. 31136(e) and

31315, the following 54 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 33406; 65 FR 57234; 66 FR 30502; 66 FR 41654; 68 FR 13360; 68 FR 44837; 70 FR 12265; 70 FR 41811; 71 FR 63379; 72 FR 180; 72 FR 1051; 72 FR 8417; 72 FR 9397; 72 FR 27624; 72 FR 36099; 72 FR 39879; 72 FR 40362; 72 FR 52419; 73 FR 78423; 74 FR 19270; 74 FR 26461; 74 FR 26466; 74 FR 34395; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 48343; 74 FR 6211; 75 FR 79083; 76 FR 17481; 76 FR 25762; 76 FR 25766; 76 FR 28125; 76 FR 37169; 76 FR 37885; 76 FR 44652; 76 FR 44653; 76 FR 49528; 76 FR 50318; 76 FR 53708; 76 FR 54530; 76 FR 61143; 77 FR 74734; 78 FR 4531; 78 FR 22598; 78 FR 24300; 78 FR 24798; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41975; 78 FR 46407; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 77782; 78 FR 78477; 79 FR 4531; 79 FR 53708; 79 FR 73686; 80 FR 2473; 80 FR 12248; 80 FR 14223; 80 FR 18693; 80 FR 22773; 80 FR 29152; 80 FR 31635; 80 FR 31636; 80 FR 33011; 80 FR 35699; 80 FR 36395; 80 FR 37718; 80 FR 40122; 80 FR 41547; 80 FR 44188; 80 FR 45573; 80 FR 48402; 80 FR 48404; 80 FR 48411; 80 FR 48413; 80 FR 49302; 80 FR 50917; 80 FR 59225; 80 FR 62161; 80 FR 62163):

Deneris G. Allen (LA)
Michael J. Altobelli (CT)
Joel D. Barchard (MA)
Rocky B. Bentz (WI)
Keith A. Bliss (NY)
Ronald Bostick (SC)
Steven J. Brauer (NJ)
Jean-Pierre G. Brefort (CT)
Michael W. Britt (MD)
Shaun E. Burnett (MO)
Kevin W. Cannon (TX)
Juan R. Cano (TX)
Charles C. Chapman (NC)
Thomas W. Crouch (IN)
Verlin L. Driskell (NE)
Robin C. Duckett (SC)
Phillip Ergovich (MO)
Dan J. Feik (IL)
Saul E. Fierro (AZ)
Steven A. Garrity (MA)
Mark E. Gessner (FL)
David B. Ginther (PA)
Dominic F. Giordano (CT)
Enrique F. Gonzalez (NC)
Donald A. Hall (NC)
Willard D. Hall (CA)
Dennis H. Heller (KS)
Steven C. Holland (OK)
Ronald E. Howard (PA)
Michael A. Kelly (TX)
Abdullah T. Khalil (VA)
Jorge Lopez (OH)
Alex P. Makhanov (WA)
Michael L. Martin (OH)
Phillip P. Mazza (WI)
Lawrence McGowan (OH)
John T. McWilliams (IA)
Dionicio Mendoza (TX)
Garth R. Mero (VT)
Charles A. Morgan (NC)
Willam V. Nickel (OR)
Russell W. Nutter (OH)
Nathan Pettis (FL)
Mark A. Pirl (NC)
Timmy J. Pottebaum (IA)
Jason W. Rupp (PA)
Ricky J. Sanderson (UT)
Kirby R. Sands (IA)
Manjinder Singh (WA)
Steven W. Stull (IL)
Richard G. Vaughn (NC)
Victor H. Vera (TX)
Bruce W. Williams (IL)

The drivers were included in docket numbers FMCSA–2000–7165; FMCSA–2001–9561; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–25246; FMCSA–2007–2663; FMCSA–2007–27897; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055. Their exemptions are applicable as of October 3, 2017, and will expire on October 3, 2019.

As of October 23, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (78 FR 47818; 78 FR 63307; 80 FR 59225):

Larry E. Blakely (GA)
Britt A. Green (ND)
Arlene S. Kent (NH)
Willie L. Murphy (IN)
Joseph J. Pudlik (IL)
Jeffrey R. Swett (SC)
Brian C. Tate (VA)

The drivers were included in docket number FMCSA–2013–0165. Their exemptions are applicable as of October 23, 2017, and will expire on October 23, 2019.

As of October 24, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 14 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 30502; 66 FR 41654; 66 FR 48504; 68 FR 44837; 68 FR 54775; 70 FR 30999; 70 FR 41811; 70 FR 46567; 70 FR 48797; 70 FR 53412; 70 FR 61493; 72 FR 39879; 72 FR 40359; 72 FR 52421; 72 FR 54971; 72 FR 62896; 74 FR 34074; 74 FR 41971; 74 FR 43221; 74 FR 49069; 76 FR 55467; 76 FR 62143; 78 FR 77782; 80 FR 59225):

Calvin D. Atwood (NM)
Andrew B. Clayton (TN)
William P. Doolittle (MO)
Richard L. Gagnebin (KS)
Jonathan M. Gentry (TN)
Benny D. Hatton, Jr. (NY)
Robert W. Healey, Jr. (NJ)
Nathaniel H. Herbert, Jr. (PA)
Thomas W. Markham (MN)
Kevin L. Moody (OH)
Charles W. Mullenix (GA)
Garry L. Rogers (CO)
Gary M. Wolff (IL)
John C. Young (VA)

The drivers were included in docket numbers FMCSA–1999–5578; FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2007–27897. Their exemptions are applicable as of October 24, 2017, and will expire on October 24, 2019.

