



FEDERAL REGISTER

Vol. 83 Friday,
No. 140 July 20, 2018

Pages 34469–34752

OFFICE OF THE FEDERAL REGISTER



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Federal Register

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9835]

RIN-1545-BN05

Definitions of Qualified Matching Contributions and Qualified Nonelective Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs) under regulations regarding certain qualified retirement plans that contain cash or deferred arrangements under section 401(k) or that provide for matching contributions or employee contributions under section 401(m). Under these regulations, an employer contribution to a plan may be a QMAC or QNEC if it satisfies applicable nonforfeiture requirements and distribution limitations at the time it is allocated to a participant's account, but need not meet these requirements or limitations when it is contributed to the plan. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of tax-qualified plans that contain cash or deferred arrangements or provide for matching contributions or employee contributions.

DATES: *Effective date.* These regulations are effective July 20, 2018.

Applicability date. These regulations apply to plan years beginning on or after July 20, 2018. However, taxpayers may apply these regulations to earlier periods.

FOR FURTHER INFORMATION CONTACT:

Angelique Carrington at (202) 317-4148 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 401(k)(1) provides that a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan will not be considered as failing to satisfy the requirements of section 401(a) merely because the plan includes a qualified cash or deferred arrangement (CODA). To be considered a qualified CODA, a plan must satisfy several requirements, including: (i) Under section 401(k)(2)(B), amounts held by the plan's trust that are attributable to employer contributions made pursuant to an employee's election must satisfy certain distribution limitations; (ii) under section 401(k)(2)(C), an employee's right to such employer contributions must be nonforfeitable; and (iii) under section 401(k)(3), such employer contributions must satisfy certain nondiscrimination requirements.

Under section 401(k)(3)(D)(ii), the employer contributions taken into account for purposes of applying the nondiscrimination requirements may, under such rules as the Secretary may provide and at the election of the employer, include matching contributions within the meaning of section 401(m)(4)(A) that meet the distribution limitations and nonforfeiture requirements of section 401(k)(2)(B) and (C) (also referred to as qualified matching contributions or QMACs) and qualified nonelective contributions within the meaning of section 401(m)(4)(C) (QNECs). Under section 401(m)(4)(C), a QNEC is an employer contribution, other than a matching contribution, with respect to which the distribution limitations and nonforfeiture requirements of section 401(k)(2)(B) and (C) are met.

Under § 1.401(k)-1(b)(1)(ii), a CODA satisfies the applicable nondiscrimination requirements if it satisfies the actual deferral percentage (ADP) test of section 401(k)(3), described in § 1.401(k)-2. The ADP test limits the disparity permitted between the percentage of compensation made as employer contributions to the plan for a plan year on behalf of eligible highly compensated employees and the percentage of compensation made as employer contributions on behalf of eligible nonhighly compensated employees. If the ADP test limits are

exceeded, the employer must take corrective action to ensure that the limits are met. In determining the amount of employer contributions made on behalf of an eligible employee, employers are allowed to take into account certain QMACs and QNECs made on behalf of the employee by the employer.

In lieu of applying the ADP test, an employer may choose to design its plan to satisfy an ADP safe harbor, including the ADP safe harbor provisions of section 401(k)(12), described in § 1.401(k)-3. Under § 1.401(k)-3, a plan satisfies the ADP safe harbor provisions of section 401(k)(12) if, among other things, it satisfies certain contribution requirements. With respect to the safe harbor under section 401(k)(12), an employer may choose to satisfy the contribution requirement by providing a certain level of QMACs or QNECs to eligible nonhighly compensated employees under the plan.

A defined contribution plan that provides for matching or employee after-tax contributions must satisfy the nondiscrimination requirements under section 401(m) with respect to those contributions for each plan year. Under § 1.401(m)-1(b)(1), the matching contributions and employee contributions under a plan satisfy the nondiscrimination requirements for a plan year if the plan satisfies the actual contribution percentage (ACP) test of section 401(m)(2) described in § 1.401(m)-2.

The ACP test limits the disparity permitted between the percentage of compensation made as matching contributions and after-tax employee contributions for or by eligible highly compensated employees under the plan and the percentage of compensation made as matching contributions and after-tax employee contributions for or by eligible nonhighly compensated employees under the plan. If the ACP test limits are exceeded, the employer must take corrective action to ensure that the limits are met. In determining the amount of employer contributions made on behalf of an eligible employee, employers are allowed to take into account certain QNECs made on behalf of the employee by the employer. Employers must also take into account QMACs made on behalf of the employee by the employer unless an exclusion applies (including an exclusion for

QMACs that are taken into account under the ADP test).

If an employer designs its plan to satisfy the ADP safe harbor of section 401(k)(12), it may avoid performing the ACP test with respect to matching contributions under the plan, as long as the additional requirements of the ACP safe harbor of section 401(m)(11) are met.

As defined in § 1.401(k)-6, QMACs and QNECs must satisfy the nonforfeatability requirements of § 1.401(k)-1(c) and the distribution limitations¹ of § 1.401(k)-1(d) “when they are contributed to the plan.” Similarly, under the independent definitions in § 1.401(m)-5, QMACs and QNECs must satisfy the nonforfeatability requirements of § 1.401(k)-1(c) and the distribution limitations of § 1.401(k)-1(d) “at the time the contribution is made.” In general, contributions satisfy the nonforfeatability requirements of § 1.401(k)-1(c) if they are immediately nonforfeitable within the meaning of section 411, and contributions satisfy the distribution limitations of § 1.401(k)-1(d) if they may not be distributed before the employee’s death, disability, severance from employment, attainment of age 59½, or hardship, or upon the termination of the plan.

Before 2017, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) received comments with respect to the definitions of QMACs and QNECs in §§ 1.401(k)-6 and 1.401(m)-5. In particular, commenters asserted that employer contributions should qualify as QMACs and QNECs as long as they satisfy applicable nonforfeatability requirements at the time they are allocated to participants’ accounts, rather than when they are first contributed to the plan. Commenters pointed out that interpreting sections 401(k)(3)(D)(ii) and 401(m)(4)(C) to require satisfaction of applicable nonforfeatability requirements at the time amounts are first contributed to the plan would preclude plan sponsors with plans that permit the use of amounts in plan forfeiture accounts to offset future employer contributions under the plan from applying such amounts to fund

QMACs and QNECs. This is because the amounts would have been allocated to the forfeiture accounts only after a participant incurred a forfeiture of benefits and, thus, generally would have been subject to a vesting schedule when they were first contributed to the plan. Commenters requested that QMAC and QNEC requirements not be interpreted to prevent the use of plan forfeitures to fund QMACs and QNECs. The commenters urged that the nonforfeatability requirements under § 1.401(k)-6 should apply when QMACs and QNECs are allocated to participants’ accounts and not when the contributions are first made to the plan.

In considering the comments, the Treasury Department and the IRS took into account that the nonforfeatability requirements applicable to QMACs and QNECs are intended to ensure that QMACs and QNECs provide nonforfeitable benefits for the participants who receive them. In accordance with that purpose, the Treasury Department and the IRS concluded that it is sufficient to require that amounts allocated to participants’ accounts as QMACs and QNECs be nonforfeitable at the time they are allocated to participants’ accounts, rather than when such contributions are made to the plan.

Accordingly, on January 18, 2017, the Treasury Department and the IRS issued a notice of proposed rulemaking (REG-131643-15), which was published in the **Federal Register** (82 FR 5477). Under the notice of proposed rulemaking, the Treasury Department and the IRS proposed to amend § 1.401(k)-6 to provide that amounts used to fund QMACs and QNECs must be nonforfeitable and subject to distribution limitations in accordance with § 1.401(k)-1(c) and (d) when allocated to participants’ accounts, and to no longer require that amounts used to fund QMACs and QNECs satisfy the nonforfeatability requirements and distribution limitations when they are first contributed to the plan. As a result, forfeitures would be permitted to be used to fund QMACs and QNECs. No public hearing on the notice of proposed rulemaking was requested or held. Several comments on the proposed rules were submitted, and, after consideration of all the comments, the proposed regulations are adopted without substantive modification.

This document contains amendments to 26 CFR part 1.

Explanation of Provisions

This document contains final regulations that amend the definitions of QMACs and QNECs to provide that

employer contributions to a plan are QMACs or QNECs if they satisfy applicable nonforfeatability requirements and distribution limitations at the time they are allocated to participants’ accounts. Accordingly, these regulations permit forfeitures of prior contributions to be used to fund QMACs and QNECs.

The Treasury Department and the IRS received five comments in response to the notice of proposed rulemaking that raised issues relating to the modification of the QMAC and QNEC definitions, including issues with respect to plan amendments and the pre-approved plan program, as described in Rev. Proc. 2015-36, 2015-27 I.R.B. 20, Part III of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, and Rev. Proc. 2017-41, 2017-29 I.R.B. 92. The Treasury Department and the IRS determined that the comments relating to the pre-approved plan program are outside the scope of these regulations, which relate solely to the modification of the definitions of QMACs and QNECs. These comments have been shared with IRS Tax Exempt and Government Entities, Employee Plans, which administers the pre-approved plan program.

The comments also included questions relating to the application of section 411(d)(6) in cases in which a plan sponsor seeks to amend its plan to apply the rules in this regulation. The application of section 411(d)(6) is generally outside the scope of these regulations. However, if a plan sponsor adopts a plan amendment to define QMACs and QNECs in a manner consistent with these final regulations and applies that amendment prospectively to future plan years, section 411(d)(6) would not be implicated. Moreover, in the common case of a plan that provides that forfeitures will be used to pay plan expenses incurred during a plan year and that any remaining forfeitures in the plan at the end of the plan year will be allocated pursuant to a specified formula among active participants who have completed a specified number of hours of service during the plan year, section 411(d)(6) would not prohibit a plan amendment adopted before the end of the plan year that permits the use of forfeitures to fund QMACs and QNECs (even if, at the time of the amendment, one or more participants had already completed the specified number of hours of service). This is because all conditions for receiving an allocation will not have been satisfied at the time of the amendment, since one of the conditions for receiving an allocation is that plan expenses at the end of the plan year are less than the amount of

¹ The existing definitions of QMACs and QNECs in §§ 1.401(k)-6 and 1.401(m)-5 refer to the distribution requirements of § 1.401(k)-1(d). Section 1.401(k)-1(d) is more appropriately characterized as providing distribution limitations (consistent with the heading of § 1.401(k)-1(d)). Accordingly, this preamble refers to distribution limitations rather than distribution requirements, and, as noted in the Explanation of Provisions section of this preamble, the definitions of QMACs and QNECs in §§ 1.401(k)-6 and 1.401(m)-5 are amended in the final regulations to refer to distribution limitations.

forfeitures. See § 1.411(d)–4, Q&A–1(d)(8) (features that are not section 411(d)(6) protected benefits include “[t]he allocation dates for contributions, forfeitures, and earnings, the time for making contributions (but not the conditions for receiving an allocation of contributions or forfeitures for a plan year after such conditions have been satisfied), and the valuation dates for account balances”).

These regulations are substantively the same as the proposed regulations. However, the Treasury Department and the IRS have determined that the distribution requirements referred to in the existing definitions of QMACs and QNECs in §§ 1.401(k)–6 and 1.401(m)–5 are more appropriately characterized as distribution limitations (consistent with the heading of § 1.401(k)–1(d)), and, accordingly, these definitions have been amended to refer to distribution limitations.

Effective/Applicability Date

These regulations are effective on July 20, 2018.

These regulations apply to plan years beginning on or after July 20, 2018. However, taxpayers may apply these regulations to earlier periods.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of these regulations is Angelique Carrington, Office of Associate Chief Counsel (Tax

Exempt and Governmental Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 401(m)(9) and 26 U.S.C. 7805. * * *

■ **Par. 2.** Section 1.401(k)–1 is amended by adding paragraph (g)(5) to read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(g) * * *

(5) *Applicability date for definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs).* The revisions to the second sentence in the definitions of QMACs and QNECs in § 1.401(k)–6 apply to plan years ending on or after July 20, 2018.

■ **Par. 3.** Section 1.401(k)–6 is amended by revising the second sentence in the definitions of *Qualified matching contributions (QMACs)* and *Qualified nonelective contributions (QNECs)* to read as follows:

§ 1.401(k)–6 Definitions.

* * * * *

Qualified matching contributions (QMACs). * * * Thus, the matching contributions must satisfy the nonforfeitability requirements of § 1.401(k)–1(c) and be subject to the distribution limitations of § 1.401(k)–1(d) when they are allocated to participants' accounts. * * *

Qualified nonelective contributions (QNECs). * * * Thus, the nonelective contributions must satisfy the nonforfeitability requirements of § 1.401(k)–1(c) and be subject to the distribution limitations of § 1.401(k)–1(d) when they are allocated to participants' accounts. * * *

* * * * *

■ **Par. 4.** Section 1.401(m)–1 is amended by adding paragraph (d)(4) to read as follows:

§ 1.401(m)–1 Employee contributions and matching contributions.

* * * * *

(d) * * *

(4) *Effective date for definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs).* The revisions to the definitions of QMACs and QNECs in § 1.401(m)–5 apply to plan years ending on or after July 20, 2018.

■ **Par. 5.** Section 1.401(m)–5 is amended by revising the definitions of *Qualified matching contributions (QMACs)* and *Qualified nonelective contributions (QNECs)* to read as follows:

§ 1.401(m)–5 Definitions.

* * * * *

Qualified matching contributions (QMACs). *Qualified matching contributions or QMACs* means qualified matching contributions or QMACs as defined in § 1.401(k)–6.

Qualified nonelective contributions (QNECs). *Qualified nonelective contributions or QNECs* means qualified nonelective contributions or QNECs as defined in § 1.401(k)–6.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: July 13, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2018–15495 Filed 7–19–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 175

RIN 0790–AJ54

[Docket ID: DOD–2016–OS–0108]

Indemnification or Defense, or Providing Notice to the Department of Defense, Relating to a Third-Party Environmental Claim

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DoD is identifying the proper address and notification method for an entity making a request for indemnification or defense, or providing notice to DoD, of a third-party claim under section 330 of the National Defense Authorization Act for Fiscal Year 1993, as amended (hereinafter “section 330”), or under section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, (hereinafter “section 1502(e)"). This rule also identifies the documentation

required to demonstrate proof of any claim, loss, or damage for indemnification or defense or for providing notice to DoD of a third-party claim. This rule also provides the mailing address for such requests for indemnification or defense or notice to DoD of a third-party claim to be filed with DoD, Office of General Counsel, the Deputy General Counsel for Environment, Energy, and Installations (DGC(EE&I)). This will allow for timely review and greater efficiency in screening requests for indemnification or defense by providing clarity to requesters.

DATES: This final rule is effective on August 20, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Sheuerman, 703-692-2287.

SUPPLEMENTARY INFORMATION:

Comments and Responses

On December 7, 2016 (81 FR 88167-88173), the Department of Defense published a proposed rule titled "Indemnification or Defense, or Providing Notice to the Department of Defense, Relating to a Third-Party Environmental Claim." The proposed rule had a 60-day public comment period, which ended on February 6, 2017. One commenter submitted comments which are addressed in 11 responses below.

Comment #1: One comment argues that the rule does not properly distinguish between the statute of limitations applicable to a request for indemnification and any limitations on when a request for defense may be made. The comment also suggests that more detail should be included as to what constitutes accrual of the action.

Response #1: The rule simply provides that the request for defense must be received by the DGC(EE&I) in sufficient time to allow the DoD to provide the requested defense (§ 175.6(b)). While the rule does identify the statutory limitation on making a request for indemnification, it does not identify a time limit for when a request for defense must be made. Since seeking defense is separate from making a request for indemnification (or providing notice of a third-party claim) and is entirely at the discretion of the requester, there is no direct connection between a request for indemnification and a request for defense. Section 330 describes accrual of action such that the rule does not address the matter further. As with many of the comments submitted, it is critical to distinguish among a request for indemnification, a request for defense, and submittal of notice of a third-party claim; these are

three separate and distinct actions. (For purposes of these responses, it is understood that the DoD will act through the Department of Justice when appearing before the courts.) No change is made to the rule.

Comment #2: One comment asserts that the requirements relating to notice of a third-party claim are unwarranted changes to the statutory provisions of section 330 and that certain unwarranted consequences will occur if a recipient of a third-party claim does not provide the required 30-day notice (see response to comment #4 for change to 15 days) of receipt of the third-party claim. Among these asserted consequences is a denial of indemnification or defense.

Response #2: The rule provides a process to give effect to the provisions of section 330; in doing so, it does not expand or diminish the rights of the parties involved. The rule does not assign any consequences to not requesting defense; as noted in the answer to question #1, a request for defense is optional and requesting it is at the discretion of the recipient of a third-party claim. The only consequences occur when a recipient of a third-party claim fails to provide notice to the DGC(EE&I) of receipt of the claim in time for the United States to choose to intervene. Section 330(c) makes it clear that the consequence of not allowing the DoD to defend against a third-party claim is that a subsequent request for indemnification will be denied. This rule provides reasonable notice and process to avoid such an eventuality due to a potential requester for indemnification being ignorant or ignoring the statutory rights of the DoD. The comment fails to recognize that section 330 authorizes the DoD, at the option of the DoD, to intervene and defend against a third-party claim. To give substance to this authority, the recipient of a third-party claim must provide reasonable notice to the DoD in order to allow DoD to act. Otherwise, the ability of the DoD to intervene and defend would be ineffectual. Failure to provide the notice does not automatically void any subsequent request for indemnification; it only affects a subsequent request for indemnification if it compromises the ability of the DoD to defend against the third-party claim. Such a determination is made within the discretion of the DGC(EE&I), based on the facts of the individual matter. To the extent that an assertion can be made that the rule modifies section 330, it would only be to the effect that the rule is more generous than section 330 because section 330 does not address when a

failure to allow DoD to defend against a third-party claim does no harm to DoD. Section 330 simply provides that "the person may not be afforded indemnification" without further elucidation. No change is made to the rule.

Comment #3: One comment asserts that the rule is a unilateral amendment of existing real property transfer documents that provide for notice under section 330, and, as such, obscures the rights of the property recipient.

Response #3: This rule is entered into under the delegated authority of the Secretary of Defense relating to the implementation of section 330. It is separate and distinct from, and in addition to, any real property transfer document provisions that were not entered into under that authority. There is no evidence that a request for indemnification or defense cannot meet both sources of requirements. Because DoD is aware of this concern, it notes in the preamble to this rule that for those situations where notice is to be given in accordance with, e.g., deeds, to other locations such as a local base closure program office, the DoD will continue to accept those notices for purposes of meeting the statute of limitations for a period of 180 days after this rule becomes final. Subsequent to that date, compliance with this rule will constitute the only reliable means to ensure compliance with the requirements of section 330. No change is made to the rule.