As of October 30, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (64 FR 68195; 65 FR 20251; 67 FR 17102; 68 FR 52811; 68 FR 61860; 70 FR 61165; 71 FR 63379; 72 FR 1050; 74 FR 49069; 74 FR 53581; 76 FR 64171; 78 FR 68137; 80 FR 59225):

James D. Davis (OH)
Dewayne E. Harms (IL)
David F. LeClerc (MN)
Jesse L. Townsend (LA)
Humberto A. Valles (TX)
James A. Welch (NH)
Michael E. Yount (ID)

The drivers were included in docket numbers FMCSA–1999–6480; FMCSA–2003–15892; FMCSA–2006–26066. Their exemptions are applicable as of October 30, 2017, and will expire on October 30, 2019.

As of October 31, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirements (76 FR 55465; 76 FR 67246; 78 FR 77782; 80 FR 59225):

Darrell G. Anthony (TX)
Harold L. Pearsall (PA)
Phillip M. Pridgen, Sr. (MD)
Gerald D. Stidham (CO)

The drivers were included in docket number FMCSA–2011–0189. Their exemptions are applicable as of October 31, 2017, and will expire on October 31, 2019.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless

revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00586 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0026]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 18 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0026 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 18 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345,

March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

II. Qualifications of Applicants

Michael H. Eheler, II

Mr. Eheler, 41, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/300. Following an examination in 2017, his optometrist stated, ''With the results of the examination from our office, I believe Michael has sufficient visual abilities to perform the driving tasks required to operate a commercial vehicle.'' Mr. Eheler reported that he has driven tractor-trailer combinations for six years, accumulating 350,000 miles. He holds an operator's license from Wisconsin. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Roberto Espinosa

Mr. Espinosa, 60, has glaucoma in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/200. Following an examination in 2017, his ophthalmologist stated, ''I certify, in my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Espinosa reported that he has driven tractor-trailer combinations for 19 years, accumulating 2.1 million miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Lee J. Gaffney

Mr. Gaffney, 35, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2017, his ophthalmologist stated, ''Mr. Gaffney does seem to meet sufficient vision standards to perform driving tasks to operate a commercial vehicle.'' Mr. Gaffney reported that he has driven straight trucks for ten years, accumulating 50,000 miles. He holds an operator's license from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Mark S. Hale

Mr. Hale, 41, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his ophthalmologist stated, ''In my opinion, he should be allowed to do commercial driving, since his field of vision is quite good in both eyes.'' Mr. Hale reported that he has driven straight trucks for three years, accumulating 60,000 miles. He holds an operator's license from Alabama. His driving record for the last three years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Raymundo Maldonado

Mr. Maldonado, 57, has had a macular scar in his left eye since 2013. The visual acuity in his right eye is 20/25, and in his left eye, 20/100. Following an examination in 2017, his ophthalmologist stated, ''I certify Mr. Maldonado has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Maldonado reported that he has driven straight trucks for 35 years, accumulating 350,000 miles, and tractor-trailer combinations for 35 years, accumulating 12.25 million miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Mickey D. McCoy

Mr. McCoy, 46, has had a cataract in his left eye due to a traumatic incident in 2005. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2017, his ophthalmologist stated, ''The patient is able to recognize the colors of a traffic control device in the right eye, and in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle and his exam results today validate that conclusion.'' Mr. McCoy reported that he has driven straight trucks for ten years, accumulating 125,000 miles and tractor-trailer combinations for 14 years, accumulating 389,746 miles. He holds a Class A CDL from Tennessee. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Colin D. McGregor

Mr. McGregor, 35, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his optometrist stated, ''With 20/20 vision and a full field vision of 160 degrees in his right eye, I feel Colin can safely perform the tasks necessary to operate a commercial motor vehicle.'' Mr. McGregor reported that he has driven straight trucks for nine years, accumulating 70,200 miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Thomas B. Miller

Mr. Miller, 60, has a retinal detachment in his left eye due to a traumatic incident in 1997. The visual acuity in his right eye is 20/20, and in his left eye, count fingers. Following an examination in 2017, his optometrist stated, ''He appears to have adequate vision to operate a commercial vehicle.'' Mr. Miller reported that he has driven straight trucks for 41 years, accumulating 820,000 miles. He holds an operator's license from Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Ryan J. Plank

Mr. Plank, 42, has a retinal detachment in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''I have never driven a commercial vehicle myself however in my opinion Mr. Plank has sufficient vision to perform the driving tasks required to operate a commercial vehicle based on his driving history and meeting the requirements you have listed.'' Mr. Plank reported that he has driven straight trucks for four years, accumulating 20,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Donald J. Poague

Mr. Poague, 47, has had central scarring in his right eye since 2011. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Taking into consideration the fact that Mr. Poague has operated commercial vehicles without any incidences since the vascular event in his right eye, and the fact that he has good peripheral vision in both eyes, as well as uncorrected acuity of 20/20 in the left eye, it is my opinion that he can safely operate vehicles requiring a commercial drivers [*sic*] license.'' Mr. Poague reported that he has driven straight trucks for 25 years, accumulating 2 million miles, and tractor-trailer combinations for 25 years, accumulating 2 million miles. He holds a Class A CDL from Georgia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jose R. Ponce

Mr. Ponce, 37, has a retinal detachment in his right eye due to a traumatic incident in 2001. The visual acuity in his right eye is 20/40, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Thus, in my opinion, Mr. Ponce does have sufficient vision to perform the driving tasks required to operate a commercial vehicle based on these results and your exemption requirements.'' Mr. Ponce reported that he has driven straight trucks for six years, accumulating 150,000 miles. He holds an operator's license from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Ronald F. Prezzia

Mr. Prezzia, 62, has aphakia in his right eye due to a traumatic incident in 2014. The visual acuity in his right eye is 20/70, and in his left eye, 20/40. Following an examination in 2017, his ophthalmologist stated, ''It is in my medical opinion that Mr. Prezzia has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Prezzia reported that he has driven straight trucks for 35 years, accumulating 2.62 million miles. He holds a Class AM CDL from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jorge A. Rodriguez

Mr. Rodriguez, 65, has complete loss of vision in his right eye due to a traumatic incident in 2001. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''I believe Mr. Rodriguez has sufficient vision in *[sic]* left eye to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rodriguez reported that he has driven straight trucks for 37 years, accumulating 1.29 million miles and tractor-trailer combinations for nine years, accumulating 405,000 miles. He holds a Class AM1 CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jimmy W. Rowland

Mr. Rowland, 50, has retinal scarring in his right eye since 1994. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2017, his optometrist stated, ''In my medical opinion, Mr. Rowland has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Rowland reported that he has driven straight trucks for 15 years, accumulating 525,000 miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and two convictions for moving violations in a CMV; in both incidents he exceeded the speed limit by nine mph.

Aaron R. Rupe

Mr. Rupe, 43, has had a macular scar in his left eye since 1992. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2017, his optometrist stated, ''In my medical opinion Aaron Rupe has sufficient vision to operate a commercial motor vehicle.'' Mr. Rupe reported that he has driven straight trucks for 17 years, accumulating 170,000 miles. He holds an operator's license from Illinois. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Charles L. Sauls

Mr. Sauls, 50, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is count fingers, and in his left eye, 20/30. Following an examination in 2017, his optometrist stated, ''I, Alan F. Swinehart OD, certify in my medical opinion that Charles L. Sauls has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Sauls reported that he has driven straight trucks for 15 years, accumulating 450,000 miles, and tractor-trailer combinations for ten years, accumulating 350,000 miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Gary M. Shoultz

Mr. Shoultz, 65, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''It is my opinion that Gary possesses sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Shoultz reported that he has driven straight trucks for four years, accumulating 164,000 miles. He holds an operator's license from Indiana. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Juan D. Zertuche, Jr.

Mr. Zertuche, 42, has had complete loss of vision in his right eye since birth. The visual acuity in his right eye is no light perception, and in his left eye, 20/25. Following an examination in 2017, his ophthalmologist stated, ''In my medical opinion, vision is sufficient to perform driving tasks required to operate a commercial vehicle.'' Mr. Zertuche reported that he has driven straight trucks for five years, accumulating 50,000 miles, and tractor-trailer combinations for five years, accumulating 500,000 miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 11 mph.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0026 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0026 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00581 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–FMCSA–2017–0057]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 46 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–FMCSA–2017–0057 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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*.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 46 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to

American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Application for Exemptions; National Association of the Deaf, (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since the February 1, 2013 notice, the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

II. Qualifications of Applicants

David Alaniz

Mr. Alaniz, age 21, holds an operator's license in Wyoming.

Marion Bennett, Jr.

Mr. Bennett, age 41, holds an operator's license in Maryland.

Gordon R. Boerner

Mr. Boerner, age 55, holds an operator's license in Maine.

Tom M. Booe

Mr. Booe, age 66, holds a class A CDL in Nebraska.

Roy E. Bowers

Mr. Bowers, age 62, holds a class A CDL in Georgia.

Richard M. Davis

Mr. Davis, age 62, holds a class A CDL in Ohio.

Rivera De Jesus

Mr. Rivera De Jesus, age 34, holds an operator's license in Texas.

Christian DeNight

Mr. DeNight, age 48, holds an operator's license in Florida.

Richard Doi

Mr. Doi, age 32, holds an operator's license in Arizona.

Trey Duncan

Mr Duncan, age 30, holds an operator's license in Texas.

Jean D. Dutes

Mr. Dutes, age 24, holds an operator's license in Florida.

Edward Elertson

Mr. Elertson, age 57, holds an operator's license in Wyoming.

Stephan Eveland

Mr. Eveland, age 32, holds an operator's license in Florida.

Richard L. Frueke

Mr. Freuke, age holds a class A CDL in Illinois.

Edison M. Garcia

Mr. Garcia, age 26, holds an operator's license in Maryland.

Adam M. Hayes

Mr. Hayes, age 34, holds an operator's license in California.

Sean Hunt

Mr. Hunt, age 23, holds an operator's license in Texas.

Charles W. Jones

Mr. Jones, age 66, holds a class B CDL in Florida.

James T. Laughrey

Mr. Laughrey, age 53, holds a class A CDL in Kansas.

Jerry L. Lewis

Mr. Lewis, age 48, holds a class A CDL in North Carolina.

Michael Lidster

Mr. Lidster, age 28, holds an operator's license in Illinois.

Stavros Likouris

Mr. Likouris, age 38, holds an operator's license in Ohio.

Adrian Lopez

Mr. Lopez, age 32, holds an operator's license in Texas.

Derrick J. Marceaux

Mr. Marceaus, age 34, holds an operator's license in Lousiana.

John E. Mayhew

Mr. Mayhew, age 52, holds an operator's license in Kansas.

JeMichael McCoy

Mr. McCoy, age 26, holds an operator's license in Lousiana.

Magdalene McLaughlin

Ms. McLaughlin, age 30, holds an operator's license in Maryland.

Pablo Muniz

Mr. Muniz, age 52, holds a class A CDL in Florida.