Comment #4: One comment suggests that, while there are firm time limits imposed on the requester for indemnification or defense, there are no corresponding time limits imposed on the DoD.

Response #4: The only major time limit imposed on the requester relates to a notice of third-party claim. (The statute of limitations is statutory and is simply restated.) It is true as the comment notes that, in some situations, the 30-day limit on notices of a third-party claim may be too long. The DoD believes it best to set a firm limit rather than one that is variable for each situation and, therefore, unpredictable for the requester. The DoD does recognize, however, the legitimacy of the concern over the length of the period and has reduced it to 15 days. The DoD does not set a time limit on itself to respond to the request because of the complexities involved in gathering information from the DoD Component responsible for the former facility, the need to thoroughly and accurately assess the legal and factual issues, and the need for coordination with potentially several divisions

within the Department of Justice and U.S. Attorney's Offices. The rule is changed as noted above.

Comment #5: One comment notes that the requirement that each individual file a separate request for indemnification or defense could be onerous, particularly in the situation of a class action lawsuit.

Response #5: The rule requires a request for indemnification or notice of third-party claim from each individual requester. The requirement does not apply to third-party claimants. There can be numerous third-party claimants against the requester. But each requester must represent itself. The DoD cannot be expected to discern the individual legal interests of multiple parties to a request for indemnification or defense. No change is made to the rule.

Comment #6: One comment suggests that the requirement to provide notice of a third-party claim should allow more informal notice so as to expedite delivery of notice and promote the likelihood of the DoD being able to exercise its right to defend against such a claim.

Response #6: The DoD recognizes the benefits of earlier notification (and the possibility of some required records not being available on short notice) and has added a paragraph to § 175.5(g) that allows a requester to provide telephone notification, subject to subsequent written confirmation by the DGC(EE&I). Telephone numbers have been included in §§ 175.5(a) and 175.6(a). The inclusion of telephone numbers may also assist in delivery of packages by commercial delivery services. The rule is changed as noted above.

Comment #7: One comment suggests that § 175.5(d) indicates that, for example, a lender who does not own or control the site could seek indemnification or defense even though not eligible under section 330.

Response #7: While it is difficult to see how a lender who does not own or control the site would have an interest in seeking indemnification, let alone defense, section 330 does not appear to make such a distinction. The rule includes "lender" because "lender" is one of those entities eligible under section 330. No change is made to the rule.

Comment #8: One comment suggests that the definition of "requester" in § 175.3 does not fully consider the situation of a subrogee (the draft rule incorrectly uses "subrogee" when it should use "subrogor" to refer to the entity from which the subrogee is taking its rights and has been corrected accordingly). This is particularly the case with the requirements to submit a notice of a third-party claim.

Response #8: Since a request for indemnification can be made within two years of accrual of the action, it is entirely feasible for, e.g., an insurance company to make a request for indemnification as subrogee of its insured. However, it is established law that a subrogee can only exercise the rights the subrogor itself had. Consequently, if a subrogor did not comply with the requirements of this rule and, in doing so, compromised the ability of DoD to defend against the claim, the subrogor would have no right to indemnification and its subrogee, which can only take its rights from the subrogor, would likewise have no right to indemnification. No change is made to the rule except correcting the reference from "subrogee" to "subrogor".

Comment #9: One comment suggests that the definition of "third-party claim" should discuss whether a citizen's suit under the environmental laws would qualify as a third-party claim.

Response #9: This question is a matter that has not been addressed by the courts and the DoD is not inclined to attempt to resolve it in this rule. No change is made to the rule.

Comment #10: One comment inquires as to whether the requirement of § 175.5(d)(4) includes all insurance policies such as for workers compensation, automobile, errors and omissions, and directors and officers.

Response #10: The experience of DoD is that it cannot rely on a requester to choose which policies or parts of policies should be submitted. Doing so does not ensure that DoD will receive all relevant documentation. If this requirement poses a significant burden on a requester, the requester should discuss the matter with the DGC(EE&I), knowing that any resulting delay will be charged against the requester. No change is made to the rule.

Comment #11: One comment suggests that § 174.15 of title 32, Code of Federal Regulations, *Revitalizing Base Closure Communities and Addressing Impacts of Realignment*, be rescinded.

Response #11: Section 174.15 contains restrictions on when reference may be made to section 330 in base closure real property disposal documents. This restriction has served the disposal process well by eliminating disputes over, e.g., deed language that frequently was inconsistent with the actual terms of section 330. The comment does, however, indicate that it would be useful to change this proposed rule by inserting a cross-reference to § 174.15 noting that nothing in this rule alters the provisions of § 174.15. That

change is made in § 175.2 with the addition of a new paragraph (c).

Legal Authority

This part is finalized under 10 U.S.C. 113, 5 U.S.C. 301, section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, October 23, 1992, 106 Stat. 2371, as amended, and section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, October 30, 2000, 104 Stat. 1654A-350, as amended.

Background

Sections 330 and 1502(e) provide that, subject to certain exceptions set forth in the statutes, the Secretary of Defense shall hold harmless, defend, and indemnify in full certain persons and entities that acquire ownership or control of, in the case of section 330, any military installation closed pursuant to a base closure law or, in the case of section 1502(e), certain portions of the former Naval Ammunition Support Detachment on the island of Vieques, Puerto Rico (hereinafter "Detachment"), from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative¹ as a result of DoD activities at any military installation (or portion thereof) that is closed pursuant to a base closure law or the Detachment. (Coverage of pollutants and contaminants was added to section 330 by an amendment contained in the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, 1002.) They also provide that DoD has certain rights in defending third-party claims.

The authority to adjudicate requests for indemnification and process requests for defense under sections 330 or 1502(e) has been delegated from the Secretary of Defense to the DoD General Counsel and re-delegated by the General Counsel to the DGC(EE&I). Requests for indemnification or defense or notice to DoD of a third-party claim must be sent to the DGC(EE&I) to be considered.

The DoD recognizes that some real property transfer documents, such as deeds and agreements, entered into in past years provide that notification

¹ Section 1502(e) does not apply to petroleum or petroleum derivatives.

under sections 330 or 1502(e) be made to, e.g., the local BRAC program office. Prior to the publication of this final rule, DoD has honored such notifications made in conformance with those transfer documents. Effective 180 days after promulgation of this rule, while a requester may continue to provide notification in accordance with such transfer documents, a requester must also comply with the notice requirements of this rule in order to comply with the requirements of sections 330 or 1502(e), particularly with regard to when the statutes of limitation in sections 330(b)(1) and 1502(e)(2)(A) begin to run. Nothing in this rule should be construed as requiring amendment of any such transfer documents.

The United States Court of Appeals for the Federal Circuit has interpreted the definition of a “claim for personal injury or property damages” under section 330 to include, under certain circumstances, notice from a governmental enforcement agency to conduct a cleanup. *Indian Harbor Insurance Co. v. United States*, 704 F.3d 949 (Fed. Cir. 2013). Because such notices may constitute a claim under section 330, a requester should carefully evaluate whether failing to provide notice to the Secretary would prevent the Secretary from settling or defending against a claim.

The timely and proper filing of a request for indemnification or defense enables the DGC(EE&I) to perform its adjudication function for requests, maintain oversight of the implementation of sections 330 and 1502(e), and secure the rights of requesters under sections 330 and 1502(e). Proper notice to DoD of a claim from a third-party is essential to allow DoD to exercise its right to defend against such a claim pursuant to sections 330(c) or 1502(e).

Under sections 330(c)(2) and 1502(e)(3)(B), the requester must allow DoD to defend the claim in order to be afforded indemnification for that claim. This regulation makes clear that failure to notify DoD immediately of receipt of any claim could prevent DoD from settling or defending that claim, and on that basis, DoD may deny indemnification. Failure to provide necessary documents and access will also prevent DoD from exercising its right to settle and defend the claim and, on that basis, DoD may deny indemnification.

In the context of a claim from a governmental enforcement agency or third party seeking to require a cleanup or response action, failure to notify DoD may prevent DoD from exercising its

right to defend against the claim. If the requester undertakes a cleanup or response action itself prior to providing immediate notice to DoD, the requestor's actions may interfere with DoD's ability to defend against a claim, which might result in denial of indemnification.

This final rule does not affect claims that are made pursuant to other authorities such as under a real property covenant contained in a deed in accordance with section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DoD has received approximately 14 requests for indemnification since 2006. This represents an annual average of requests for indemnification of slightly more than one per year. DoD cannot fully estimate the cost of the current process upon requesters because the only times it has paid such costs are when a request for indemnification has been litigated and administrative costs paid as part of a settlement. That settlement cost, however, includes the cost of litigation, which is substantially greater than the cost of seeking an administrative settlement.

Administrative Requirements

A. Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

E.O. 12866 defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

It has been determined that this rule is not a significant regulatory action. This rule has not been reviewed by OMB under the requirements of these Executive Orders.

B. Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to consider “small entities” throughout the regulatory process. Section 603 of the Regulatory Flexibility Act requires an initial screening analysis performance to determine whether small entities will be adversely affected by the regulation. No comments were received relating to the requirements of the Regulatory Flexibility Act. It has been certified that this final rule will not add to the current burden for small entities to report their activities based on a request for indemnification or defense under sections 330 or 1502(e).

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501, authorizes the Director of OMB to review certain information collection requests by Federal agencies. The recordkeeping and reporting requirements of this final rule do not constitute a “collection of information” as defined in 44 U.S.C. 3502(3), the Paperwork Reduction Act of 1995.

E. Environmental Justice

Under E.O. 12898 (59 FR 7629 (February 11, 1994)), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Federal agencies are required to identify and address disproportionately high and adverse human health and environmental effects of Federal programs, policies, and activities on minority and low-income populations.

Sections 330 and 1502(e) are intended to reduce specified risks resulting from development of former military land by aiding and legally protecting the entities that take title to land on closed military installations for development purposes. Because this rule will equally affect, on a national basis, requests for indemnification associated with the development of land, a disparate impact on minority and low-income population areas is not expected.

F. Unfunded Mandates

Title II of the Unfunded Mandates Report Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and Indian tribal governments and the private sector.

The DoD has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Indian tribal governments, in the aggregate, or the private sector in any one year. Thus, this final rule is not subject to the requirements of Section 202 of the UMRA.

G. Executive Order 13132, "Federalism"

It has been determined that this rule does not have federalism implications. This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 175

Indemnification, Claim.

■ Accordingly, 32 CFR part 175 is added to read as follows:

PART 175—INDEMNIFICATION OR DEFENSE, OR PROVIDING NOTICE TO THE DEPARTMENT OF DEFENSE, RELATING TO A THIRD-PARTY ENVIRONMENTAL CLAIM

Sec.

- 175.1 Purpose.
- 175.2 Applicability.
- 175.3 Definitions.
- 175.4 Responsibilities.
- 175.5 Notice to DoD relating to a third-party claim.
- 175.6 Filing a request for indemnification or defense.

Authority: 10 U.S.C. 113, 5 U.S.C. 301, section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, October 23, 1992, 106 Stat. 2371, as amended, and section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-398, October 30, 2000, 1014 Stat. 1654A-350, as amended.

§ 175.1 Purpose.

This part describes the process for filing a request for indemnification or defense, or providing proper notice to DoD, of a third-party claim pursuant to section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, October 23, 1992, 106 Stat. 2371, as amended (hereafter "section 330"), or section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, October 30, 2000, 1014 Stat. 1654A-350, as amended (hereafter "section 1502(e)"). This process identifies the minimum information that a request for

indemnification or defense or notice to DoD of a third-party claim for indemnification must include, where that information must be sent, how to make such a request or provide such a notice, the time limits that apply to such a request or notice, and other requirements.

§ 175.2 Applicability.

- (a) This part applies to—
 - (1) The Office of the General Counsel of the Department of Defense and the Military Departments.
 - (2) Any person or entity making a request for indemnification or defense, or providing notice to DoD, of a third-party claim pursuant to section 330 or section 1502(e).
 - (b) In the case of a property that is subject to an earlier agreement containing different notification requirements, the requirement for notice to the Deputy General Counsel in sections 175.5 and 175.6 are in addition to those notification requirements.
 - (c) Nothing in this part alters the provisions of § 174.15 of this title.

§ 175.3 Definitions.

Commercial delivery service. Federal Express or United Parcel Service, or other similar service that provides for delivery of packages directly from the sender to the recipient for a fee, but excluding the United States Postal Service (USPS).

Deputy General Counsel. The Deputy General Counsel (Environment, Energy, and Installations), Department of Defense.

Received. Actual physical receipt by the intended recipient.

Request. Any request for indemnification or defense made to the Department of Defense (DoD) by a requester pursuant to section 330 or section 1502(e).

Requester. A person or entity making a request pursuant to section 330 or section 1502(e). When the requester is acting by way of subrogation, the requester is subject to the same requirements and limitations as though it were the subrogor.

Section 330. Section 330 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, October 23, 1992, 106 Stat. 2371, as amended.

Section 1502(e). Section 1502(e) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Public Law 106-398, October 30, 2000, 114 Stat. 1654A-350. (This provision applies only to certain portions of the former Naval Ammunition Support Detachment on the island of Vieques, Puerto Rico.)

Third-party claim. A claim from a person or entity (other than the requester) to a requester resulting from a suit, claim, demand or action, liability, judgment, cost or other fee, demanding, seeking, or otherwise requiring that the requester pay an amount, take an action, or incur a liability for alleged personal injury or property damage and such payment, action, or liability is eligible for indemnification or defense pursuant to section 330 or section 1502(e). A third-party claim may consist of a notice, letter, order, compliance advisory, compliance agreement, or similar direction from a governmental regulatory authority exercising its authority to regulate the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative if the notice, letter, order, compliance advisory, compliance agreement, or similar notification imposes, directs, or demands requirements for environmental actions or asserts damages related thereto that are eligible for indemnification or defense pursuant to section 330 or section 1502(e).

§ 175.4 Responsibilities.

(a) The General Counsel of the Department of Defense has been delegated the authorities and responsibilities of the Secretary of Defense under section 330 and section 1502(e), with certain limitations as to re-delegation.

(b) The General Counsel has re-delegated the authority and responsibility to adjudicate requests for indemnification or defense and to process notices to DoD of a third-party claim under section 330 and section 1502(e) to the Deputy General Counsel or, when the position of Deputy General Counsel is vacant, the acting Deputy General Counsel. The authority to acknowledge receipt of a request has been delegated to an Associate General Counsel under the Deputy General Counsel.

§ 175.5 Notice to DoD relating to a third-party claim.

(a) **Where to file a notice to DoD of a third-party claim.** (1) Notice to DoD of receipt of a third-party claim, or intent to enter into, agree to, settle, or solicit such a claim, must be received by the Deputy General Counsel at the following address: Deputy General Counsel, Environment, Energy, and Installations, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301-1600, (703-693-4895) or (703-692-2287).

(2) Delivering or otherwise filing a notice of a third-party claim with any other office or location will not

constitute proper notice for purposes of this part. Requesters should be aware that all delivery services, and particularly that of the USPS, to the Pentagon can be significantly delayed for security purposes and they should plan accordingly in order to meet any required filing deadlines under this part; use of a commercial delivery service may reduce the delay.

(b) *Individual notices.* A notice to DoD of a third-party claim must be filed separately for each person or entity that is filing the notice. Notices may not be filed jointly for a group, a class, or for multiple persons or entities.

(c) *Means of filing a notice of a third-party claim.* A notice of a third-party claim must be submitted in writing by mail through the USPS or by a commercial delivery service. While the Deputy General Counsel will affirmatively acknowledge receipt of a notice of a third-party claim, it is recommended that a requester, whether using the USPS or a commercial delivery service, mail its notice by registered or certified mail, return receipt requested, or equivalent proof of delivery.

(d) *Information to be included in a notice to DoD of a third-party claim.* A notice to DoD of a third-party claim must include, at a minimum, the following information:

(1) A complete copy of the third-party claim, or, if not presented in writing, a complete summary of the claim, with the names of officers, employees, or agents with knowledge of any information that may be relevant to the claim or any potential defenses. The third-party claim may consist of a summons and complaint or, in the case of a third-party claim from a governmental regulatory authority, a notice, letter, order, compliance advisory, compliance agreement, or similar notification.

(2) A complete copy of all pertinent records, including any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for the facility for which the third-party claim is made.

(3) If the requester is not the first transferee from DoD, a complete copy of all intervening deeds, sales agreements, bills of sale, leases, licenses, easements, rights-of-way, or other transfer documents between the original transfer from DoD and the transfer to the current owner. If the requester is a lender who has made a loan to a person or entity who owns, controls, or leases the facility for which the request for indemnification is made that is secured by said facility, complete copies of all promissory notes, mortgages, deeds of

trust, assignments, or other documents evidencing such a loan by the requester.

(4) A complete copy of any insurance policies related to such facility.

(5) If the notice to DoD of a third-party claim is being made by a representative, agent, or attorney in fact or at law, proof of authority to make the notice on behalf of the requester.

(6) Evidence or proof of any claim, loss, or damage alleged to be suffered by the third-party claimant which the requester asserts is covered by section 330 or by section 1502(e).

(7) In the case where a requester intends to enter into, agree to, settle, or solicit a third-party claim, a description or copy of the proposed claim, settlement, or solicitation, as the case may be.

(8) To the extent that any environmental response action has been taken, the documentation supporting such response action and its costs included in the request for indemnification.

(9) To the extent that any environmental response action has been taken, a statement as to whether the remedial action is consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (part 300 of title 42, Code of Federal Regulations) or other applicable regulatory requirements.

(10) A complete copy of any claims made by the requester to any other entity related to the conditions on the property which are the subject of the claim, and any responses or defenses thereto or made to any third-party claims, including correspondence, litigation filings, consultant reports, and other information supporting a claim or defense.

(e) *Entry, inspection, and samples.* The requester must provide DoD a right of entry at reasonable times to any facility, establishment, place, or property under the requester's control which is the subject of or associated with the requester's notice of third-party claim and must allow DoD to inspect or obtain samples from that facility, establishment, place, or property.

(f) *Additional information.* The Deputy General Counsel will advise a requester in writing of any additional information that must be provided to defend against a claim. Failure to provide the additional information in a timely manner may result in denial of a request for indemnification or defense for lack of information to adjudicate the claim.