Dario Novoa

Mr. Novoa, age 62, holds a class A CDL in Florida.

Hugo Paniagua

Mr. Paniagua, age 26, holds an operator's license in California.

Calvin Payne

Mr. Payne, age 26, holds an operator's license in Maryland.

Joseph R. Piros

Mr. Piros, age 47, holds a class A CDL in California.

Michael Quinonez

Mr. Quinonez, age 26, holds an operator's license in Texas.

Khon Saysanam

Mr. Saysanam, age 38, holds an operator's license in Texas.

Jeffrey W. Schulkers

Mr Schulkers, age 48, holds a class A CDL in Kentucky.

Stephan W. Stotts, Jr.

Mr. Stotts, age 31, holds a class A CDL in Ohio.

Teddy Rosevelt Tice

Mr. Tice, age 48, holds an operator's license in New York.

William Tassell

Mr. Tassell, age 55, holds an operator's license in Ohio.

Daniel R. Taylor

Mr. Taylor, age 31, holds an operator's license in Alabama.

Jason C. Thomas

Mr. Thomas, age 32, holds an operator's license in Texas.

Roderick B. Thomas

Mr. Thomas, age 53, holds a class A CDL in Georgia.

Joshua Tinley

Mr. Tinley, age 29, holds an operator's license in Arizona.

Carlos Torres

Mr. Torres, age 41, holds an operator's license in Ohio.

Allen Whitener

Mr. Whitener, age 68, holds an operator's license in Texas.

Kerri M. Wright

Ms. Wright, age 41, holds an operator's license in Oklahoma.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all

comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0057 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0057 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00583 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0355; FMCSA–2015–0325]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 3 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on November 5, 2017. The exemptions expire on November 5, 2019. Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0355; FMCSA–2015–0325; using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to driver a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid,

35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 3 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in 49 CFR 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315, each of the 3 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 3 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

As of November 5, 2017 and in accordance with 49 U.S.C. 31136(e) and 31315, the following 3 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers: Lawrence F. Cogar, (WA); Albert Foster (IL); and Daniel Harnish, (OR).

The drivers were included in docket numbers FMCSA–2015–0355 and FMCSA–2015–0325. Their exemptions are applicable as of November 5, 2017, and will expire on November 5, 2019.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in 49 CFR 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 3 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in 49 CFR 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00585 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0288]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 23 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) operating a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 15, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0288 using any of the following methods:

- *Federal eRulemaking 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 23 individuals listed in this notice have requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population.

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e). Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

II. Qualifications of Applicants

Irah H. Buttgenbach, Jr.

Mr. Buttgenbach, Jr. 61, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Buttgenbach understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Buttgenbach meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Scott A. Civitarese

Mr. Civitarese, 47, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Civitarese understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Civitarese meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Cornelius Clark

Mr. Clark, 54, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Clark understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Ronald J. Danielson

Mr. Danielson, 60, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance

of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Danielson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Danielson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Mark A.L. Givan

Mr. Givan, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Givan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Givan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Arkansas.

Lyle C. Hatfield

Mr. Hatfield, 56, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hatfield understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hatfield meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Brian C. Hosea

Mr. Hosea, 48, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hosea understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hosea meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

James Middlebrook, III

Mr. Middlebrook, 44, has had ITDM since 1983. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Middlebrook understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Middlebrook meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Ohio.

Thomas B. Miller

Mr. Miller, 61, has had ITDM since 2007. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Keith E. Moran

Mr. Moran, 41, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Moran understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moran meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Rhode Island.

Christopher R. Pearson

Mr. Pearson, 40, has had ITDM since 1997. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Pearson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pearson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Minnesota.

John C. Plaster

Mr. Plaster, 51, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Plaster understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Plaster meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Glenn E. Rausch

Mr. Rausch, 65, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rausch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rausch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Ricardo P. Salazar

Mr. Salazar, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Salazar understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Salazar meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Mexico.

Seann D. Sampson

Mr. Sampson, 49, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Sampson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sampson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Florida.

Alex Shirvani

Mr. Shirvani, 55, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Shirvani understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shirvani meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Cameron M. Simpson

Mr. Simpson, 21, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Simpson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simpson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Phillip J. Sobczak

Mr. Sobczak, 66, has had ITDM since 1999. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Sobczak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sobczak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Christoph Trimblett

Mr. Trimblett, 47, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Trimblett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trimblett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Martin L. Veitz

Mr. Veitz, 67, has had ITDM since 2011. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Veitz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Veitz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Kenneth W. West

Mr. West, 52, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in

the last five years. His endocrinologist certifies that Mr. West understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. West meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Rodney J. Woods

Mr. Woods, 52, has had ITDM since 1994. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Woods understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woods meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Alabama.

Timothy A. Zimmerman

Mr. Zimmerman, 53, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Zimmerman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zimmerman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the **DATES** section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0288 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0288 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: January 5, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–00579 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2017–0024]

Research Program: Automated Transit Buses

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The Federal Transit Administration (FTA) seeks public comment regarding the current and near-future status of automated transit buses and related technologies. FTA seeks comments in particular from parties involved in the development, demonstration, deployment, and evaluation of currently available or near-market ready automated buses; systems and components that support bus automation; and ancillary systems that support non-driving bus operator functions (*e.g.,* wheelchair securement, occupant detection, passenger information assistance, fare payment, etc.). For purposes of this notice, ''bus'' is defined broadly to consider a range of sizes, vehicle platforms and configurations, and passenger capacities, and could include both traditional and novel vehicle designs (*e.g.,* full-size city buses, articulated buses, small shuttles, etc.). ''Bus'' includes bus rapid transit.

DATES: Comments must be submitted by March 2, 2018. FTA will consider late-filed comments to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA–2017–0024. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.*

(1) *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

(2) *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.

(3) *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) *Fax:* 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2017–0024) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal**

Register on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions, contact Steve Mortensen, Office of Research, Demonstration and Innovation, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E43–422, Washington, DC 20590, phone: (202) 493–0459, fax: (202) 366–3765, or email, *Steven.Mortensen@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Transportation currently is undergoing a transformation. As traveler preferences and needs recently have evolved and continue to change, so have the capabilities of emerging transportation technologies and, more importantly, the operational concepts defining how those technologies will be deployed in our communities.

Motor vehicle automation (both as a technology platform and service model) has become the most talked about development for surface transportation in recent times. Many industry stakeholders and observers anticipate and expect that public transportation will have a significant role in this new space, as garnered from transit stakeholders during FTA preliminary research on the subject. Certain operational applications such as circulator or first mile/last mile service are clear instances where the use of automated motor vehicles could play a very effective role, based on transit stakeholder input and preliminary benefit-cost information on these service types. Circulator service is regular service within a closed loop, typically on a fixed route, and may be found in business parks, retirement communities, college campuses, downtowns, etc. First mile/last mile service provides service between high-capacity fixed-route service, such as rail transit and bus rapid transit, and a traveler's origin and/or destination, usually within a radius of three miles and often in an area of low-density development.

FTA is seeking comments and information for the purpose of determining the current state of the industry as related to automated vehicle technology in order to make more informed decisions regarding future areas of research. The intent of this request for comments is to gauge the transit industry and other sectors' ability and interest in responding to one or more near-future Notices of Funding Opportunity (NOFOs) for demonstration(s) and evaluation(s) of use cases where commercially ready technology and products could be applied to transit to provide early demonstrable results. FTA has identified transit bus automation use cases, organized into five general categories, as outlined below:

1. Transit Bus Advanced Driver Assistance Systems (ADAS)
   - Smooth Acceleration and Deceleration
   - Automatic Emergency Braking and Pedestrian Collision Avoidance
   - Curb Avoidance
   - Object Avoidance
   - Precision Docking
   - Narrow Lane/Shoulder Operations
   - Platooning
2. Automated Shuttles
   - Circulator Bus Service
   - Feeder Bus Service
3. Maintenance, Yard, and Parking Operations
   - Precision Movement for Fueling, Service Bays, and Bus Wash
   - Automated Parking and Recall
4. Mobility-on-Demand Service
   - Automated First/Last Mile
   - Automated Americans with Disabilities Act (ADA) Paratransit
   - On-Demand Shared Ride
5. Automated Bus Rapid Transit

This notice is a request for comments and information only. It is not a solicitation for project proposals. Submission of any information in response to this notice is voluntary. The Government will not pay for any effort expended in responding to this notice.

II. Scope and Submission of Comments

The goal of this notice is to better inform FTA of existing transit bus automation technology, and to assist FTA in identifying potential areas of future research. For purposes of this notice, ''bus'' is defined broadly to consider a range of sizes, vehicle platforms and configurations, and passenger capacities, and could include both traditional and novel vehicle designs (*e.g.,* full-size city buses, articulated buses, small shuttles, etc.). ''Bus'' includes bus rapid transit.

FTA requests comments for a broad range of automation technologies spanning automation levels 1–5 as defined in the Society of Automotive Engineers (SAE) standard J3016_201609 (see *http://standards.sae.org/j3016_201609/*). Responses to this notice will help inform FTA on the technological readiness of the transit industry to participate in demonstrations of use cases as identified above.

In particular, FTA seeks comments with respect to the following areas of interest:

A. What transit bus automation and supplemental technologies currently exist, and/or are being developed? Are there any ADAS, inclusive of automated actuation (*e.g.,* as in an automated emergency braking application), currently available or soon to be available in the market? If so, please specify or describe these new systems and products.

B. What light-duty and commercial vehicle automation technologies currently on the market or in development could be transferred or applied to transit buses?

C. Are there any new business models or processes that may arise in response to or may accommodate transit bus automation, including, but not limited to, cross-organizational data management and exchange? If so, please specify or describe these new potential business models or processes.

Please note FTA is not seeking comments pertaining to systems without an automated driving aspect (*e.g.,* driver warnings and alerts), unless the system is evolving to include automation in the foreseeable future. Please also note that this notice is not seeking comments related to rail fixed guideway systems or personal rapid transit systems.

Each response should indicate which level of automation the technology or process addresses. Inclusion of existing supplemental information is welcomed and encouraged. This supplemental information could include reports, presentations, specifications, or other documentation. Interested parties are requested to respond to this notice in writing as soon as possible but not later than March 2, 2018.

This request for comments is for information and planning purposes only, and is a market research tool to determine the availability and adequacy of potential business sources prior to determining the method of acquisition and possible issuance of a Request for Proposal (RFP) or NOFO, including the use of any non-profit organization or small business program. This notice does not constitute a solicitation for bids, quotations, and proposals, and is not to be construed as a commitment by FTA to issue an RFP or NOFO. FTA is not obligated to and will not pay for any information received from potential sources as a result of response to this

notice. FTA will not pay for any materials provided in response to this notice and submittals will not be returned to the sender.

Each response should reference the docket number (FTA–2017–0024), and provide the name and contact information (company, company representative's name, phone, email, etc.) of the submitter, at a minimum.