(g) *When to file a notice to DoD of a third-party claim.* (1) A requester must, within 15 days of receiving a third-party claim, file with DoD a notice of such

claim in accordance with this part. Failure to timely file such a notice, if it in any way compromises the ability of DoD to defend against such a claim pursuant to section 330(c) or section 1502(e)(3), will result in denial of any subsequent request for indemnification or defense resulting from such a claim. Requesters who take action in compliance with any such third-party claim, or any part of such claim, without first providing DoD with a notice of such claim in accordance with this section do so at their own risk.

(2) A requester must, at least 30 days prior to the earlier of entering into, agreeing to, settling, or soliciting a third-party claim, file a notice to DoD of such intent in accordance with this part. Failure to file such a notice will compromise the ability of DoD to defend against such a claim pursuant to section 330(c) or section 1502(e)(3) and will result in denial of any subsequent request for indemnification or defense resulting from such a claim.

(3) A requester may, if it believes more immediate notice to DoD is desirable or less than all the information required by paragraph (d) of this section is immediately available, contact the Deputy General Counsel using the phone numbers in paragraph (a)(1) of this section. Any such contact does not constitute compliance with the requirements of paragraph (g)(1) or (2) of this section unless and until the Deputy General Counsel subsequently provides written confirmation that the notice constitutes such compliance. Such written confirmation may be provided by electronic means.

(h) *No implication from DoD action.* Any actions taken by DoD related to defending a claim do not constitute a decision by DoD that the requester is entitled to indemnification or defense.

(i) *Notice also constituting a request for indemnification or defense.* Notice of receipt of a third-party claim may also constitute a request for indemnification or defense if that notice complies with all applicable requirements for a request for indemnification or defense.

§ 175.6 Filing a request for indemnification or defense.

(a) *Where to file a request for indemnification or defense.* (1) In order to notify DoD in accordance with section 330(b)(1) or section 1502(e)(2)(A), a request for indemnification or defense pursuant to section 330 or section 1502(e) must be received by the Deputy General Counsel at the following address: Deputy General Counsel, Environment, Energy, and Installations, 1600 Defense Pentagon, Room 3B747, Washington, DC

20301–1600, (703–693–4895) or (703–692–2287).

(2) Delivering or otherwise filing a request for indemnification or defense with any other office or location will not constitute proper notice of a request for purposes of section 330(b)(1) or section 1502(e)(2)(A). Requesters should be aware that all delivery services, and particularly that of the USPS, to the Pentagon can be significantly delayed for security purposes and they should plan accordingly in order to meet any required filing deadlines under this part; use of a commercial delivery service may reduce the delay.

(b) *When to file a request for indemnification or defense.* A request for indemnification must be received by the Deputy General Counsel within two years after the claim giving rise to the request accrues. A request for defense must be received by the Deputy General Counsel in sufficient time to allow the United States to provide the requested defense.

(c) *Means of filing a request for indemnification or defense.* A request for indemnification or defense must be submitted in writing by mail through the USPS or by a commercial delivery service. While the Deputy General Counsel will affirmatively acknowledge receipt of a request for indemnification or defense, it is recommended that a requester, whether using the USPS or a commercial delivery service, mail its request by registered or certified mail, return receipt requested, or equivalent proof of delivery.

(d) *Individual requests.* A request for indemnification or defense must be filed separately for each person or entity that is making the request. Requests may not be filed jointly for a group, a class, or for multiple persons or entities.

(e) *Information to be included in a request for indemnification or defense.* A request for indemnification or defense must include, at a minimum, the following information:

(1) A complete copy of the third-party claim, or, if not presented in writing, a complete summary of the claim, with the names of officers, employees, or agents with knowledge of any information that may be relevant to the claim or any potential defenses.

(2) A complete copy of all pertinent records, including any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for the facility for which the request for indemnification or defense is made.

(3) If the requester is not the first transferee from DoD, a complete copy of all intervening deeds, sales agreements, bills of sale, leases, licenses, easements,

rights-of-way, or other transfer documents between the original transfer from DoD and the transfer to the current owner. If the requester is a lender who has made a loan to a person or entity who owns, controls, or leases the facility for which the request for indemnification is made that is secured by said facility, complete copies of all promissory notes, mortgages, deeds of trust, assignments, or other documents evidencing such a loan by the requester.

(4) A complete copy of any insurance policies related to such facility.

(5) If the request for indemnification or defense is being made by a representative, agent, or attorney in fact or at law, proof of authority to make the request on behalf of the requester.

(6) Evidence or proof of any claim, loss, or damage covered by section 330 or by section 1502(e).

(7) In the case of a request for defense, a copy of the documents, such as a summons and complaint, or enforcement order, representing the matter against which the United States is being asked to defend.

(8) To the extent that any environmental response action has been taken, the documentation supporting such response action and its costs included in the request for indemnification.

(9) To the extent that any environmental response action has been taken, a statement as to whether the remedial action is consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (part 300 of title 42, Code of Federal Regulations) or other applicable regulatory requirements.

(10) A complete copy of any claims made by the requester to any other entity related to the conditions on the property which are the subject of the claim, and any responses or defenses thereto or made to any third-party claims, including correspondence, litigation filings, consultant reports, and other information supporting a claim or defense.

(f) *Entry, inspection, and samples.* The requester must provide DoD a right of entry at reasonable times to any facility, establishment, place, or property under the requester's control which is the subject of or associated with the requester's request for indemnification or defense and must allow DoD to inspect or obtain samples from that facility, establishment, place, or property.

(g) *Additional information.* The Deputy General Counsel will advise a requester in writing of any additional information that must be provided to adjudicate the request for

indemnification or defense. Failure to provide the additional information in a timely manner may result in denial of the request for indemnification or defense.

(h) *Adjudication.* The Deputy General Counsel will adjudicate a request for indemnification or defense and provide the requester with DoD's determination of the validity of the request. Such determination will be in writing and sent to the requester by certified or registered mail.

(i) *Reconsideration.* Any such determination will provide that the requester may ask for reconsideration of the determination. Such reconsideration shall be limited to an assertion by the requester of substantial new evidence or errors in calculation. The requester may seek such reconsideration by filing a request to that effect. A request for reconsideration must be received by the Deputy General Counsel within 30 days after receipt of the determination by the requester. Such a request must be sent to the same address as provided for in paragraph (a)(1) of this section and provide the substantial new evidence or identify the errors in calculation. Such reconsideration will not extend to determinations concerning the law, except as it may have been applied to the facts. A request for reconsideration will be acted on within 30 days from the time it is received. If a request for reconsideration is made, the six month period referred to in section 330(b)(1) and section 1502(e)(2)(A) will commence from the date the requester receives DoD's denial of the request for reconsideration.

(j) *Finality of adjudication.* An adjudication of a request for indemnification constitutes final administrative disposition of such a request, except in the case of a request for reconsideration under paragraph (i) of this section, in which case a denial of the request for reconsideration constitutes final administrative disposition of the request.

Dated: July 16, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–15487 Filed 7–19–18; 8:45 am]

BILLING CODE 5001–06–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25 and 30

[GN Docket No. 14–177; WT Docket No. 10–112; FCC 18–73]

Use of Spectrum Bands Above 24 GHz for Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts rules for specific millimeter wave bands above 24 GHz. A proposed rule document for the Third Further Notice of Proposed Rulemaking (*3rd FNPRM*) related to the Final rule document for the *Third Report and Order* and Memorandum Opinion and Order (*3rd R&O*) is published elsewhere in this issue of the **Federal Register**.

DATES: Effective August 20, 2018, except for the amendments to § 25.136, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those amendments.

FOR FURTHER INFORMATION CONTACT: John Schauble of the Wireless Telecommunications Bureau, Broadband Division, at (202) 418–0797 or John.Schauble@fcc.gov, Michael Ha of the Office of Engineering and Technology, Policy and Rules Division, at 202–418–2099 or Michael.Ha@fcc.gov, or Jose Albuquerque of the International Bureau, Satellite Division, at 202–418–2288 or Jose.Albuquerque@fcc.gov. For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* and Memorandum Opinion and Order (*3rd R&O*), GN Docket No. 14–177, FCC 18–73, adopted on June 7, 2018 and released on June 8, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is available on the Commission's

website at <http://wireless.fcc.gov>, or by using the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs/>. Alternative formats are available to persons with disabilities by sending an email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in the *Third Report and Order*.

Congressional Review Act

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

Synopsis

I. Introduction

1. The Commission continues its effort to make available millimeter wave (mmW) spectrum, at or above 24 GHz, for fifth-generation (5G) wireless, Internet of Things, and other advanced spectrum-based services. In the *3rd R&O*, the Commission addresses pending issues regarding FSS sharing and operability in the 24 GHz band, as well as pending issues regarding performance requirements and mobile spectrum holdings policies for the mmW bands authorized for flexible use. With respect to the 37–37.6 GHz band (Lower 37 GHz band), the Commission resolves pending petitions for reconsideration, establish a band plan, and in the *3rd FNPRM*, the Commission seeks comment on a more detailed framework to facilitate Federal and non-Federal use. In addition, the Commission proposes to make additional spectrum in the 42–42.5 GHz (42 GHz band) and 25.25–27.5 GHz band (26 GHz band) available for flexible wireless use, while recognizing the need to protect and provide continued opportunities for Federal use of this band. The Commission notes that it will consider other bands and issues raised in this proceeding in future Commission items.

2. The Commission's efforts in this proceeding to make mmW spectrum available for wireless uses is vital to ensuring continued American leadership in wireless broadband. That leadership represents a critical

component of economic growth, job creation, public safety, and global competitiveness. The Commission will continue to take steps to facilitate access to additional low-band, mid-band, and high-band spectrum for the benefit of American consumers, including holding an auction of the 28 GHz band starting in November followed by an auction of the 24 GHz band.

II. Background

3. On November 22, 2017, the Commission released the *2nd R&O*, *2nd FNPRM*, *Order on Recon*, and *MO&O* in this proceeding. See 83 FR 37. In relevant parts, the *2nd R&O* authorized the 24 GHz band and the 47.2–48.2 GHz band (47 GHz band) for flexible wireless use; it declined to set pre-auction limits on the amount of spectrum an entity may acquire at auction in the 24 GHz and 47 GHz bands; and it revised the mmW spectrum threshold for reviewing proposed secondary market transactions to 1850 megahertz by including the 24 GHz and 47 GHz bands. The *2nd FNPRM* sought comment on five issues. First, the Commission proposed to license Fixed-Satellite Service (FSS) earth stations in the 24.75–25.25 GHz band on a co-primary basis under the provisions in Section 25.136(d) applicable to the 47 GHz band. Second, the Commission sought comment on adopting additional performance metrics tailored to Internet of Things (IoT)-type deployments. Third, the Commission proposed to eliminate the pre-auction limit of 1250 megahertz that the *R&O* had adopted for the 28 GHz, 37 GHz and 39 GHz bands. Fourth, the Commission proposed to require that any equipment capable of operating anywhere within the 24 GHz band must be capable of operating across the entire 24 GHz band, on all frequencies in both band segments. Finally, the Commission invited commenters to submit new studies or data on bands under consideration by the Commission, as well as comments on additional bands the Commission should consider.

4. The Commission received 15 comments and 12 reply comments. A list of commenters, reply commenters, and *ex parte* filings is contained in the List of Commenters to the *2nd FNPRM*. No petitions for reconsideration of the *2nd R&O* were filed. SOM1101, LLC filed a comment addressing the issue of allowing satellite user equipment in the 37.5–40 GHz band. Comment of SOM1101 LLC (filed Jan. 23, 2018). In the *MO&O*, the Commission declined to authorize satellite user equipment in the 37.5–40 GHz band. Because SOM1101's comment neither acknowledges nor seeks reconsideration of the *MO&O*'s

decision, the Commission will not give further consideration to this issue.

III. Third Report and Order

A. Performance Requirements— Geographic Area Metric

5. *Background.* In the *R&O*, the Commission moved away from a substantial service regime in the mmW bands by adopting a defined set of metrics for performance requirements for Upper Microwave Flexible Use Service (UMFUS). UMFUS licensees relying on mobile or point-to-multipoint service must show that they are providing reliable signal coverage and service to at least 40 percent of the population within the service area of the licensee, and that they are using facilities to provide service in that area either to customers or for internal use. Licensees relying on point-to-point service must demonstrate that they have four links operating and providing service, either to customers or for internal use, if the population within the license area is equal to or less than 268,000. If the population within the license area is greater than 268,000, a licensee relying on point-to-point service must demonstrate it has at least one link in operation and is providing service for each 67,000 population within the license area. Showings that rely on a combination of multiple types of service will be evaluated on a case-by-case basis. This reliance on fixed metrics was a change from the buildout rules formerly applicable to 28 GHz and 39 GHz licensees, which used a substantial service standard. In the *FNPRM*, the Commission sought comment on expanding this list of metrics by adopting a performance metric designed to accommodate IoT-type deployments. In the *2nd FNPRM*, the Commission sought comment more specifically on a geographic area metric that might accommodate IoT or other services deployed along non-traditional lines, while still measuring a meaningful level of service in a proven way.

6. *Discussion.* The Commission adopts a geographic area metric for UMFUS licenses, to be included in the existing list of performance metrics from which licensees may choose, as an additional alternative to meeting the Commission's performance requirements. Consistent with the option on which the Commission sought comment in the *2nd FNPRM*, licensees may fulfill the requirements of this metric either by demonstrating mobile or point-to-multipoint coverage of at least 25% of their license's geographic area, or by showing the presence of

equipment transmitting or receiving on the licensed spectrum in at least 25% of census tracts within the license area. The Commission believes the 25% level would maintain parity with the 40% population coverage metric. As with the Commission's previously-adopted metrics, equipment must be in use and actually providing service, either for private, internal use or to unaffiliated customers, in order to be counted. This metric, like the Commission's previously-adopted metrics, may be used by any UMFUS licensee, regardless of the type of service deployed.

7. The Commission emphasizes that this geographic area metric is an additional alternative for licensees, not a supplemental requirement. If a licensee deploying IoT systems finds that the Commission's existing mobile or fixed metrics better fit their needs, it is welcome to use either of those metrics instead. As the Commission has emphasized since the *R&O*, all licensees may choose the particular metric they wish to satisfy, and the adoption of this metric merely expands their list of choices. Without the adoption of this additional choice of metric, licensees would have only the mobile or fixed options through which to demonstrate their compliance with the Commission's performance requirements. While the Commission continues to support its previous conclusion that it is too soon to design a *usage-based* metric that will be technology- and use case-neutral, it believes it is important to provide some additional option for UMFUS licensees whose deployments may not track residential population, or that may not involve traditional higher-power fixed links, as will likely be the case for some IoT-type services. The Commission's adoption of a geographic area metric is responsive to the calls from commenters for greater flexibility. In the interest of providing licensees with as much flexibility and certainty as possible in advance of the Commission's contemplated auctions of UMFUS spectrum, the Commission does not believe it is appropriate to delay the adoption of an additional choice of metric to future rounds of this proceeding.

8. The objections raised by, and alternative suggestions offered by commenters, are not persuasive. With respect to calls for entirely different regimes, such as substantial service or site-based licensing, the Commission has already determined that geographic area licensing with the performance requirements that the Commission adopted in the *Report and Order* strikes the best balance between flexibility for licensees and accountability in ensuring

efficient use of mmW spectrum. The Commission notes that it has also designated a total of fourteen gigahertz of unlicensed spectrum in the mmW bands, and that it seeks further comment on the sharing regime it has adopted for the lower 37 GHz band.

B. Operability in the 24 GHz Band

9. *Background.* The 24 GHz band consists of two band segments: The lower segment, from 24.25–24.45 GHz, and the upper segment, from 24.75–25.25 GHz. In the *2nd R&O*, the Commission adopted UMFUS licensing and technical rules for the 24 GHz band. The Commission also proposed to adopt an operability requirement for the 24 GHz band. Under this requirement, any mobile or transportable equipment capable of operating in any portion of the 24 GHz band must be capable of operating at all frequencies within the 24 GHz band, in both band segments.

10. *Discussion.* The Commission adopts its proposal to require operability throughout the 24 GHz band. Any mobile or transportable equipment capable of operating on any frequency between 24.24–24.45 GHz or 24.75–25.25 GHz must be capable of operating on all frequencies in those ranges. This requirement will support competition by ensuring a robust device ecosystem throughout the band. Given the separation of the 24 GHz band into two different segments, the Commission believes an operability requirement is important to supporting development of the lower portion of the band.

11. The Commission reiterates that this operability requirement in no way dictates the use of any particular technology or air interface. The Commission also emphasizes that this operability requirement is specific to the 24 GHz band, and does not extend to other UMFUS bands. The 28 GHz band and the 37 and 39 GHz bands also have operability requirements, but those are separate and independent from the one the Commission adopts for the 24 GHz band. Devices are not required to operate across all UMFUS bands. While one commenter expresses concern about the ability to filter signals from the 24.45–24.75 GHz band, it ultimately supports the operability requirement, and it does not provide any technical analysis in support of its concern.

12. In addition, as the Commission noted in the *2nd R&O*, ongoing international studies include analyses to determine IMT–2020 out-of-band emission limits necessary to protect passive sensors onboard weather satellites in the 23.6–24.0 GHz band. The Commission recognizes the need to protect these passive satellite operations

that provide important data necessary for weather predictions and warnings. Given that this is a matter of interest to multiple stakeholders internationally and that the Commission cannot predict the outcome, it finds it inappropriate to adopt U.S.-only limits that may need to be modified at a later time. Once interference protection standards are agreed upon internationally the Commission will, if necessary, consider through notice and comment whether any modification of its current out-of-band limits may be needed. The Commission encourages non-Federal operators in the 24 GHz band to monitor these studies and to plan their systems, to the extent possible, to take into account the potential for additional future protection of passive sensors in the 23.6–24.0 GHz band.

C. 24 GHz FSS Sharing

13. *Background.* The U.S. Table of Frequency Allocations (U.S. Table) currently includes primary, non-Federal, Fixed, Mobile and Fixed-Satellite Service (FSS) (Earth-to-space) allocations in the 24.75–25.25 GHz band. Footnote NG535 to the U.S. Table provides feeder links in the Broadcasting-Satellite Service (BSS) priority over other FSS uses in the 24.75–25.05 GHz band segment, and restricts FSS use of the 25.05–25.25 GHz band segment to feeder links for the BSS. In the *2nd R&O* the Commission adopted a primary Fixed Service allocation in the 24.75–25.05 GHz band segment, added a primary Mobile Service allocation in the 24.75–25.25 GHz band segment, and authorized both mobile and fixed operations in those bands under the part 30 UMFUS rules. The Commission did not make changes to its current rules at that time, but decided instead to seek comment in the *2nd FNPRM* in conjunction with a proposal to allow more flexible use of the band for FSS earth stations.

14. In the *2nd FNPRM*, the Commission proposed to license FSS earth stations in 24.75–25.25 GHz band on a co-primary basis under the provisions contained in Section 25.136(d), which currently applies to the 47 GHz band, by adding the 24.75–25.25 GHz band to this rule section. This change would limit availability of the 24.75–25.25 GHz band for FSS to individually-licensed FSS earth stations that meet the same specific licensing requirements applicable to earth stations in the 47 GHz band. The Commission also sought comment on adding a U.S. Table footnote specifying the relative interference protection obligations of FSS and UMFUS stations in this band. In addition, the

Commission proposed various conforming modifications to certain earth station application requirements. The Commission sought comment on these proposals and on possible actions needed to address the potential for aggregate interference from terrestrial users into satellite systems in the band.

15. To provide for more flexible FSS use of the 24.75–25.25 GHz band, the Commission proposed to eliminate footnote NG535, thereby making this band available for general FSS uplink operations without restricting these operations to, or affording priority for, the provision of feeder links for 17/24 GHz BSS space stations. To further increase flexibility for all FSS uses in this new sharing regime, the Commission also proposed to eliminate the Petitions for Reconsideration of *Spectrum Frontiers Report and Order* addressed herein orbital-location restrictions for 17/24 GHz BSS space stations specified in Section 25.262(a), thus providing more flexibility to these BSS operations. Consistent with these proposals, the Commission proposed several other rule changes to part 25 of its rules to harmonize the treatment of BSS feeder links with other FSS transmissions. Specifically, the Commission proposed the following rule changes: (1) Modify Section 25.138 to extend applicability of the Ka-band off-axis EIRP density limits in paragraph (a) to the 24.75–25.25 GHz band, and then to eliminate the nearly identical BSS feeder link-specific earth station off-axis EIRP density limits for the 24.75–25.25 GHz band in Section 25.223(b); (2) add the 24.75–25.25 GHz band to the list of frequency bands in our general FSS earth station coordination rules in Section 25.220(a), thereby permitting us to eliminate the coordination provisions contained in Sections 25.223(c) and (d); (3) remove and reserve Section 25.223, because there would be no need for these provisions, which provide an alternative means of licensing BSS feeder links, and also eliminate cross references to Section 25.223 contained in Section 25.209(f); (4) eliminate Section 25.204(e)(4), which contains rain fade specifications specific to 17/24 GHz BSS feeder link transmissions, and instead include the 24.75–25.25 GHz band in paragraph (e)(3), which contains nearly identical Ka-band FSS rain fade specifications; (5) modify the interference-showing requirements for FSS applicants in Section 25.140(a) to make clear its applicability to FSS (Earth-to-space) transmissions to 17/24 GHz BSS space stations; (6) add a new subparagraph (iv) to Section 25.140(a)

requiring applicants for space stations receiving uplinks in the 24.75–25.25 GHz band to certify, among other things, that the earth stations transmitting to such space stations will not exceed the off-axis EIRP density limits in Section 25.138(a); (7) modify the definitions of “routine processing or licensing” and “two-degree compliant space station” contained in Section 25.103; (8) eliminate the operational requirements associated with the Appendix F orbital-location constraints in Section 25.262 by deleting paragraphs (a) and (d), and modifying paragraphs (b) and (e); (9) modify Sections 25.140(b), (c) and (d) to reflect changes in the interference showing required by 17/24 GHz BSS applicants, which is currently defined in part by the applicant’s orbital position relative to Appendix F locations; (10) delete Section 25.262(b) to eliminate an operational requirement made moot; (11) delete Appendix F specific requirements contained in Section 25.114(d)(17); (12) eliminate a reference in Section 25.114(d)(7) to a deleted subparagraph in Section 25.140(b); and (13) modify the cross-polarization isolation requirement in Section 25.210(i) to making clear that it applies only to 17/24 GHz BSS space-to-Earth transmissions, to provide for consistent treatment of 17/24 GHz feeder uplinks with other FSS transmissions in the 24.75–25.25 GHz band.

16. *Discussion.* After review of the record, the Commission modifies the FSS earth station licensing proposal set out in the *2nd FNPRM* so as to better provide FSS with additional capacity for satellite services while permitting substantial terrestrial use of the band. As with the 28 GHz and 47 GHz bands, the Commission finds generally that allowing a limited number of FSS earth stations in the 24.75–25.25 GHz band would further the public interest, and therefore provide for sharing of the 24.75–25.25 GHz band by UMFUS and FSS earth stations, including BSS feeder link earth stations. Based on the record, the Commission adopts rules that incorporate certain sharing criteria applicable in the 27.5–28.35 GHz and 47.2–48.2 GHz bands. Specifically, the Commission applies the permitted aggregate population limits within the specified earth station PFD contour on a per-county basis, similar to the requirement in the 27.5–28.35 GHz band, rather than the per-PEA limits applicable to the 47.2–48.2 GHz band. Additionally, as in the 47.2–48.2 GHz band, the Commission adopts constraints on the number of permitted earth stations not only in the county but

also in the UMFUS licensing area (PEA) in which the earth station is located. To reflect these requirements, the Commission adopts a new rule section 25.136(g), which its find includes sufficient defined restrictions on earth station operations consistent with CCA's request.

17. The Commission will not adopt any operational requirements addressing limits on aggregate interference into satellite receivers at this time, as it does not believe such limits are justified by the current record, and the Commission received no specific proposals for such a rule. The Commission retains the authority to monitor developments and intervene to prevent unacceptable interference to satellites if that becomes necessary, but there is no evidence to date that suggests that any such intervention will be necessary. The Commission will amend footnote NG65 to the U.S. Table to include the 24.75–25.25 GHz band to make clear the relative interference protection obligations between the co-primary services. The Commission rejects CTIA's argument that it should adopt a new footnote stating that certain shared frequency bands are identified predominantly for terrestrial mobile and fixed services on a primary basis. The Commission does not believe that this proposed footnote fulfills its intent to specify accurately the relative interference protection obligations of FSS and UMFUS stations in this band, and further, it would go beyond the scope of this rulemaking by including frequency bands apart from the 24.75–25.25 GHz band (*i.e.*, the 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands). The Commission also adopts the proposed conforming modifications to Sections 25.115(e) and 25.130(b), and delete the obsolete licensing requirements for the 25.05–25.25 GHz band specified in Section 25.203(l).

18. The Commission adopts its proposals to remove footnote NG535. In doing so, the Commission removes the restriction on FSS operations apart from BSS feeder links, in the 25.05–25.25 GHz band segment, and eliminate the priority of BSS feeder links relative to other FSS operations in the 24.75–25.05 GHz band. The Commission also eliminates the Appendix F orbital-location restrictions contained in Section 25.262(a), which should give 17/24 GHz BSS feeder link operators the same flexibility as other FSS operators in the band. FSS use beyond the provision of BSS feeder links is already permitted in the lower portion of the band, and the Commission believes that it will further spectrum efficiency to extend this same flexibility to other

types of individually licensed FSS earth stations in the upper band segment. The Commission rejects T-Mobile's argument that the Commission should constrain satellite operators' use of the 24.75–25.25 GHz band beyond limits placed on satellite operators in comparable UMFUS bands. Such a position is at variance with the Commission's stated objectives in the *Spectrum Frontiers* proceeding to make available millimeter wave (mmW) bands for flexible wireless deployment while simultaneously adopting rules that will allow the mmW bands to be shared with other uses, including satellite, in bands where there are existing FSS allocations. The Commission also disagrees with AT&T that retention of subsection (a) in footnote NG535 is warranted, as it believes it would only serve to undermine its goals of increasing flexibility of use and spectrum efficiency. AT&T acknowledges that the Commission's two-degree spacing requirements are sufficient to protect BSS feeder links from other FSS operations, and it provides no justification for retaining BSS feeder link priority in the 24.75–25.05 GHz portion of the band.

19. The Commission received no opposition to its proposed rule changes to harmonize the treatment of FSS and BSS feeder link transmissions under its rules, nor any opposition on the associated conforming amendments. Accordingly, the Commission adopts these rule changes as elaborated above, for the reasons set forth in the *2nd FNPRM*. The Commission will not however, include in the amended definition of "routine processing or licensing" in § 25.103 an exclusion for earth stations in the 24.75–25.25 GHz band as originally proposed in the *2nd FNPRM*. Upon further consideration, this change is not necessary to accurately reflect our licensing procedures. In addition, as a consequence of eliminating the Appendix F orbital-location requirement in § 25.262(a), the Commission also deletes § 25.262(c)(2). This provision, which addresses cancelled or surrendered licenses relative specifically to Appendix F orbital locations, is moot. Once the rules become effective, these rule changes will ensure that all FSS transmissions in the 24.75–25.25 GHz band, including BSS feeder link transmissions, are subject to the Commission's two-degree spacing requirements. The four-degree spacing regimen applicable to 17/24 GHz BSS downlink transmissions however, will be unaltered, which SIA notes is an important predicate for its

support of proposed changes to the Commission's rules governing uplink band operations.

D. Lower 37 GHz Band Plan

20. *Background.* In the *R&O*, the Commission adopted rules to permit fixed and mobile terrestrial operation in the 37 GHz band. The Commission also adopted a licensing regime for the 37.6–38.6 GHz portion of the band (Upper 37 GHz Band), which would be licensed in five 200 megahertz blocks on a geographic area basis. Rather than adopting a particular licensing regime for the Lower 37 GHz Band, the Commission made it available for coordinated co-primary sharing between Federal and non-Federal users. The Commission explained that Federal and non-Federal users would access the Lower 37 GHz Band through a coordination mechanism, which it would more fully develop through government/industry collaboration.

21. In the *FNPRM*, the Commission sought comment, among other things, on the appropriate band plan for the Lower 37 GHz. The Commission proposed to establish a 100 megahertz minimum channel size. It also proposed to allow users to aggregate 100 megahertz channels into larger channel sizes up to the maximum of 600 megahertz where available. Starry and T-Mobile support the proposal to license 100 megahertz channels in the Lower 37 GHz band. No party opposed the proposal.

22. *Discussion.* The Commission affirms the Commission's decision to adopt a co-primary sharing approach for the Lower 37 GHz band and the Commission seeks additional comment on the details of that approach. Here, the Commission adopts the Commission's proposal to license the Lower 37 GHz Band as six 100 megahertz channels. This channelization will allow for a sufficient acquisition of spectrum by smaller users while still allowing for aggregation by larger entities. The Commission believes that 100 megahertz channels will be sufficient for a licensee to provide the type of high rate data services, and other innovative uses and applications, contemplated for this spectrum. These smaller channels offer an opportunity to provide low-barrier access to spectrum for new technologies and providers while also enhancing shared access methods and technologies between commercial and Federal users.

E. Mobile Spectrum Holdings

23. *Background.* The *R&O* established a pre-auction, bright-line limit of 1250

megahertz on the amount of mmW spectrum in the 28 GHz, 37 GHz, and 39 GHz bands (*R&O* bands) that an entity could acquire at auction. In the *2nd R&O*, the Commission declined to adopt a similar pre-auction limit on the 24 GHz and 47 GHz bands, primarily because preemptive limits on the amount of spectrum an entity might acquire could unnecessarily inhibit participation at auction and discourage the development of spectrum-intensive services. Moreover, the Commission found that mmW technology currently is at a nascent stage of development and that there was insufficient information to predict the amount of spectrum needed for future still-to-be-developed services. No petitions for reconsideration were filed in response to the Commission's decisions in the *2nd R&O*. In the *2nd FNPRM*, the Commission proposed to eliminate the pre-auction limit of 1250 megahertz that the *R&O* had adopted for the *R&O* bands. Further, in the absence of any pre-auction limits, the Commission sought comment regarding whether it should apply a post-auction case-by-case review on all mmW spectrum available at auction.

24. *Discussion.* The Commission adopts its proposal in the *2nd FNPRM* to eliminate the pre-auction limit of 1250 megahertz for the 28 GHz, 37 GHz, and 39 GHz bands. In the *R&O*, the Commission indicated that its consideration of whether to adopt a mobile spectrum holdings limit for the licensing of spectrum through competitive bidding—and, if so, what type of limit—would take into account several objectives, including: The promotion of competition in relevant markets; the acceleration of private sector deployment of advanced services; and generally managing the spectrum in the public interest. In reaching its decision to adopt a pre-auction spectrum aggregation limit for the 28 GHz, 37 GHz, and 39 GHz bands, the Commission observed, among other things, that mmW spectrum is likely to be a critical component in the development of 5G and that pre-auction limits could encourage the development of innovative services to the benefit of the American consumer. The Commission continues to recognize that mmW spectrum is an important resource for the deployment of 5G and other advanced wireless services, as evidenced by the steps it takes in this *3rd R&O*, *MO&O*, and *3rd FNPRM* to further promote this deployment. The Commission also notes that in addition to mmW spectrum, various providers have announced plans to develop 5G in

other bands, such as 600 MHz and 2.5 GHz, and have indicated an interest in using 3.5 GHz and 3.7–4.2 GHz for 5G. Overall, the Commission observes that there are a variety of spectral paths to 5G deployment in the United States, and that accelerating this deployment, including through the use of mmW spectrum, is an increasingly important objective given the potential economic benefits.

25. Thus, while technological development in the mmW bands remains in a nascent stage, the Commission's balancing of objectives shifts towards facilitating rapid 5G deployment in the United States. In that context, and given the Commission's balancing of various statutory objectives, the Commission weighs more heavily the risk that bright-line, pre-auction limits may restrict unnecessarily the ability of entities to participate and acquire spectrum in a mmW band auction. This could, in turn, unnecessarily constrain providers in their paths towards 5G deployment on mmW bands, limit their incentives to invest in these new services, and delay the realization of related economic benefits. The Commission is not inclined to adopt such limits on auction participation absent a clear indication that they are necessary to address a specific competitive concern. In the case of the 28 GHz, 37 GHz, and 39 GHz bands, the Commission is not persuaded by commenters' generalized assertions that a bright-line, pre-auction limit in these bands is necessary to protect competition in the provision of wireless services, particularly in light of its decision below to adopt a post-auction case-by-case review of spectrum in the UMFUS bands. The Commission emphasizes that the Commission has adopted rules to facilitate flexible terrestrial wireless use of 4950 megahertz of mmW spectrum across five bands, which will be licensed in multiple blocks of different sizes and geographic areas, providing many spectrum opportunities for various types of auction bidders. In addition, given the similar technical characteristics and potential uses of the mmW spectrum for the *R&O* bands—relative to the 24 GHz and 47 GHz bands—the Commission sees no reason to reach a different conclusion regarding a pre-auction limit for the *R&O* bands than it reached for the 24 GHz and 47 GHz bands. Moreover, treating certain UMFUS bands differently from others for purposes of a pre-auction limit would be inconsistent with the Commission's policy of treating *all* five UMFUS bands the same for purposes of

secondary market transactions. The Commission therefore concludes that entities bidding for licenses in the 24 GHz, 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands should not be subject to bright-line, pre-auction limits on the amount of spectrum they may acquire at an auction of these bands. Consistent with the Commission's rationale in the *2nd R&O*, the Commission concludes that this approach will maximize the opportunities in these bands for putting this mmW spectrum to efficient use.

26. Although the Commission will not apply an *ex ante* bright-line limit to the acquisition of spectrum in the five UMFUS bands through auction, the Commission will conduct an *ex post* case-by-case review to the acquisition through auction of spectrum in the UMFUS bands. In particular, the Commission finds that it is in the public interest to review applications for initial licenses filed post-auction on a case-by-case basis using the same 1850 megahertz threshold the Commission uses for reviewing applications for secondary market transactions. As noted above, the Commission continues to recognize that mmW spectrum is an important resource for the deployment of 5G and other advanced wireless services, as the Commission acknowledged in retaining the mmW spectrum threshold for secondary markets. Applying a post-auction case-by-case review will provide an opportunity to evaluate whether an applicant's post-auction spectrum holdings would result in excessive concertation of licenses, in a manner consistent with the Commission's obligations under Section 309(j)(3)(B). Moreover, the Commission finds that applying a case-by-case review to initial applications for spectrum won at auction is necessary to ensure that the public interest benefits of having a mmW spectrum threshold for reviewing proposed secondary market transactions are not rendered ineffective. In addition, unlike a bright-line pre-auction limit, a post-auction case-by-case review will provide flexibility to bidders and facilitate the assignment of licenses to those who value them the most. As is the case for the mmW spectrum threshold applied to secondary market transactions, the threshold the Commission will apply to review initial applications for spectrum won at auction merely identifies those markets that may warrant further competitive analysis.

27. The Commission intends to conduct the same type of case-by-case review that the Commission anticipated in 2001 when it eliminated the CMRS spectrum cap, and that it articulated in

2008 in the context of the 700 MHz auction (Auction 73), but which it discontinued in the 2014 *Mobile Spectrum Holdings Order*. Case-by-case review permits bidders to participate fully in a mmW spectrum auction, while still allowing the Commission to assess the impact on competition from the assignment of initial mmW spectrum licenses, and to take appropriate action to preserve or protect competition only where necessary. Thus, for example, the Commission may allow a winning auction bidder to exceed the threshold if it finds that this would not foreclose other competitors from acquiring similar mmW spectrum. Further, as was the case under the Commission's post-auction case-by-case review that previously was applied, in the event that a divestiture is required before issuing any new licenses, the winning bidder likely would have greater flexibility to choose which spectrum to divest among its existing mmW spectrum holdings or winning bids, in a manner that nevertheless would address competitive concerns.

28. In supporting such a case-by-case review, U.S. Cellular proposed a two-tiered public interest framework that relied on band-specific spectrum concentration limits. The Commission rejects their proposal for specific in-band limits for similar reasons as it articulated in the *R&O* and *2nd R&O*, where it stated that, either at auction or in the secondary market, separate band-specific limits are not necessary. Further, the Commission disagrees with commenters that allege that a post-auction case-by-case review creates uncertainty that is inconsistent with Section 309(j). The post-auction case-by-case review will be based on the standard articulated in the 2008 *Union Telephone Order*, and the Commission will apply this review to auctions of mmW bands going forward. Spectrum auctions were subject to this kind of review for a number of years before 2014, and the Commission finds that it is similarly appropriate with respect to the mmW spectrum. The Commission finds that such a case-by-case review provides parties with a clear and familiar standard that the Commission and Bureau have used, and continue to use, in reviewing proposed secondary market transactions currently. In that regard, the Commission finds that post-auction case-by-case review is likely to create sufficient bidder certainty consistent with Section 309(j)(3)(E) of the Communications Act, which emphasizes the need for clear bidding rules "to ensure that interested parties have a sufficient time to develop

business plans, assess marketplace conditions, and evaluate the availability of equipment for the relevant services." In addition, for the reasons discussed above, the Commission finds that the adoption of a post-auction case-by-case review for mmW spectrum is the best way to satisfy its obligation under another part of Section 309 to guard against the excessive concentration of licenses.