For information about the Federal Transit Administration, please refer to the FTA website at *https://www.transit.dot.gov/.*

Issued in Washington, DC, on January 10, 2018 under authority delegated in 49 CFR Part 1.91.

K. Jane Williams,

Deputy Administrator.

[FR Doc. 2018–00615 Filed 1–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2017–0025]

Removing Barriers to Transit Bus Automation

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The Federal Transit Administration (FTA) seeks public comment regarding current or potential regulatory or other policy barriers to the development, demonstration, deployment, and evaluation of automated transit buses and related technologies for Society of Automotive Engineers (SAE) automation levels 3 through 5. For purposes of this notice, ''bus'' is defined broadly to consider a range of sizes, vehicle platforms and configurations, and passenger capacities, and could include both traditional and novel vehicle designs (*e.g.,* full-size city buses, articulated buses, small shuttles, etc.). ''Bus'' includes bus rapid transit.

DATES: Comments must be submitted by March 2, 2018. FTA will consider late-filed comments to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA–2017–0025. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.*

(1) *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

(2) *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.

(3) *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) *Fax:* 202–493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2017–0025) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave. SE, Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions, contact Steve Mortensen, Office of Research, Demonstration and Innovation, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E43–422, Washington, DC 20590, phone: (202) 493–0459, fax: (202) 366–3765, or email, *Steven.Mortensen@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Transportation currently is undergoing a transformation. As traveler preferences and needs recently have evolved and continue to change, so have the capabilities of emerging transportation technologies and, more importantly, the operational concepts defining how those technologies will be deployed in our communities.

Motor vehicle automation (both as a technology platform and service model) has become the most talked about development for surface transportation in recent times. Many industry stakeholders and observers anticipate and expect that public transportation will have a significant role in this new space, as garnered from transit stakeholders during FTA preliminary research on the subject. Certain operational applications such as circulator or first mile/last mile service are clear instances where the use of automated motor vehicles could play a very effective role, based on transit stakeholder input and preliminary benefit-cost information on these service types. Circulator service is regular service within a closed loop, typically on a fixed route, and may be found in business parks, retirement communities, college campuses, downtowns, etc. First mile/last mile service provides service between high-capacity fixed-route service, such as rail transit and bus rapid transit, and a traveler's origin and/or destination, usually within a radius of three miles and often in an area of low-density development.

Preliminary findings from FTA research are supported by a National Highway Cooperative Research Program study on automated transit (Gettman, Douglas, et al. 2017. NCHRP Project 20–102 (02), Project Report Document 239, *Impacts of Laws and Regulations on CV and AV Technology Introduction in Transit Operations.*) (see also *https://www.nap.edu/download/24922#*) which suggest that non-technical issues may present challenges or barriers to the development, demonstration, deployment, and evaluation of automation technologies in transit bus applications. For example, existing National Highway Traffic Safety Administration Federal safety requirements and vehicle test procedures generally do not anticipate a fully driverless vehicle, and FTA procurement and other requirements could limit product availability for automated transit buses, particularly for automation levels 3 through 5.

FTA seeks comments from stakeholders, including the disability community, to better understand regulatory and policy barriers and challenges to development, demonstration, deployment, and evaluation of automation systems in the transit industry. Information from this RFC will help inform FTA's approach to automated transit buses, including determining whether to pursue potential modifications of FTA regulations, guidance, and internal practices, and may also help inform any future legislation.

This notice is a request for comments and information only. It is not a solicitation for project proposals. Submission of any information in response to this notice is voluntary. The

Government will not pay for any effort expended in responding to this notice.

II. Scope and Submission of Comments

The goal of this notice is to better inform FTA regarding current or potential regulatory and other policy areas, and procedures or actions that may slow or prevent the development, demonstration, deployment, and evaluation of automated transit buses and related technologies. For purposes of this notice, ''bus'' is defined broadly to consider a range of sizes, vehicle platforms and configurations, and passenger capacities, and could include both traditional and novel vehicle designs (*e.g.,* full-size city buses, articulated buses, small shuttles, etc.). ''Bus'' also includes bus rapid transit.

FTA requests comments from stakeholders, including the disability community, concerning technologies spanning automation levels 3 through 5 as defined in the SAE standard J3016_201609 (see *http://standards.sae.org/j3016_201609/*) and as used in the National Highway Traffic Safety Administration *Automated Driving Systems (ADS): A Vision for Safety 2.0* guidance.

In particular, FTA seeks comments with respect to the following areas of interest:

A. Are there existing FTA statutes, regulations, or policies that may present a challenge or barrier to the development, demonstration, deployment, or evaluation of automated transit buses? If so, please specify or describe these challenges, and provide proposed resolution, if possible.

B. Are there other Federal statutes, regulations, or policies (*e.g.,* Federal Motor Vehicle Safety Standards, etc.) that may present a challenge or barrier to the development, demonstration, deployment, or evaluation of automated transit buses? If so, please specify or describe these challenges, and provide proposed resolution, if possible.

C. Are there any specific regulatory barriers related to small business that DOT/FTA should consider, specifically those that may help facilitate small business participation in this emerging technology?

D. Are there other regulatory, policy, or legislative challenges or barriers not otherwise specified above, which may impede development, demonstration, deployment, or evaluation of automated transit buses? If so, please specify or describe these challenges, and provide proposed resolution, if possible.

Where applicable, indicate the level(s) of automation impacted by the statute, regulation, or policy. Please note FTA is not seeking comments pertaining to systems without an automated driving aspect (*e.g.,* driver warnings and alerts), unless the system is evolving to include automation levels 3 through 5 in the foreseeable future. Please also note that this notice is not seeking comments related to rail fixed guideway systems or personal rapid transit systems. Interested parties are requested to respond to this notice in writing as soon as possible but not later than March 2, 2018.