IV. Memorandum Opinion and Order

A. Licensing Lower 37 GHz

29. *Petitions for Reconsideration.* CTIA, CCA, 5G Americas, TIA, and T-Mobile (Petitioners) filed Petitions for Reconsideration (Petitions) of the *R&O* asking the Commission to reconsider decisions it made regarding the 37 GHz band. First, CTIA, CCA, 5G Americas, and T-Mobile ask the Commission to reconsider its decision to adopt a Shared Access Licensing scheme for the lower band segment in which non-Federal users would be licensed by rule. CTIA, 5G Americas, CCA, and T-Mobile recommend that the Commission instead adopt exclusive area licensing in the 37–37.6 GHz band. Second, 5G Americas and TIA ask the Commission to reconsider its decision that Federal operations should have expansion rights in the Lower 37 GHz band.

30. *Discussion.* The Commission denies the petitions of CTIA, CCA, 5G Americas, TIA, and T-Mobile under Section 1.429(b) of the Commission's rules because the Commission has already considered and rejected the arguments raised by the petitioners in favor of exclusive area licensing. In their comments and reply comments to the *NPRM*, the petitioners urged the Commission to adopt an exclusive area licensing scheme for the 37–37.6 GHz band. In their petitions for reconsideration, they raise no new facts or arguments here. In the *R&O*, the Commission concluded that "[a]lthough there is support in the record to license the entire 37 GHz band by geographic area, the Commission finds that it is in the public interest to license a portion of this band on a non-exclusive shared basis, and to license the remainder of the band by geographic area to give potential licensees additional opportunity to access large blocks of spectrum or to use 37 GHz spectrum in combination with, and similarly to, 39 GHz spectrum." The Commission explained that "[a]llowing part of the band to be made available on a non-exclusive, shared basis will promote access to spectrum by a wide variety of entities, support innovative uses of the band, and help ensure that spectrum is

widely utilized." The Commission further explained that "[a]dopting geographic area licensing for the other portion of the band will expeditiously make spectrum available and allow common development of the 37 GHz and 39 GHz bands." Thus, the Commission will not reconsider its decision to adopt a co-primary sharing scheme for the 37–37.6 GHz band and the Commission reaffirms its decision in the *Report and Order*.

31. The Commission rejects CTIA's argument that the Commission's action was arbitrary and capricious because the Commission did not "provide reasoning for adopting an untested sharing model that requires licensees to coordinate with Federal parties, the latter of which has proven to be highly successful for the AWS-1 and AWS-3 bands." In the *R&O*, the Commission explained that the sharing approach it adopted best enables "the band to be used for new commercial uses while simultaneously allowing fixed and mobile Federal use to expand." The Commission added that "[a]llowing part of the band to be made available on a non-exclusive, shared basis will promote access to spectrum by a wide variety of entities, support innovative uses of the band, and help ensure that spectrum is widely utilized." The Commission further stated that the approach it adopted provided "satellite operators the certainty they need to be able to expand their operations into the 37 GHz band in the future. Nothing in the petitions supports the change in direction suggested by petitioners.

32. In the *R&O*, the Commission directed the Wireless Bureau and Office of Engineering and Technology to collaborate with NTIA and Federal stakeholders, as well as industry stakeholders and other interested parties to further define the sharing framework." Initial collaboration has identified the issues raised in the *3rd FNPRM* adopted June 7, 2018. The *3rd FNPRM* presents another opportunity to open a dialogue about how sharing can best be implemented and achieved in the Lower 37 GHz band prior to the adoption of final sharing rules. The Commission looks forward to continuing to work with NTIA, Federal stakeholders, and industry to complete development of the sharing mechanism.

B. FSS Allocation in 42–42.5 GHz

33. *Background.* In the *R&O*, the Commission declined to allocate the 42 GHz band for fixed satellite service (FSS) downlink operations. It concluded there was less reason to expand FSS operations into the 42 GHz band given that it was already granting FSS

enhanced access to the 37.5–40 GHz band and because FSS has exclusive access to the 40.5–42 GHz band. Rather, the Commission saw greater value in making the band available exclusively for terrestrial use.

34. Various satellite interests sought reconsideration of that decision. ViaSat asserts that “the 42–42.5 GHz band segment could be used in connection with the downlink spectrum that currently is available for satellite use in the adjacent 37.5–42 GHz band segment to achieve increased satellite broadband network capabilities that will be needed to meet this exponentially expanding consumer demand.” ViaSat, SES, and O3b argue that providing satellite access to the 42 GHz band also comes with an established public interest benefit—helping to bridge the digital divide in rural America.

35. *Discussion.* The Commission declines to reconsider its decisions to not allocate the 42 GHz band for FSS use. The Commission’s decision was part of an overall goal to have a balanced strategy for sharing between terrestrial and satellite services in V-band. Given the Commission’s prior decisions to provide FSS with exclusive access to the 40–42 GHz and 48.2–50.2 GHz bands—plus shared access to the 37.5–40 GHz and 28 GHz bands, the Commission see nothing arbitrary in reserving 500 megahertz of spectrum for exclusive terrestrial use. Moreover, the Commission notes that in the *3rd R&O* above, the Commission provides for shared FSS use of the 24 GHz band. Satellite interests raise no new facts and merely reassert arguments they made previously regarding the need for the 42 GHz band to deploy broadband. They also have not demonstrated that the Commission has committed any error.

36. The MOBILE NOW Act does not require us to give further consideration to adding an FSS allocation in the 42 GHz band. While the Act asks that the Commission considers how this band may be used to provide “commercial wireless broadband service,” including licensed and/or unlicensed service, it also asks that the Commission include technical characteristics under which the band may be employed for “mobile or fixed terrestrial wireless operations, including any appropriate coexistence requirements.” By its express language limiting any proposed licensed or unlicensed services in the band to “mobile and fixed terrestrial operations,” the Commission finds that Congress excluded the alternative of permitting licensed satellite service in the band. Legislative history also indicates that Congress intended such mmW spectrum for “mobile or fixed

terrestrial wireless operations, including for broadband” without any concomitant discussion of satellite service. Accordingly, the Commission does not believe the MOBILE NOW Act requires that it reconsider permitting satellite service in the 42 GHz band or to consider how this non-terrestrial service could share with any possible licensed and unlicensed terrestrial services on whose coexistence the Commission now seeks comment.

V. Final Regulatory Flexibility Analysis

37. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2nd FNPRM* released in November 2017 in this proceeding. The Commission sought written public comment on the proposals in the *2nd FNPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Third Report and Order

38. In the *3rd R&O*, the Commission authorizes Fixed-Satellite Service (FSS) use of the 24.75–25.25 GHz band for individually licensed earth stations. Under the current rules, Broadcasting Satellite Service (BSS) feeder links have priority over other FSS uses in the 24.75–25.25 GHz band. Given the very light use of the 24.75–25.25 GHz band for BSS feeder links, the existence of the Commission’s earth station two-degree spacing rules that can protect BSS feeder links from other FSS earth stations in the band, and the power limits placed on BSS feeder link earth stations, there is no need to give BSS feeder link earth stations priority over other uses of the FSS for earth stations located within the United States, or to preclude other FSS earth stations from claiming protection from feeder link earth stations located within the United States.

39. The *3rd R&O* also creates a buildout standard for UMFUS licensees based on geographic area coverage that would be an alternative to the current population coverage standard in the current rules. A performance metric based on geographic area coverage (or presence) would allow for networks that provide meaningful service but deploy along other lines than residential population. Such a metric could be useful for sensor-based networks, particularly for uses in rural areas. The Commission adopts the following metric as an option for UMFUS licensees to fulfill their buildout requirements: Geographic area coverage of 25% of the

license area. The latter standard could accommodate deployments, such as sensor networks, that are not designed to provide mobile or point-to-multipoint area coverage, and for whom calculating “coverage of 25% of the area” would therefore not be a meaningful standard.

40. The *3rd R&O* also adopts an operability requirement such that any device designed to operate within the 24 GHz bands must be capable of operating on all frequencies within those bands. This operability requirement will ensure that devices developed for the 24 GHz band operate throughout the band, making it easier for smaller businesses with fewer resources to find equipment that can operate across the entire band.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

41. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

42. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

43. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

44. *Fixed Microwave Services.*

Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the UMFUS and the Millimeter Wave Service where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus, under this SBA category and the associated standard, the Commission estimates that the majority of fixed microwave service licensees can be considered small.

45. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that both the common carrier microwave fixed and the private operational microwave fixed licensee categories includes some large entities.

46. *Satellite Telecommunications and All Other Telecommunications.* This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." The category has

a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

47. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 1442 firms that operated for the entire year. Of these firms, a total of 1400 firms had gross annual receipts of under \$25 million and 42 firms had gross annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that a majority of "All Other Telecommunications" firms potentially affected by its actions can be considered small.

48. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number,

828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry is small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

49. The Commission expects the rules adopted in the 3rd R&O will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other applicants and licensees. The projected reporting, recordkeeping, and other compliance requirements in the 3rd R&O will apply to all entities in the same manner. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to wireless spectrum.

50. Small entities and other applicants for UMFUS licenses will be required to file license applications using the Commission's automated Universal Licensing System (ULS). ULS is an online electronic filing system that also serves as a powerful information tool, one that enables potential licensees to research applications, licenses, and antenna structures. It also keeps the public informed with weekly public notices, FCC rulemakings, processing utilities, and a telecommunications glossary. Small entities, like all other entities who are UMFUS applicants, must submit long-form license applications must do so through ULS using Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms.

51. The Commission expects that the filing, recordkeeping and reporting requirements associated with the demands described above will require small businesses as well as other entities that intend to utilize these new UMFUS licenses to use professional, accounting, engineering or survey services in order to meet these requirements. As described below, several steps have been taken that will alleviate the burdens of the requirements on small businesses.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant, specifically

small business, alternatives that it has considered in reaching its 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 or reporting requirements under the rule for 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.

53. The Commission does not believe that its adopted changes will have a significant economic impact on small entities. As noted above, the various construction and performance requirements and their associated showings will be the same for small and large businesses that license the UMFUS bands. To the extent applying the rules equally to all entities results in the cost of complying with these burdens being relatively greater for smaller businesses than for large ones, these costs are necessary to effectuate the purpose of the Communications Act, namely to further the efficient use of spectrum and to prevent spectrum warehousing. Likewise compliance with the Commission's service and technical rules and coordination requirements are necessary for the furtherance of its goals of protecting the public while also providing interference free services. Moreover, while small and large businesses must equally comply with these rules and requirements, the Commission has taken the steps described below to help alleviate the burden on small businesses that seek to comply with these requirements.

54. The proposals to facilitate satellite service in the 24 GHz band should also assist small satellite businesses by providing them with additional flexibility to locate their earth stations without causing interference to or receiving interference from UMFUS licensees.

G. Report to Congress

55. The Commission will send a copy of the *3rd R&O*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *3rd R&O*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *3rd R&O*, and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

56. *It is ordered*, pursuant to the authority found in sections 1, 2, 3, 4, 5, 7, 301, 302, 302a, 303, 304, 307, 309, and 310 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 301, 302, 302a, 303, 304, 307, 309, and 310, section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and § 1.411 of the Commission's rules, 47 CFR 1.411, that the *Third Report and Order*, Third Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order *is hereby adopted*.

57. *It is further ordered* that the Commission's rules *are hereby amended* as set forth in the Final Rules.

58. *It is further ordered* that the provisions and requirements of this *Third Report and Order* and the rules adopted herein *will become effective* August 20, 2018, except for rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and *will become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

59. *It is further ordered* that the petitions for reconsideration listed in the *Petitions for Reconsideration of Spectrum Frontiers Report and Order* *are granted* to the extent indicated and *are otherwise denied*.

60. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference

Information Center, *shall send* a copy of this *Third Report and Order*, *Third Further Notice of Proposed Rulemaking*, and *Memorandum Opinion and Order*, including the Final, Supplemental Final, and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

61. *It is further ordered* that the Commission *shall send* a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 2, 25 and 30

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Satellites.

Federal Communications Commission,

Marlene Dortch,

Secretary, Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, and 30 as follows:

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

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

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

■ 2. In § 2.106, the Table of Frequency Allocations is amended as follows:

■ a. Page 54 is revised.

■ b. In the list of non-Federal Government (NG) Footnotes, footnote NG65 is revised and footnote NG535 is removed.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

24-24.05 AMATEUR AMATEUR-SATELLITE			24-24.05 AMATEUR AMATEUR-SATELLITE	SM Equipment (18) Amateur Radio (97)
5.150			5.150 US211	5.150 US211
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active)			24.05-24.25 RADIOLOCATION G59 Earth exploration-satellite (active)	24.05-24.25 Amateur Earth exploration-satellite (active) Radiolocation
5.150			5.150	5.150
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 FIXED MOBILE RADIONAVIGATION	24.25-24.45	24.25-24.45 FIXED MOBILE
				RF Devices (15) Upper Microwave Flexible Use (30)
24.45-24.65 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION	24.45-24.65 INTER-SATELLITE RADIONAVIGATION	RF Devices (15) Satellite Communications (25)
	5.533	5.533	5.533	
24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	

		MOBILE 5.533			
24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B	24.75-25.25 FIXED-SATELLITE (Earth-to-space) 5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE	24.75-25.25	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) NG65 MOBILE	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30)
25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)	RF Devices (15)
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space)			25.5-27 EARTH EXPLORATION- SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	25.5-27 SPACE RESEARCH (space-to-Earth) Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	
5.536A					

BILLING CODE 6712-01-C

* * * * *

Non-Federal Government (NG)**Footnotes**

* * * * *

NG65 In the bands 24.75–25.25 GHz and 47.2–48.2 GHz, stations in the fixed and mobile services may not claim protection from individually licensed earth stations authorized pursuant to 47 CFR 25.136. However, nothing in this footnote shall limit the right of UMFUS licensees to operate in conformance with the technical rules contained in 47 CFR part 30. The Commission reserves the right to monitor developments and to undertake further action concerning interference between UMFUS and FSS, including aggregate interference to satellite receivers, if appropriate.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. Amend § 25.103 by revising the definitions of “Routine processing or licensing” and “Two-degree-compliant space station” to read as follows:

§ 25.103 Definitions.

* * * * *

Routine processing or licensing. Expedited processing of unopposed applications for earth stations in the FSS communicating with GSO space stations, that satisfy the criteria in §§ 25.138(a), 25.211(d), 25.212(c), 25.212(d), 25.212(e), 25.212(f), or 25.218, include all required information, are consistent with all Commission rules, and do not raise any policy issues. Some, but not all, routine earth station applications are eligible for an autogrant procedure under § 25.115(a)(3).

* * * * *

Two-degree-compliant space station. A GSO FSS space station operating in the conventional or extended C-bands, the conventional or extended Ku-bands, the 24.75–25.25 GHz band, or the conventional Ka-band within the limits on downlink EIRP density or PFD specified in § 25.140(a)(3) and communicating only with earth stations operating in conformance with routine uplink parameters specified in

§§ 25.138(a), 25.211(d), 25.212(c), (d), or (f), §§ 25.218, 25.221(a)(1) or (a)(3), or § 25.222(a)(1) or (a)(3), § 25.226(a)(1) or (a)(3), or § 25.227(a)(1) or (a)(3).

* * * * *

■ 5. Amend § 25.114 by revising paragraph (d)(7) and removing and reserving paragraph (d)(17) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(7) Applicants for authorizations for space stations in the Fixed-Satellite Service, including applicants proposing feeder links for space stations operating in the 17/24 GHz Broadcasting-Satellite Service, must also include the information specified in § 25.140(a). Applicants for authorizations for space stations in the 17/24 GHz Broadcasting-Satellite Service must also include the information specified in § 25.140(b);

* * * * *

(17) [Reserved]

* * * * *

■ 6. Amend § 25.115 by revising paragraphs (e)(1) and (g)(1)(vii) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(e) * * *

(1) An application for a GSO FSS earth station license in the 17.8–19.4 GHz, 19.6–20.2 GHz, 24.75–25.25 GHz, 27.5–29.1 GHz, or 29.25–30 GHz bands not filed on FCC Form 312EZ, pursuant to paragraph (a)(2) of this section must be filed on FCC Form 312, Main Form and Schedule B, and must include any information required by paragraph (g) or (j) of this section or by § 25.130.

* * * * *

(g) * * *

(1) * * *

(vii) The relevant off-axis EIRP density envelopes in §§ 25.138, 25.218, 25.221, 25.222, 25.226, or § 25.227 must be superimposed on plots submitted pursuant to paragraphs (g)(1)(i) through (vi) of this section.

* * * * *

■ 7. Amend § 25.136 by adding new paragraph (g) to read as follows:

§ 25.136 Earth Stations in the 24.75–25.25 GHz, 27.5–28.35 GHz, 37.5–40 GHz and 47.2–48.2 GHz bands.

* * * * *

(g) Notwithstanding that FSS is co-primary with the Upper Microwave Flexible Use Service in the 24.75–25.25 GHz band, earth stations in that bands shall be limited to individually licensed earth stations. An applicant for a license for a transmitting earth station in the 24.75–25.25 GHz band must meet one of the following criteria to be authorized to operate without providing any additional interference protection to stations in the Upper Microwave Flexible Use Service:

(1) The FSS licensee also holds the relevant Upper Microwave Flexible Use Service license(s) for the area in which the earth station generates a power flux density (PFD), at 10 meters above ground level, of greater than or equal to -77.6 dBm/m²/MHz;

(2) The earth station in the 24.75–25.25 GHz band was authorized prior to August 20, 2018; or

(3) The application for the earth station in the 24.75–25.25 GHz band was filed prior to August 20, 2018; or

(4) The applicant demonstrates compliance with all of the following criteria in its application:

(i) There are no more than two other authorized earth stations operating in the 24.75–25.25 GHz band within the county where the proposed earth station is located that meet the criteria contained in either paragraphs (g)(1) (g)(2), (g)(3) or (g)(4) of this section, and there are no more than 14 other authorized earth stations operating in the 24.75–25.25 GHz band within the Partial Economic Area where the proposed earth station is located that meet the criteria contained in paragraphs (g)(1) (g)(2), (g)(3) or (g)(4) of this section. For purposes of this requirement, multiple earth stations that are collocated with or at a location contiguous to each other shall be considered as one earth station;

(ii) The area in which the earth station generates a power flux density (PFD), at 10 meters above ground level, of greater than or equal to -77.6 dBm/m²/MHz, together with the similar area of any other earth station operating in the 24.75–25.25 GHz band authorized pursuant to paragraph (g) of this section, does not cover, in the aggregate, more than the amount of population of the county within which the earth station is located as noted below:

TABLE 1 TO PARAGRAPH (g)(4)(ii)

Population within the county where earth station is located	Maximum permitted aggregate population within -77.6 dBm/m ² /MHz PFD contour of earth stations
Greater than 450,000	0.1 percent of population in county.
Between 6,000 and 450,000	450 people.
Fewer than 6,000	7.5 percent of population in county.

(iii) The area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to -77.6 dBm/m²/MHz does not contain any major event venue, urban mass transit route, passenger railroad, or cruise ship port. In addition, the area mentioned in paragraph (a)(4)(ii) of this section shall not cross any of the following types of roads, as defined in functional classification guidelines issued by the Federal Highway Administration pursuant to 23 CFR 470.105(b): Interstate, Other Freeways and Expressways, or Other Principal Arterial. The Federal Highway Administration Office of Planning, Environment, and Realty Executive Geographic Information System (HEPGIS) map contains information on the classification of roads. For purposes of this rule, an urban area shall be an Adjusted Urban Area as defined in section 101(a)(37) of Title 21 of the United States Code.

(iv) The applicant has successfully completed frequency coordination with the UMFUS licensees within the area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to -77.6 dBm/m²/MHz with respect to existing facilities constructed and in operation by the UMFUS licensee. In coordinating with UMFUS licensees, the applicant shall use the applicable processes contained in § 101.103(d) of this chapter. (f) If an earth station applicant or licensee in the 24.75–25.25 GHz, 27.5–28.35 GHz, 37.5–40 GHz and/or 47.2–48.2 GHz bands enters into an agreement with an UMFUS licensee, their operations shall be governed by that agreement, except to the extent that the agreement is inconsistent with the Commission’s rules or the Communications Act.

* * * * *

■ 8. Amend § 25.138 by revising the section heading and paragraph (a) introductory text, and paragraph (a)(6) to read as follows:

§ 25.138 Licensing requirements for GSO FSS earth stations in the conventional Ka-band and the 24.75–25.25 GHz band.

(a) Applications for earth station licenses in the GSO FSS in the conventional Ka-band or the 24.75–

25.25 GHz band that indicate that the following requirements will be met and include the information required by relevant provisions in §§ 25.115 and 25.130 may be routinely processed:

* * * * *

(6) The pfd at the Earth’s surface produced by emissions from a space station operating in the conventional Ka-band, for all conditions including clear sky, and for all methods of modulation, shall not exceed a level of -118 dBW/m²/MHz, in addition to the limits specified in § 25.208(d).

- * * * * *
- 9. Amend § 25.140 by:
 - a. Revising paragraphs (a)(2), (a)(3) introductory text, and (a)(3)(iv) through (v);
 - b. Adding paragraph (a)(3)(vi);
 - c. Revising paragraphs (b) introductory text, and (b)(3) through (5);
 - d. Removing paragraph (b)(6);
 - e. Removing and reserving paragraph (c); and
 - f. Revising paragraph (d) introductory text.

The revisions and addition read as follows:

§ 25.140 Further requirements for license applications for GSO space station operation in the FSS and the 17/24 GHz BSS.

(a) * * *

(2) In addition to the information required by § 25.114, an applicant for GSO FSS space station operation, including applicants proposing feeder links for space stations operating in the 17/24 GHz BSS, that will be located at an orbital location less than two degrees from the assigned location of an authorized co-frequency GSO space station, must either certify that the proposed operation has been coordinated with the operator of the co-frequency space station or submit an interference analysis demonstrating the compatibility of the proposed system with the co-frequency space station. Such an analysis must include, for each type of radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See Appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 83–184, and the

following public notices, copies of which are available in the Commission’s EDOCS database, available at <https://www.fcc.gov/edocs>: DA 03–3863 and DA 04–1708.) The provisions in this paragraph do not apply to proposed analog video operation, which is subject to the requirement in paragraph (a)(1) of this section.

(3) In addition to the information required by § 25.114, an applicant for a GSO FSS space station, including applicants proposing feeder links for space stations operating in the 17/24 GHz BSS, must provide the following for operation other than analog video operation:

* * * * *

(iv) With respect to proposed operation in the 24.75–25.25 GHz band (Earth-to-space), a certification that the proposed uplink operation will not exceed the applicable EIRP density envelopes in § 25.138(a) and that the associated space station will not generate a power flux density at the Earth’s surface in excess of the applicable limits in this part, unless the non-routine uplink and/or downlink FSS operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six degrees of the orbital location and except as provided in paragraph (d) of this section.

(v) With respect to proposed operation in the 4500–4800 MHz (space-to-Earth), 6725–7025 MHz (Earth-to-space), 10.70–10.95 GHz (space-to-Earth), 11.20–11.45 GHz (space-to-Earth), and/or 12.75–13.25 GHz (Earth-to-space) bands, a statement that the proposed operation will take into account the applicable requirements of Appendix 30B of the ITU Radio Regulations (incorporated by reference, see § 25.108) and a demonstration that it is compatible with other U.S. ITU filings under Appendix 30B.

(vi) With respect to proposed operation in other FSS bands, an interference analysis demonstrating compatibility with any previously authorized co-frequency space station at a location two degrees away or a certification that the proposed operation has been coordinated with the operator(s) of the previously authorized

space station(s). If there is no previously authorized space station at a location two degrees away, the applicant must submit an interference analysis demonstrating compatibility with a hypothetical co-frequency space station two degrees away with the same receiving and transmitting characteristics as the proposed space station.

(b) Each applicant for a license to operate a space station transmitting in the 17.3–17.8 GHz band must provide the following information, in addition to that required by § 25.114:

(3) An applicant for a license to operate a space station transmitting in the 17.3–17.8 GHz band must certify that the downlink power flux density on the Earth’s surface will not exceed the values specified in § 25.208(c) and/or (w), or must provide the certification specified in § 25.114(d)(15)(ii).

(4) An applicant for a license to operate a space station transmitting in the 17.3–17.8 GHz band to be located less than four degrees from a previously licensed or proposed space station transmitting in the 17.3–17.8 GHz band, must either certify that the proposed operation has been coordinated with the operator of the co-frequency space station or provide an interference analysis of the kind described in paragraph (a) of this section, except that the applicant must demonstrate that its proposed network will not cause more interference to the adjacent space station transmitting in the 17.3–17.8 GHz band operating in compliance with the technical requirements of this part, than if the applicant were located at an orbital separation of four degrees from the previously licensed or proposed space station.

(5) In addition to the requirements of paragraphs (b)(3) and (4) of this section, the link budget for any satellite in the 17.3–17.8 GHz band (space-to-Earth) must take into account longitudinal stationkeeping tolerances. Any applicant for a space station transmitting in the 17.3–17.8 GHz band that has reached a coordination agreement with an operator of another space station to allow that operator to exceed the pfd levels specified in § 25.208(c) or § 25.208(w), must use those higher pfd levels for the purpose of this showing.

(c) [Reserved]

(d) An operator of a GSO FSS space station in the conventional or extended C-bands, conventional or extended Ku-bands, 24.75–25.25 GHz band (Earth-to-space), or conventional Ka-band may notify the Commission of its non-

routine transmission levels and be relieved of the obligation to coordinate such levels with later applicants and petitioners.

§ 25.203 [Amended]

■ 10. Amend § 25.203 by removing and reserving paragraph (l).

■ 11. Amend § 25.204 by removing paragraph (e)(4) and revising paragraphs (e) introductory text, (e)(1) and (3) to read as follows:

§ 25.204 Power limits for earth stations.

(e) To the extent specified in paragraphs (e)(1) through (e)(3) of this section, earth stations in the Fixed-Satellite Service may employ uplink adaptive power control or other methods of fade compensation to facilitate transmission of uplinks at power levels required for desired link performance while minimizing interference between networks.

(1) Except when paragraphs (e)(2) through (e)(3) of this section apply, transmissions from FSS earth stations in frequencies above 10 GHz may exceed the uplink EIRP and EIRP density limits specified in the station authorization under conditions of uplink fading due to precipitation by an amount not to exceed 1 dB above the actual amount of monitored excess attenuation over clear sky propagation conditions. EIRP levels must be returned to normal as soon as the attenuating weather pattern subsides.

(3) FSS earth stations transmitting to geostationary space stations in the 24.75–25.25 GHz, 28.35–28.6 GHz, and/or 29.25–30.0 GHz bands may employ uplink adaptive power control or other methods of fade compensation. For stations employing uplink power control, the values in paragraphs (a)(1), (2), and (4) of § 25.138 may be exceeded by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions must not exceed 1.5 dB or 15 percent of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5 percent of the time during which the excess is no more than 4.0 dB.

■ 12. Amend § 25.209 by revising paragraph (f) to read as follows:

§ 25.209 Earth station antenna performance standards.

(f) A GSO FSS earth station with an antenna that does not conform to the applicable standards in paragraphs (a) and (b) of this section will be authorized only if the applicant demonstrates that the antenna will not cause unacceptable interference. This demonstration must comply with the requirements in §§ 25.138, 25.218, 25.220, 25.221, 25.222, 25.226, or § 25.227, as appropriate.

■ 13. Amend § 25.210 by revising paragraph (i) to read as follows:

§ 25.210 Technical requirements for space stations.

(i) 17/24 GHz BSS space station antennas transmitting in the 17.3–17.8 GHz band must be designed to provide a cross-polarization isolation such that the ratio of the on axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band is at least 25 dB within its primary coverage area.

■ 14. Amend § 25.220 by revising paragraph (a) to read as follows:

§ 25.220 Non-routine transmit/receive earth station operations.

(a) The requirements in this section apply to applications for, and operation of, earth stations transmitting in the conventional or extended C-bands, the conventional or extended Ku-bands, the 24.75–25.25 GHz band, or the conventional Ka-band that do not qualify for routine licensing under relevant criteria in §§ 25.138, 25.211, 25.212, 25.218, 25.221(a)(1) or (a)(3), § 25.222(a)(1) or (a)(3), § 25.226(a)(1) or (a)(3), or § 25.227(a)(1) or (a)(3).

§ 25.223 [Removed and Reserved]

■ 15. Remove and reserve § 25.223.
 ■ 16. Revise § 25.262 to read as follows:

§ 25.262 Licensing and domestic coordination requirements for 17/24 GHz BSS space stations.

(a) An applicant may be authorized to operate a space station transmitting in the 17.3–17.8 GHz band at levels up to the maximum power flux density limits defined in § 25.208(c) and/or § 25.208(w), without coordinating its power flux density levels with adjacent licensed or permitted operators, only if there is no licensed space station, or prior-filed application for a space station transmitting in the 17.3–17.8 GHz band at a location less than four degrees from the orbital location at

which the applicant proposes to operate.

(b) Any U.S. licensee or permittee authorized to transmit in the 17.3–17.8 GHz band that does not comply with the power flux-density limits set forth in § 25.208(c) and/or § 25.208(w) shall bear the burden of coordinating with any future co-frequency licensees and permittees of a space station transmitting in the 17.3–17.8 GHz band under the following circumstances:

(1) If the operator's space-to-Earth power flux-density levels exceed the power flux-density limits set forth in § 25.208(c) and/or § 25.208(w) by 3 dB or less, the operator shall bear the burden of coordinating with any future operators proposing a space station transmitting in the 17.3–17.8 GHz band in compliance with power flux-density limits set forth in § 25.208(c) and/or § 25.208(w) and located within ± 6 degrees of the operator's 17/24 GHz BSS space station.

(2) If the operator's space-to-Earth power flux-density levels exceed the power flux-density limits set forth in § 25.208(c) and/or § 25.208(w) by more than 3 dB, the operator shall bear the burden of coordinating with any future operators proposing a space station transmitting in the 17.3–17.8 GHz band in compliance with power flux-density limits set forth in § 25.208(c) and/or § 25.208(w) and located within ± 10 degrees of the operator's space station.

(3) If no good faith agreement can be reached, the operator of the space station transmitting in the 17.3–17.8 GHz band that does not comply with § 25.208(c) and/or § 25.208(w) shall reduce its space-to-Earth power flux-density levels to be compliant with those specified in § 25.208(c) and/or § 25.208(w).

(c) Any U.S. licensee or permittee using a space station transmitting in the 17.3–17.8 GHz band that is required to provide information in its application pursuant to § 25.140(b)(4) must accept any increased interference that may result from adjacent space stations transmitting in the 17.3–17.8 GHz band that are operating in compliance with the rules for such space stations specified in §§ 25.140(b), 25.202(a)(9) and (e)–(g), 25.208(c) and (w), 25.210(i)–(j), 25.224, 25.262, 25.264(h), and 25.273(a)(3)).

(d) Notwithstanding the provisions of this, licensees and permittees will be allowed to apply for a license or authorization for a replacement satellite that will be operated at the same power level and interference protection as the satellite to be replaced.

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

■ 17. The authority citation for part 30 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.

■ 18. Amend § 30.104 by revising the section heading, redesignating paragraphs (b) through (e) as paragraphs (c) through (f), adding new paragraph (b), and revising newly redesignated paragraphs (c), (e), and (f) to read as follows:

§ 30.104 Performance requirements.

* * * * *

(b) In the alternative, a licensee may make its buildout showing on the basis of geographic area coverage. To satisfy the requirements of using this metric, licensees relying on mobile or point-to-multipoint service must show that they are providing reliable signal coverage and service to at least 25% of the geographic area of the license. The geographic area of the license shall be determined by the total land area of the county or counties covered by the license. Licensees relying on fixed point-to-point links or other, low-power point-to-point connections must show that they have deployed at least one transmitter or receiver in at least 25% of the census tracts within the license area. All equipment relied upon in the showing, whatever type of service or connection it provides, must be operational and providing service, either to customers or for internal use, as of the date of the filing.

(c) Showings that rely on a combination of multiple types of service will be evaluated on a case-by-case basis. Licensees may not combine population-based showings with geographic area-based showings.

* * * * *

(e) Failure to meet this requirement will result in automatic cancellation of the license. In bands licensed on a Partial Economic Area basis, licensees will have the option of partitioning a license on a county basis in order to reduce the population or land area within the license area to a level where the licensee's buildout would meet one of the applicable performance metrics.

(f) Existing 24 GHz, 28 GHz and 39 GHz licensees shall be required to make a showing pursuant to this section by June 1, 2024.

■ 19. Revise § 30.208 to read as follows:

§ 30.208 Operability.

Mobile and transportable stations that operate on any portion of frequencies within the 27.5–28.35 GHz or the 37–40 GHz bands must be capable of operating

on all frequencies within those particular bands. Mobile and transportable stations that operate on any portion of either the 24.25–24.45 GHz or 24.75–25.25 GHz bands must be capable of operating on all frequencies within both of those bands.

[FR Doc. 2018–14806 Filed 7–19–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180220196–8196–01]

RIN 0648–XG051

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2018 Sector Operations Plans and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule determines the quota overages that Northeast Fishery Sector IX is responsible for paying back, allocates annual catch entitlements to Northeast Fishery Sectors VII and IX for the 2018 fishing year, approves a new lease-only operations plan for Northeast Fishery Sector IX, and approves a substantive amendment to Northeast Fishery Sector VII operations plan. Approval of the operations plans and allocation of annual catch entitlements is necessary for the sectors to operate. This action is intended to ensure that these sectors are allocated accurate annual catch entitlements that account for past catch overages, and that the sectors' operations plans can achieve the conservation and management objectives of the Northeast Multispecies Fishery Management Plan.

DATES: Effective July 20, 2018 through April 30, 2019. Comments must be received on or before August 20, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0069, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

www.regulations.gov/
#!docketDetail;D=NOAA-NMFS-2018-0069, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Rulemaking for NEFS 7 and NEFS 9.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of each sector’s operations plan and contract, as well as the programmatic environmental assessment for sectors operations in fishing years 2015 to 2020, are available from the NMFS Greater Atlantic Regional Fisheries Office (GARFO): Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the GARFO website: <https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies/>.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Policy Analyst, (978) 282-8493.

SUPPLEMENTARY INFORMATION:

Background

To help achieve the fishing mortality and conservation objectives of the Northeast Multispecies Fishery Management Plan (FMP), each sector is allocated annual catch entitlements (ACE) and must ensure that these ACEs are not exceeded. The Regional Administrator must approve sector operations plans in order for sectors to operate and be allocated ACE for specific groundfish stocks. A sector’s operations plan includes a detailed plan for monitoring and reporting catch and the specific management rules sector participants will abide by in order to avoid exceeding the sector’s allocation, as well as a plan for how the sector will operate if an ACE is exceeded. The operations plan also includes internal

sector enforcement measures for operations plan breaches and remedies, such as a penalty schedule for operations plan non-compliance or other actions that would jeopardize the sector’s continued approval. Penalties under the plan range from a written warning or fine to expulsion from the sector.

On March 30, 2017, Carlos Rafael pleaded guilty to all counts in *United States v. Carlos Rafael* (No. 16–CR10124–WGY). Mr. Rafael is the owner of Carlos Seafood (a Federally permitted dealer) and a fleet of Federally permitted groundfish vessels that are enrolled in Northeast Fishery Sector IX (NEFS 9). Mr. Rafael admitted to falsely reporting catch information on dealer catch reports and vessel trip reports from 2012 through 2015. All of the vessels involved in the misreporting operated under the sector operations plan for NEFS 9 during the period of known misreporting, were enrolled in NEFS 9 for fishing year 2017, and are now enrolled in Northeast Fishery Sector VII (NEFS 7) for fishing year 2018.

On September 25, 2017, Mr. Rafael was sentenced to serve 46 months in prison and 3 years of supervised release. During his supervised release, he is barred from working in the fishing industry. The Court also ordered Mr. Rafael to pay a fine of \$200,000 and forfeited Mr. Rafael’s interests in four fishing vessels used in the criminal violations, including all fishing permits that NMFS issued to the four vessels.

As a result of Mr. Rafael’s violations, NEFS 9 was operating without having accurately accounted for its available ACE. Further, the violations revealed a failure of adequate sector oversight and accounting. On November 22, 2017, we published an interim final rule to withdraw approval of the Fishing Years 2017 and 2018 Sector Operations Plan for NEFS 9 (82 FR 55522). This withdrawal was a necessary administrative action because NEFS 9 and its participants failed to uphold the requirements of the sector operations plan and adequately respond to Mr. Rafael’s violations. Without accurate catch and ACE accounting, effective monitoring, or internal governance, we determined that continuation of the sector would undermine conservation and management objectives of the FMP. With the disapproval of the sector’s operation plan, the members of NEFS 9 are not allowed to fish for groundfish, and the sector cannot transfer quota to or from other sectors.