For information about the Federal Transit Administration, please refer to the FTA website at *https://www.transit.dot.gov/.*

Issued in Washington, DC, on January 10, 2018 under authority delegated in 49 CFR part 1.91.

K. Jane Williams,

Deputy Administrator.

[FR Doc. 2018–00617 Filed 1–12–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2018 2018–0001]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FAR SEA II; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 15, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0001. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FAR SEA II is:

—INTENDED COMMERCIAL USE OF VESSEL: ''Intended for use as a small passenger vessel available for skippered and bareboat charters with captains approved by the insurance company, the owner, and the county of Los Angeles.''

—GEOGRAPHIC REGION: ''California''

The complete application is given in DOT docket MARAD–2018–0001 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * *

By Order of the Maritime Administrator.
Dated: January 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–00483 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0002]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TE FITI; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 15, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0002. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TE FITI is:

—*Intended Commercial Use of Vessel:* ''Bareboat charter, Dinner Cruises, and inter island charters.''

—*Geographic Region:* ''Hawaii''

The complete application is given in DOT docket MARAD–2018–0002 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator.
Dated: January 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–00485 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2018–0003]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DUNVEGAN; Invitation for Public Comments

AGENCY: Maritime Administration.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 15, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0003. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DUNVEGAN is:

—INTENDED COMMERCIAL USE OF VESSEL: Day sail charter

—GEOGRAPHIC REGION: ''Washington State''

The complete application is given in DOT docket MARAD 2018–0003 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * *

By Order of the Maritime Administrator
Dated: January 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–00482 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2018 0005]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AQUATHERAPY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 15, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0005. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AQUATHERAPY is:

—*Intended Commercial Use of Vessel:* ''Recreational Charter''

—*Geographic Region:* ''Florida, Alabama, Mississippi, Louisiana, Texas''

The complete application is given in DOT docket MARAD–2018–0005 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator
Dated: January 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–00481 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0004]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel INDIGO; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 15, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0004. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime

Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel INDIGO is:

—*Intended Commercial Use of Vessel:* ''Offer short, recreational charters on Indigo for approximately 4–8 passengers.''

—*Geographic Region:* ''Maine''

The complete application is given in DOT docket MARAD–2018–0004 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator.
Dated: January 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–00484 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0002]

Notice and Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Written comments should be submitted by March 19, 2018.

ADDRESSES: You may submit comments [identified by Docket No. NHTSA–2018–0002] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randy Reid, Office of Defects Investigation (NEF–100) 202–366–4383, National Highway Traffic Safety Administration, W48–311, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, email *randy.reid@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consumer Complaints.

OMB Control Number: 2127–0008.

Type of Request: Renewal of a current information collection.

Abstract: Chapter 301 of title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicles and items of motor vehicle equipment to conduct owner notification and remedy, *i.e.,* a recall campaign, when it has been determined that a safety defect exists in the performance, construction, components, or materials in motor vehicles and motor vehicle equipment. To make this determination, the National Highway Traffic Safety Administration (NHTSA) solicits information from vehicle owners which is used to identify and evaluate possible safety-related defects and provide the necessary evidence of the existence of such a defect. Under the Authority of chapter 301 of Title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicle and motor vehicle equipment which do not comply with the applicable motor vehicle safety standards or contains a defect that relates to motor vehicle safety to notify each owner that their vehicle contains a safety defect or noncompliance. Also, the manufacturer of each such motor vehicle item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or noncompliance to be remedied without charge. In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer shall cause the vehicle remedied by whichever of the following means he elects: (1) By repairing such vehicle; (2) by replacing such motor vehicle without charge; or (3) by refunding the purchase price less depreciation. To ensure these objectives are being met, NHTSA audits recalls conducted by manufacturer. These audits are performed on a randomly selected number of vehicle owners for verification and validation purposes.

Affected Public: Individuals and Households.

Estimated Number of Respondents: It will take a large effort by ODI database support (Artemis) to determine the number of unique respondents due to some individuals submitting multiple complaints to NHTSA.

Frequency: Daily.

Number of Responses: 69,181.

Estimated Total Annual Burden Hours: 17,295 hours.

Estimated Total Annual Burden Cost: $242,134.00.

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.

Randy Reid,

Chief, Correspondence Research Division, Office of Defects Investigation.

[FR Doc. 2018–00519 Filed 1–12–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act a meeting of the Geriatrics and Gerontology Advisory Committee will be held on May 16–17, 2018 at the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC. On May 16th, the session will be held in Room 630 and begin at 1:00 p.m. and end at 5 p.m. On May 17th, the session will be held in Room 830 and begin at 8 a.m. and end at 4:30 p.m. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, updates on VA's employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Alejandra Paulovich, Program Analyst, Geriatrics and Extended Care (10NC4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or via email at *Alejandra.Paulovich@va.gov.* Individuals who wish to attend the meeting should contact Mrs. Paulovich at (202) 461–6016.

Dated: January 10, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–00613 Filed 1–12–18; 8:45 am]

BILLING CODE P

Reader Aids

Federal Register

Vol. 83, No. 10

Tuesday, January 16, 2018

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6050**

Public Laws Update Service (numbers, dates, etc.) **741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–208 2
209–462 3
463–588 4
589–704 5
705–970 8
971–1172 9
1173–1288 10
1289–1510 11
1511–2028 12
2029–2328 16

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9688 587

Executive Orders:
13799 (Revoked by EO 13820) 969
13820 969
13821 1507
13822 1513

Administrative Orders:
Memorandum of January 8, 2018 1511

5 CFR

1201 1173

7 CFR

927 589
959 592

Proposed Rules:
Subtitle A 474
Subtitle B 474
929 72
930 77

9 CFR

Proposed Rules:
Ch. I 474
Ch. II 474
Ch. III 474

10 CFR

2 1515
13 1515
205 1174
207 1289
218 1289
429 1289
431 1289
490 1289
501 1289
601 1289
820 1289
824 1289
851 1289
1013 1289
1017 1289
1050 1289

12 CFR

19 1517
109 1517
217 705
263 1182
308 1519
622 1293
747 2029
1083 1525

Proposed Rules:
213 286

14 CFR

25 ..... 463, 2032, 2035, 2038
39 ..... 209, 594, 596, 1527, 1529, 1532, 1535, 2039, 2042
71 ..... 1184, 1185, 1537
95 971
121 1186
135 1188
1264 2045
1271 2045

Proposed Rules:
39 ..... 80, 83, 1198, 1311, 1313, 1579, 2088, 2090
71 ..... 1201, 1582, 1584
73 ..... 1316, 1319

15 CFR

6 706
774 709

17 CFR

3 1538
9 ..... 1538, 1548
211 1295
230 2046
275 1296

Proposed Rules:
200 291

18 CFR

11 1
250 1550
381 468
385 1550

Proposed Rules:
401 1586
440 1586

20 CFR

404 711
416 711
655 7
702 7
725 7
726 7

21 CFR

1 598
11 598
16 ..... 598, 2057
106 598
110 598
111 598
112 598
114 598
117 598
120 598
123 598
129 598
179 598
211 598
507 598
573 19
801 2057

803.....2057
806.....2057
810.....2057
814.....2057
820.....2057
821.....2057
822.....2057
830.....2057
864.....20, 232
878.....22
892.....600
1308.....469

Proposed Rules:

201.....2092
801.....2092
1100.....2092

22 CFR

35.....234
103.....234
127.....234
138.....234

25 CFR

575.....2059

26 CFR

301.....24

27 CFR

16.....1552

29 CFR

5.....7
500.....7
501.....7
503.....7
530.....7
570.....7
578.....7
579.....7
801.....7
825.....7
1902.....7
1903.....7
2560.....7
2575.....7
2590.....7
4022.....1553
4071.....1555
4302.....1555

Proposed Rules:

2510.....614

30 CFR

100.....7

32 CFR

205.....1556

33 CFR

100.....237
117.....237, 2060
147.....237
165.....237

Proposed Rules:

100.....1597
165.....1599

34 CFR

36.....2062
350.....1556
356.....1556
359.....1556
364.....1556
365.....1556
366.....1556
668.....2062

36 CFR

2.....2065
14.....2069

Proposed Rules:

220.....302

37 CFR

2.....1559
201.....2070
202.....2070

38 CFR

17.....974

Proposed Rules:

74.....1203

39 CFR

111.....980
113.....1189

Proposed Rules:

111.....995
3050.....1320

40 CFR

19.....1190
52.....33, 983, 984, 1194, 1195, 1302
63.....1559
81.....1098
122.....712
123.....712
180.....33
260.....420
262.....420
263.....420
264.....420
265.....420
271.....420
282.....985

Proposed Rules:

52...636, 764, 997, 1001, 1003, 1212, 1602, 2097
62.....768
63.....1604
81.....636, 651
257.....2100
282.....1003

41 CFR

50–201.....7
105–70.....1303
300–3.....602
300–70.....602
301–10.....602
301–70.....602
App. C to Chap. 301.....602
302–1.....602
302–4.....602
304–2.....602

42 CFR

2.....239

Proposed Rules:

493.....1004

44 CFR

Ch. I.....472
64.....252

45 CFR

1149.....2071
1158.....2071
1230.....2073
2554.....2073

46 CFR

506.....1304

47 CFR

0.....732
1.....37
2.....37
10.....1565
15.....37
25.....37
30.....37
54.....254, 2075
64.....1566
73.....733
90.....1577
96.....992
101.....37

Proposed Rules:

1.....1215
2.....85
25.....85
30.....85
54.....303, 2104
64.....770
73.....774
76.....2119

48 CFR

Proposed Rules:

812.....1321
813.....1321
852.....1321

49 CFR

367.....605
1022.....992

Proposed Rules:

395.....1220, 1222

50 CFR

17.....257, 2085
622.....65, 1305
660.....757
679.....284

Proposed Rules:

17.....330, 475, 490, 1223
648.....780
660.....1009

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 381/P.L. 115–109

To designate a mountain in the John Muir Wilderness of the Sierra National Forest as ''Sky Point''. (Jan. 10, 2018; 131 Stat. 2268)

H.R. 699/P.L. 115–110

Mount Hood Cooper Spur Land Exchange Clarification Act (Jan. 10, 2018; 131 Stat. 2270)

H.R. 863/P.L. 115–111

To facilitate the addition of park administration at the Coltsville National Historical Park, and for other purposes. (Jan. 10, 2018; 131 Stat. 2273)

H.R. 2142/P.L. 115–112

International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology Act (Jan. 10, 2018; 131 Stat. 2274)

H.R. 2228/P.L. 115–113

Law Enforcement Mental Health and Wellness Act of 2017 (Jan. 10, 2018; 131 Stat. 2276)

H.R. 2331/P.L. 115–114

Connected Government Act (Jan. 10, 2018; 131 Stat. 2278)

Last List January 11, 2018

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.