On February 22, 2018, the NEFS 9 Board of Directors submitted a new sector operations plan for review and

approval. The operations plan would allow the sector to operate as a “lease-only” sector. As a lease-only sector, NEFS 9 vessels could not actively fish for groundfish, but the sector would be allowed to transfer groundfish quota to and from other sectors. NEFS 9 vessels could continue to fish for other species not managed under the Northeast Multispecies FMP for which they have permits, such as scallops, summer flounder, and squid.

On March 26, 2018, NEFS 7 and NEFS 9 submitted rosters for the 2018 fishing year, indicating that 55 of the 60 permits previously enrolled into NEFS 9 would move into NEFS 7. Only three permits remain in NEFS 9. Consistent with sector eligibility requirements these permits are issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in the sector. NEFS 7’s submitted roster included new members enrolled with the condition that all permits owned by Mr. Rafael would be inactive and unable to fish in the groundfish fishery unless and until the permit was sold to an independent third party. In order to implement and enforce this condition, the sector requested that, until such a sale occurred, we withhold the letters of authorization (LOA). LOAs are issued to all vessel owners or operators participating in a sector and authorize participation in sector operations. Because this permit condition is a substantive change to the operations plan, it requires rulemaking.

On May 1, 2018, we allocated groundfish quota to all sectors except NEFS 7 and NEFS 9. In that rule, we provided a summary of the NEFS 7 and 9 roster changes, but we did not make a determination regarding allocations to those two sectors (83 FR 18965; May 1, 2018). Before making this determination, we needed more information about, and time to evaluate how, NEFS 7 and NEFS 9 would operate and account for the past overages, and notified the public that these issues would be included in a separate rulemaking.

NEFS 9 Overages Due to Misreported Catch

When we withdrew approval of NEFS 9 in November 2017, the interim final rule stated that initial allocations made to the sector at the start of the 2017 fishing year were likely artificially high, and that it was possible that the sector’s 2017 catch might have already exceeded what should have been allocated. Based on analysis to assess the stock-level

apportionment of the misreported catch discovered in the criminal case, NEFS 9 ended the 2016 fishing year with quota overages for witch flounder, American plaice, Georges Bank (GB) cod, and Cape Cod/Gulf of Maine (CC/GOM) yellowtail flounder (Tables 1 and 2). We allocated ACE to NEFS 9 for fishing year 2017 without any adjustments, because, at that time, we had not yet determined the overages caused by the misreported catch. Because NEFS 9 was not

permitted to harvest groundfish after the sector operations plan was withdrawn in November, the sector was prevented from creating further overages, and unfished 2017 ACE reduced or eliminated the quota overages determined from admissions in the criminal case. After accounting for NEFS 9's available 2017 ACE after operations were suspended, we determined that NEFS 9 ended the 2017 fishing year with a single overage of

72,224 lb (32.8 mt) of witch flounder. This interim final rule announces the NEFS 9 fishing year 2017 balances for the stocks affected by the criminal case, as shown in Tables 1 and 2: Witch flounder, American plaice, GB cod, GOM cod, GB yellowtail flounder, Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder, and CC/GOM yellowtail flounder.

TABLE 1—SUMMARY OF NEFS 9 BALANCES (lb) AT END OF FISHING YEARS 2016 AND 2017

Stock	Balance at end of fishing year 2016	Balance at end of fishing year 2017
Witch flounder	-218,682	-72,224
American plaice	-115,789	12,867
Eastern GB cod	1,378	38,366
Western GB cod	-14,582	56,258
GOM cod	1,176	18,322
GB yellowtail flounder	130,589	88,674
SNE/MA yellowtail flounder	31,238	44,053
CC/GOM yellowtail flounder	-23,229	40,866

* Negative number indicates an overage.

TABLE 2—SUMMARY OF NEFS 9 BALANCES (mt) AT END OF FISHING YEARS 2016 AND 2017

Stock	Balance at end of fishing year 2016	Balance at end of fishing year 2017
Witch flounder	-99	-33
American plaice	-53	6
Eastern GB cod	1	17
Western GB cod	-7	26
GOM cod	1	8
GB yellowtail flounder	59	40
SNE/MA yellowtail flounder	14	20
CC/GOM yellowtail flounder	-11	19

* Negative number indicates an overage.

To calculate the overages, we applied the misreported catch to the appropriate fishing year, as if we had known about the catch during or immediately following the end of each fishing year. If the misreported catch caused an overage in a particular fishing year, we deducted the overage from the sector's allocation for the next fishing year. If the sector carried over quota into a fishing year that it should not have, we removed the carryover that would not have been available had we known about the additional catch. Misreported catch occurred in fishing years 2012–2015. We applied the resulting overages from 2015 to 2016 allocations and from 2016 to 2017 allocations. As stated earlier, NEFS 9 ended the 2016 fishing year with multiple overages. Because we withdrew approval of the sector's operations plan, and NEFS 9 vessels have not been able to fish for groundfish

since November 20, 2017, NEFS 9 ended fishing year 2017 with an overage for witch flounder only.

Catch Apportionment Calculations

As part of calculating the overages, we first correctly apportioned the misreported catch that was presented in the criminal case at a species level, broken down by calendar year. This required distributing the misreported catch into the appropriate fishing year, based on the landing date for trips associated with the misreported catch. Witch flounder and American plaice are unit stocks, and therefore, no further analysis was required. However, cod and yellowtail flounder are subdivided into management stock units. For cod, the sub-units are GOM and GB; GB is further divided into eastern and western GB. For yellowtail flounder, the sub-units are CC/GOM, GB, and SNE/MA.

Allocating the misreported catch to stock area requires estimating the stock areas where the misreported catch was likely to have been caught.

To apportion the misreported catch to the appropriate stock areas, we used data from the vessel monitoring systems (VMS) used by the vessels that were named in the criminal case to identify the most likely stock area from which that catch originated. We scaled the VMS effort by annual average catch-per-hour from observed groundfish trips by all sector vessels using trawl gear, to account for the different catch rate in different stock areas. The correctly apportioned catch by time and area was then applied to the allocated ACEs for the years in question to determine the overage amounts.

Sector Allocations for Fishing Year 2018 for NEFS 7 and NEFS 9

As stated above, on May 1, 2018, we allocated groundfish quota to all sectors except NEFS 7 and NEFS 9 and did not make a determination regarding allocating to those two sectors (83 FR 18965; May 1, 2018). This rule allocates groundfish quota to NEFS 7 and to NEFS 9, based on the final sector enrollment submitted by the sectors and

the fishing year 2018 specifications approved through Framework 57 (83 FR 18985; May 1, 2018). These allocations use updated rosters and are slightly different from the rule that proposed allocations for all sectors (83 FR 12706; March 23, 2018), which used the fishing year 2017 sector rosters as a basis to estimate fishing year 2018 sector allocations.

Consistent with how ACE is allocated to all other sectors, we calculate the

sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-annual catch limit (sub-ACL) for that stock. Table 3 shows the projected total PSC for each sector by stock for fishing year 2018. Table 4 shows an estimate of the allocations that each sector is allocated, in pounds and metric tons, respectively, for fishing year 2018.

TABLE 3—CUMULATIVE PSC (PERCENTAGE) FOR NEFS 7 AND NEFS 9 BY STOCK FOR FISHING YEAR 2018

Species	NEFS 7	NEFS 9
GB Cod	13.20690936349290	0.0362859749871986
GOM Cod	3.01910742037318	0.0000000000000000
GB Haddock	11.2685073680510	0.0259765497865176
GOM Haddock	7.40318927053197	0.0000000000000000
GB Yellowtail Flounder	25.51455362936140	0.0275501100708375
SNE/MA Yellowtail Flounder	8.53317090461840	0.0000000000000000
CC/GOM Yellowtail Flounder	10.56678059758250	0.0118856525483093
Plaice	9.61237900717373	0.0013210183240834
Witch Flounder	9.33559754356342	0.0000000000000000
GB Winter Flounder	33.29143002089540	0.0883620482300341
GOM Winter Flounder	2.94812548603488	0.0000000000000000
SNE/MA Winter Flounder	17.56207969721130	0.0107895691382281
Redfish	9.05128922223861	0.0000000000000000
White Hake	6.37760020543757	0.0000000000000000
Pollock	6.34572003847383	0.0007489254483443

TABLE 4—ESTIMATED ACE FOR NEFS 7 AND NEFS 9 (IN mt AND 1,000 lb) BY STOCK FOR FISHING YEAR 2018

Species	NEFS 7		NEFS 9	
	Sector ACE (mt)	Sector ACE (1,000 lb)	Sector ACE (mt)	Sector ACE (1,000 lb)
GB Cod East	34	75	0	0
GB Cod West	124	273	0	1
GOM Cod	11	24	0	0
GB Haddock East	1,758	3,875	4	9
GB Haddock West	3,274	7,219	8	17
GOM Haddock	647	1,426	0	0
GB Yellowtail Flounder	43	95	0	0
SNE/MA Yellowtail Flounder	4	8	0	0
CC/GOM Yellowtail Flounder	42	93	0	0
Plaice	152	335	0	0
Witch Flounder	77	171	0	0
GB Winter Flounder	243	536	1	1
GOM Winter Flounder	11	23	0	0
SNE/MA Winter Flounder	91	201	0	0
Redfish	973	2,146	0	0
White Hake	174	385	0	0
Pollock	2,373	5,232	0	1

Based on regulations at § 648.87(b)(1)(iii), should an ACE allocated to a sector be exceeded in a given fishing year, the sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year. If a sector has an overage, but disbands in the year following the overage, the overage follows the permits to the new sector(s) or to the common pool. If the sector does not disband, but does not have

sufficient ACE to pay back the overage, the sector's ACE for that stock is set to zero until the sector can acquire sufficient ACE to cover the remaining overage.

Therefore, if NEFS 9 has remaining overages from fishing year 2017, following any transfers conducted during a 2-week transfer window after all year-end catch accounting is complete (see section on NEFS 9 Operations Plan for more detail), NEFS 9's 2018 ACE would be reduced by the

overage on a pound-for-pound basis. However, because the permits enrolled in NEFS 9 for 2018 have zero PSC for witch flounder, the sector would be allocated zero pounds of witch flounder. Therefore, if the sector has a remaining overage from fishing year 2017, it would begin fishing year 2018 with a negative balance of witch flounder. The Board of NEFS 7 has agreed that if the NEFS 9 overage cannot be reconciled during the post-year transfer window, NEFS 7 will

transfer sufficient 2018 witch flounder ACE to NEFS 9 to cover the remaining overage. This commitment is included in the amendment to the NEFS 7 operations plan, as described later in this preamble.

NEFS 9 Sector Operations Plan

In this interim final rule, we are approving NEFS 9's sector operations plan and contract to operate as a lease-only sector. When the Regional Administrator withdrew approval of the NEFS 9 operations plan in November 2017, we cited accurate reporting, internal accountability, and organizational integrity as core principles of the sector system that were lacking in NEFS 9, as evidenced by the systematic and long-term sector and vessel misreporting. The operations plan was withdrawn, in part, because it did not contain measures that would provide accurate information or ensure compliance with the operations plan to prevent and address future misreporting or ACE overages. Restricting the sector to only being able to participate in the groundfish fishery through ACE transfers with other sectors addresses our concerns about the sector's ability to harvest groundfish and monitor and report that activity, consistent with the goals and objectives of the FMP. As a lease-only sector, NEFS 9 vessels cannot actively fish for groundfish, but the sector is allowed to transfer groundfish quota to and from other sectors, which will facilitate the sector's accounting for its ACE and overages. Based on this, we have determined that the lease-only sector operations plan and contract is consistent with the FMP's goals and objectives, and meets sector requirements outlined in the regulations at § 648.87.

The lease-only operations plan is a change from the previous operations plan for NEFS 9, for which the Regional Administrator withdrew approval. However, it is similar to the currently approved operations plan for NEFS 4, which also operates as a lease-only sector. An approved lease-only operations plan provides NEFS 9 with the ability to pay back the quota overage incurred by misreported catch. Without a new operations plan, NEFS 9 has no mechanism for reconciling the overages for which it is responsible. In April 2018, we consulted with the New England Fishery Management Council regarding NEFS 9, and the Council passed a motion to recommend that NMFS authorize the NEFS 9 lease-only operations plan to ensure the repayment of the NEFS 9 overage, as well as amend the NEFS 7 operations plan as needed and appropriately allocate to the sectors.

Because this interim final rule approves a lease-only sector operations plan for NEFS 9, the sector has the ability to eliminate the overage by transferring quota in from other sectors. We will allow NEFS 9 to transfer fishing year 2017 ACE for 2 weeks upon our completion of year-end catch accounting for all sectors to reduce or eliminate any fishing year 2017 overages. As provided by the regulations, this window of post-year transfers is opened annually. During this time, sectors are only allowed to transfer in quota to reconcile an overage. Quota for stocks that do not have an overage may not be transferred.

NEFS 7 Amendment to Operations Plan

In this interim final rule, we are approving an amendment to the NEFS 7 sector operations plan. As described above, on March 26, 2018, NEFS 7 submitted a roster for the 2018 fishing year, indicating that 55 of the 60 permits previously enrolled into NEFS 9 would move into NEFS 7, in addition to one vessel from NEFS 8. No vessels that had been enrolled in NEFS 7 for the 2017 fishing year remained in NEFS 7 for 2018. All 56 vessels enrolled in NEFS 7 for 2018 are listed as inactive. The NEFS 7 Board of Directors voted, as part of its process to allow vessels to enroll in the sector, to add a permit condition requiring all permits in which Mr. Rafael has an ownership interest to remain inactive and unable to fish in the groundfish fishery unless and until the permit is sold to an independent third party. By approving this permit condition as part of the NEFS 7 operations plan (along with the quota allocations described earlier), NEFS 7 is able to transfer ACE to and from other sectors in the 2018 fishing year, but vessels owned by Mr. Rafael cannot actively fish for groundfish.

All of the vessels that are enrolled in NEFS 7 and in which Mr. Rafael has no ownership interest are currently listed as inactive members of the sector. To become active, the sector Board would have to vote to allow a vessel to harvest sector ACE, consistent with normal sector operations, and notify NMFS of the vessel change in status. In contrast to the vessels owned by Mr. Rafael, these vessels do not need to be sold in order to be active in the groundfish fishery.

To facilitate and enforce the requirement for a vessel owned by Mr. Rafael to be sold to an independent third party before it could become active, the Board initially requested that we withhold LOAs for those permits until a permit is sold to an independent third party, the new member requests in

writing that the Board reconsider non-active status, and the NEFS 7 Board grants active status to the new member. However, current regulations at § 648.87(c)(2) state that, if a sector is approved, the Regional Administrator shall issue an LOA to each vessel operator and/or vessel owner participating in the sector, authorizing participation in the sector operations. The regulations allow the Regional Administrator to include requirements and conditions necessary to ensure effective administration and compliance with the sector's operations plan and the sector allocation. Therefore, the NEFS 7 amendment includes clarification that we will issue LOAs to vessels indicating that they are inactive. If the required steps are taken for a vessel to become active, we will issue a new LOA authorizing participation in the groundfish fishery.

NEFS 7's initial proposal did not identify the factors by which the Board would determine the new owner is independent of Mr. Rafael. Historically, NMFS uses several factors to determine whether a transfer or sale of a permit appears to be between separate legal entities. These include, but are not limited to: Whether the transfer appears to be an "arm's length" transaction to an independent person or entity in which the current owner, subsidiary, partner, officer, director, trustee, shareholder or any of their family members does not have any financial interest or any control; whether the transferor/seller derive any financial benefits from the operations of the vessel after it is transferred; whether the transferor/seller exercises any control over the activities or operation of the vessel after it is transferred; and whether there are any common shareholders, partners, or investors with significant overlapping ownership interests in both the transferor/seller and the transferee/buyer. The NEFS 7 Board of Directors has incorporated these factors into the amendment to the NEFS 7 operations plan as conditions for Board approval of new owners to provide sufficient Board oversight controls and avoid confusion regarding whether a sale meets the requirement of being an independent third party.

As stated earlier in this preamble, the Board of NEFS 7 has committed that if the NEFS 9 overage cannot be reconciled during the 2017 post-year transfer window, NEFS 7 will transfer sufficient 2018 witch flounder ACE to NEFS 9 to cover the overage, and this is included in the amendment to the NEFS 7 operations plan.

The NEFS 7 operations plan amendment addresses the operational

issues that required withdrawal of the prior NEFS 9 operations plan. Approval of an operations plan that provides for paying back all of the overages incurred by vessels in NEFS 9 ensures that the sector is operating properly within the sector system and within all ACE that is properly allocated. The vertical integration between Mr. Rafael's vessels, his seafood dealership, and sector governance that facilitated the falsification of landing records would no longer exist with new independent vessel owners.

These changes to the operations plan meet the goals and objectives of the FMP and the sector system. We will evaluate any changes made to NEFS 7 and 9 membership and vessel ownership, using the criteria detailed above, to ensure the sector's operations remain consistent with its operations plan and the goals and objectives of the FMP. Additional substantive changes to the NEFS 7 operations plan that are requested, or determined to be necessary, would be addressed in a future rulemaking.

Classification

The NMFS Assistant Administrator has preliminarily determined that this interim final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This interim final rule is exempt from the procedures of Executive Order (E.O.) 12866 because this action contains no implementing regulations.

This interim final rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds good cause to waive prior notice and the opportunity for public comment on approval of the NEFS 9 lease-only operations plan, and approval of the amendment to the NEFS 7 operations plan because it would be contrary to the public interest.

Additionally, the AA finds there is good cause, under 5 U.S.C. 553(d)(1) and (3), to waive the 30-day delay in effectiveness for the allocation of annual catch entitlements (ACE) for fishing year 2018 to NEFS 7 and 9, approval of the NEFS 9 lease-only operations plan, and approval of the amendment to the NEFS 7 operations plan so that the purpose of this rule is not undermined.

Approving the NEFS 9 lease-only operations plan relieves the prohibition against operating and provides a mechanism for NEFS 9 to reconcile its witch flounder overage through the 2017 year-end transfer window and address its quota overage for witch flounder. Any overage remaining after this transfer window must be reconciled via an ACE transfer from NEFS 7, in order for NEFS 7 to remain in compliance with the operations plan amendment approved by this rule. As a result, implementing these measures immediately ensures that proper catch and ACE accounting occur. This is fundamental to achieving the goals and objectives of the FMP.

We previously proposed and accepted comment on allocating groundfish quota to NEFS 7 and 9 (83 FR 12706; March 23, 2018). Additionally, before taking this action, we consulted with the New England Council at its April 2018 meeting, at which the Council recommended that we approve the sectors' operations plan requests. This consultation provided the Council and interested members of the public an opportunity to comment on NEFS 7's and 9's potential operations plan changes and an additional opportunity to comment on the allocation of quota to both sectors. At this meeting, the Council recommended that we ensure the repayment of the NEFS 9 overage, approve the NEFS 9 lease-only operations plan, amend the NEFS 7 operations plan as needed, and appropriately allocate to the sectors. The Council also explained the importance of making quota available to the fishery at-large. Some stocks, such

as Georges Bank winter flounder, have a significant seasonal component, and therefore there is additional benefit to making this quota available to the fishery as a whole as soon as possible.

The ACEs being allocated to NEFS 7 and 9 represent between 3 percent and 33 percent of the total quota for each allocated stock. Continuing to withhold this amount of quota from the fishery significantly hampers the ability of the fishery as a whole to operate. This quota is particularly important due to recent stock assessments that resulted in reduced overall quotas for several stocks, including Southern New England/Mid-Atlantic yellowtail flounder (75-percent reduction), Gulf of Maine winter flounder (45-percent reduction), and white hake (20-percent reduction). Further delaying allocations to NEFS 7 and NEFS 9 significantly reduces the quota for these stocks available for transfer to other sectors engaged in fishing. This reduces catch of these as target stocks and also impacts catch of more abundant stocks like haddock and pollock, which catch these limiting stocks as bycatch. This, together with the benefit of ensuring that all quota overages that resulted from Mr. Rafael's criminal misreporting are reconciled, outweigh the benefits of allowing for additional public comment prior to effectiveness, beyond that which we already received on the March 23, 2018, proposed rule (83 FR 12706) and through consultation with the Council.

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

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

Dated: July 16, 2018.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2018-15477 Filed 7-19-18; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 83, No. 140

Friday, July 20, 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 ENERGY

10 CFR Part 431

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meetings for the Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps Working Group To Negotiate a Notice of Proposed Rulemaking for Test Procedures and Energy Conservation Standards

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

ACTION: Notification of public meetings and webinar.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces public meetings for the variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems) working group. The Federal Advisory Committee Act (FACA) requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: DOE will hold a public meeting on August 23, 2018 from 9 a.m. to 5 p.m., and on August 24, 2018 from 9 a.m. to 1 p.m., in Washington, DC. The meetings will also be broadcast as a webinar.

ADDRESSES: The public meetings will be held at the U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW, Washington, DC 20585-0121. Please see the Public Participation section of this notice for additional information on attending the public meeting, including webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE-5B), 950 L'Enfant Plaza SW, Washington, DC 20024. Phone: (202) 287-1692. Email: ASRAC@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On January 10th 2018, the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) met and passed the recommendation to form a VRF multi-split systems working group to meet and discuss and, if possible, reach a consensus on proposed federal test procedures and standards for VRF multi-split systems. On Wednesday, April 11, 2018, DOE published a notice of intent to establish a working group for VRF multi-split systems to negotiate a notice of proposed rulemaking for test procedures and energy conservation standards. The notice also solicited nominations for membership to the working group. 83 FR 15514. This notice announces the first two meetings for this working group.

DOE will host a public meeting on August 23, 2018 from 9 a.m. to 5 p.m., and on August 24, 2018 from 9 a.m. to 1 p.m., in Washington, DC.

The purpose of these meetings will be to provide an overview of the ASRAC negotiation process, establish ground rules, and establish a schedule for future meetings. The meeting will also include discussions and review of the VRF multi-split market and test procedure.

Public Participation

Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections of this document. If you plan to attend the public meeting, please notify the ASRAC staff at asrac@ee.doe.gov.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's

desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at <https://www.dhs.gov/real-id-enforcement-brief>. A driver's license from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: <https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. Participants are responsible for ensuring their systems are compatible with the webinar software.

Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable

DOE staff to make a follow-up contact, if needed.

Conduct of Public Meeting

ASRAC's Designated Federal Officer will preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. A transcript of the public meeting will be included on DOE's website: <https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. In addition, any person may buy a copy of the transcript from the transcribing reporter. Public comment and statements will be allowed prior to the close of the meeting.

Docket

The docket is available for review at <https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003>, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *regulations.gov* index. However, not all documents listed in the index may be publically available, such as information that is exempt from public disclosure.

Signed in Washington, DC, on June 28, 2018.

Kathleen B. Hogan,

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

[FR Doc. 2018-15579 Filed 7-19-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE-2017-BT-TP-0020]

Energy Conservation Program: Test Procedure for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy ("DOE") is initiating a data collection process through this request for information ("RFI") to consider whether to amend DOE's test procedure for single package vertical air

conditioners ("SPVACs") and single package vertical heat pumps ("SPVHPs"), collectively referred to as single package vertical units ("SPVUs"). To inform interested parties and to facilitate the process, DOE has gathered data, identifying several issues associated with the currently applicable test procedure on which DOE is interested in receiving comment. The issues outlined in this document mainly concern: Incorporation by reference of the applicable industry standard; efficiency metrics; clarification of test methods; and any additional topics that may inform DOE's decisions in a future test procedure rulemaking, including methods to reduce regulatory burden while ensuring the procedure's accuracy. DOE welcomes written comments from the public on any of subject within the scope of this document (including topics not raised in this RFI).

DATES: Written comments and information are requested and will be accepted on or before September 4, 2018.

ADDRESSES: Interested persons are encouraged to submit comments by any of the following methods:

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

2. *Email:* SPVACandHeatPumps2017TP0020@ee.doe.gov. Include docket number EERE-2017-BT-TP-0020 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, Test Procedure RFI for Single Package Vertical Air Conditioners and Heat Pumps, Docket No. EERE-2017-BT-TP-0020, 1000 Independence Avenue SW, Washington, DC 20585-0121. If possible, please submit all items on a compact disc ("CD"), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is

available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at <https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0020>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-7335. Email: ApplianceStandardsQuestions@ee.doe.gov.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586-9507. Email: Eric.Stas@hq.doe.gov.

For further information on how to submit a comment, or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

SPVACs and SPVHPs are included in the list of "covered equipment" for which DOE is authorized to establish and amend energy efficiency standards and test procedures. (42 U.S.C. 6311(1)(B)-(D)) DOE's test procedure for SPVACs and SPVHPs is prescribed in title 10 of the Code of Federal Regulations ("CFR"), appendix A to subpart F of part 431. The following

sections discuss DOE's authority to establish and amend test procedures for SPVACs and SPVHPs, as well as relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority and Background

The Energy Policy and Conservation Act of 1975 ("EPCA" or "the Act"),¹ Public Law 94-163 (42 U.S.C. 6291-6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part C² of the Act, added by Public Law 95-619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes small, large, and very large commercial package air conditioning and heating equipment, which includes the SPVACs and SPVHPs (referred to collectively as single package vertical units ("SPVUs")) that are the subject of this RFI. (42 U.S.C. 6311(1)(B)-(D))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42

U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of covered equipment during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b))

As discussed, SPVUs are a category of commercial package air conditioning and heating equipment. EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE Standard 90.1, "Energy Standard for Buildings Except Low-Rise Residential Buildings" (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment including SPVUs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating

costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish a proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this RFI to collect data and information to inform its decision in satisfaction of the 7-year review requirement specified in EPCA.

B. Rulemaking History

DOE's current test procedures for SPVUs with a cooling capacity less than 760,000 Btu/h are set forth at 10 CFR part 431, subpart F, appendix A ("Appendix A"). The test procedure currently incorporates by reference ANSI/AHRI Standard 390-2003 ("ANSI/AHRI 390-2003"), "Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps," (omitting section 6.4) and includes additional provisions in paragraphs (c) and (e) of 10 CFR 431.96. ANSI/AHRI 390-2003 is the SPVU test standard referenced in ASHRAE Standard 90.1. Paragraph (c) of 10 CFR 431.96 provides the method for an optional break-in period. Paragraph (e) of 10 CFR 431.96 provides specifications for addressing key information typically found in the installation and operation manuals. DOE established its test procedure for SPVUs in a final rule for commercial heating, air conditioning, and water heating equipment published on May 16, 2012. 77 FR 28928.

II. Request for Information

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended test procedures for SPVUs may be warranted. Specifically, DOE is requesting comment on any opportunities to streamline and simplify testing requirements for SPVUs.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this process that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Pursuant to that

¹ All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114-11 (April 30, 2015).

² For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A-1.

Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its regulations applicable to SPVUs consistent with the requirements of EPCA.

A. Scope and Definitions

DOE defines an SPVAC as air-cooled commercial package air conditioning and heating equipment that: (1) Is factory-assembled as a single package that: (i) Has major components that are arranged vertically; (ii) is an encased combination of cooling and optional heating components; and (iii) is intended for exterior mounting on, adjacent interior to, or through an outside wall; (2) is powered by a single- or 3-phase current; (3) may contain 1 or more separate indoor grilles, outdoor louvers, various ventilation options, indoor free air discharges, ductwork, well plenum, or sleeves; and (4) has heating components that may include electrical resistance, steam, hot water, or gas, but may not include reverse cycle refrigeration as a heating means. 10 CFR 431.92. Additionally, DOE defines an SPVHP as a single package vertical air conditioner that: (1) Uses reverse cycle refrigeration as its primary heat source; and (2) may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. *Id.*

B. Test Procedure

1. Test Set-Up

ANSI/AHRI 390–2003 provides different test provisions, such as minimum external static pressure (“ESP”), based on whether the model is ducted or non-ducted. However, whether an SPVU is ducted may be more a characteristic of installation than the equipment itself. A given SPVU model could potentially be installed either with or without a duct. DOE’s preliminary research has not revealed that SPVUs have physical characteristics that clearly distinguish them as ducted or non-ducted models, and DOE has identified several models that advertise the capability for use in both ducted and non-ducted installations. ANSI/AHRI 390–2003 does not specify how to determine whether an SPVU model is to be tested using the ducted or non-ducted provisions.

Issue 1: DOE requests comment on what, if any, equipment characteristics can be used to determine whether SPVU models would be installed (and hence should be tested) as ducted or non-ducted models. DOE also requests comments on whether individual SPVU

models that are sold for both ducted and non-ducted applications are currently tested using both ducted and non-ducted standard rating conditions.

Section 5.2.3 of ANSI/AHRI 390–2003 requires that for SPVUs with an outdoor-side fan drive that is non-adjustable, standard ratings shall be determined at the outdoor-side airflow rate inherent to the equipment when operated with all of the resistance elements associated with inlets, louvers, and any ductwork and attachments considered by the manufacturer as normal installation practice. However, it is not clear from DOE’s initial review of manufacturer literature which resistance elements should be used during the test to be consistent with what manufacturers consider as “normal installation practice.” For externally-mounted SPVUs, provisions for transferring outdoor air through an external wall are not necessary, but it may be possible that alternative “resistance elements” could be offered as options (*i.e.*, louvers instead of grills). In addition, for internally-mounted SPVUs, there may be multiple options for the specific geometry for external wall pass-through, as well as the option for louvers instead of grills.

Issue 2: DOE requests comments on the variations in outdoor air-side attachments (*e.g.*, grills, louvers, wall sleeve) that could affect performance during testing. DOE seeks comment on what, if any, provisions should be considered for addition to the test procedure to standardize outdoor air flow for both externally and internally mounted SPVUs, including considerations regarding grills or louvers, geometry of wall pass-through sleeves, and a representative wall thickness.

ANSI/AHRI 390–2003 does not provide any specific guidance on setting and verifying the refrigerant charge of a unit. In a test procedure final rule for central air conditioners (CACs) published on June 8, 2016 (“June 2016 CAC TP final rule”), DOE established a comprehensive approach for refrigerant charging that improves test reproducibility. 81 FR 36992, 37030–37031. The approach indicates which set of installation instructions to use for charging, explains what to do if there are no instructions, specifies that target values of parameters are the centers of the ranges allowed by installation instructions, and specifies tolerances for the measured values. The approach also requires that refrigerant line pressure gauges be installed for single-package units, unless otherwise specified in manufacturer instructions. *Id.* These methods provide general refrigerant

charging instructions and guidelines that DOE believes should be applied to air conditioners and heat pumps across a range of capacities, including commercial equipment such as SPVUs.

Issue 3: DOE seeks comment on whether it would be appropriate to adopt an approach for charging requirements for SPVUs similar or identical to the approach adopted in the June 2016 CAC TP final rule. DOE seeks comments regarding which parts of the approach should or should not be considered for adoption, and for what reasons those provisions might or might not be suitable for application to SPVUs. DOE is also interested in receiving data that demonstrate how sensitive the performance of a SPVU is relative to changes in the various charge indicators used for different charging methods, specifically the method based on sub-cooling.

Section 5.2.1 of ANSI/AHRI 390–2003, requires that, for units rated with 208/230 dual nameplate voltages, the test be performed at 230 V. For all other dual nameplate voltage units, the test standard requires that the test be performed at both voltages or at the lower voltage if only a single rating is to be published. DOE understands that voltage can affect the measured efficiency of air conditioners and may, therefore, consider adding provisions to its test procedure that specify at which nameplate voltage to conduct the test for dual nameplate voltage units.

Issue 4: DOE requests data and information demonstrating the effect of voltage on air conditioning equipment (including, but not limited to, SPVUs). Specifically, DOE seeks comment on whether there is a consistent relationship between voltage and efficiency, and if so, whether testing at a lower voltage will typically result in a higher or lower tested efficiency. Further, DOE requests feedback on whether certain voltages within common dual nameplate voltage ratings (*e.g.*, 208/230 V) are more representative of typical field installation.

Section 5.2.2.a of ANSI/AHRI 390–2003 requires that non-filtered ducted equipment be tested at the minimum ESP specified in Table 4 of ANSI/AHRI 390–2003 plus an additional 0.08 in H₂O of ESP. However, ANSI/AHRI 390–2003 does not define “non-filtered equipment.” It is possible that an SPVU may be designed so as not to be installed with a filter. For SPVUs designed to be installed with a filter, a filter may not be shipped with the unit (*i.e.*, the filter would not be present during the test, requiring an increase in the minimum ESP to account for the pressure drop of the filter if one were

present, as it is expected to be in the field).

Issue 5: DOE requests comments on whether there are any SPVUs that are not designed to be installed with a filter. Further, DOE requests comment on what the typical effectiveness (*i.e.*, minimum efficiency reporting value (MERV) rating) is of filters provided or installed with SPVUs, which will impact the pressure drop across the filter. Finally, DOE requests comment on whether non-ducted SPVUs intended for installation with a filter are ever tested without a filter installed, and, if so, how such testing has accounted for the filter pressure drop to better represent actual performance.

2. Airflow and External Static Pressure

Table 4 of ANSI/AHRI 390–2003 specifies the minimum ESP required for testing ducted SPVUs based on capacity range. DOE is considering whether the minimum ESP levels in ANSI/AHRI 390–2003 are representative of field operation for ducted SPVUs.

Issue 6: DOE seeks comments on whether the minimum ESP requirements in Table 4 of ANSI/AHRI 390–2003 are representative of field operation for ducted SPVUs, and if not, comment and data on what representative minimum ESP levels would be.

ANSI/AHRI 390–2003 does not specify tolerances on achieving the rated airflow and/or the minimum ESP during testing. The performance of any air conditioner or heat pump can be affected by variations in airflow and ESP. Consequently, rated performance could vary from field performance if airflow and ESP during testing are different than that intended for field operation. How to control an SPVU to achieve a specified airflow at a specified ESP and how closely an SPVU can achieve the specified airflow and ESP depends on the type of fan drive system. There are two common types used in SPVUs: One is multi-speed drive, which provides discrete airflow settings (or motor speeds), each typically associated with certain functions and operating conditions (*e.g.*, high or low static operation); the other is variable-speed drive, which can be adjusted continuously within a range of speeds. The type of fan drive system is determined by the type of fan motor (*e.g.*, multi-speed motor, variable-speed motor), the type of drives (*e.g.*, direct-drive, belt-drive), and whether there is any external control (*e.g.*, variable-frequency drive). When a multi-speed drive system is required to meet the specified ESP, a certain deviation in airflow is expected because of limited

speed options; whereas, for variable-speed drive systems, a smaller deviation is expected because of the capability to be adjusted continuously.

To address the tolerances for variable-speed fan drive systems, which are common in air-cooled commercial unitary air-conditioners (“ACUACs”) with capacity greater than or equal to 65,000 Btu/h, DOE established a requirement for ACUACs that the full-load indoor airflow rate must be within ± 3 percent of the certified airflow. Section 6 of Appendix A. In addition, the tolerance for ESP for testing ACUACs in DOE’s current test procedure is $-0.00/+0.05$ in H₂O (see section 3 of Appendix A, which incorporates by reference Table 5 of ANSI/AHRI Standard 340/360–2007, “2007 Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment” (“ANSI/AHRI 340/360–2007”). In contrast, in DOE’s test procedure for central air conditioners and heat pumps (“CAC/HPs”), the method for setting indoor air volume rate for ducted units without variable-speed constant-air-volume-rate indoor fans is a multi-step process that addresses the discrete-step fan speed control of these units. In this method, (a) the air volume rate during testing may not be higher than the certified air volume rate, but may be up to 10 percent less, and (b) the ESP during testing may not be lower than the minimum specified ESP, but may be higher than the minimum if this is required to avoid having the air volume rate overshoot its certified value. See 10 CFR part 430, subpart B, appendix M, section 3.1.4.2.a.

Issue 7: DOE seeks more information on the different types of indoor air fan drive systems that are used for SPVUs. For example, are fans with multi-speed motors provided with variable-frequency drive or belt drives with variable-pitch sheaves to allow continuous variation of fan speed? Are direct-drive fans provided with variable-speed motors for which the installer can only select limited speeds?

Issue 8: DOE seeks information on how closely the rated airflow and specified ESP are achieved in laboratory testing of SPVUs. For indoor fans that are adjustable in discrete steps, is the specified ESP typically exceeded in order to match the certified airflow? Additionally, DOE seeks comments on whether the tolerances for setting airflow of ACUACs or of CACs would be appropriate for all SPVUs or if separate tolerances should be provided based on fan motor type. If neither of the tolerances would be appropriate, DOE

requests information or data on what tolerances would be appropriate for airflow and ESP.

ANSI/AHRI 390–2003 does not distinguish between cooling and heating airflow rates required for testing. For SPVHPs with multiple-speed or variable-speed indoor fans, the indoor airflow rate in heating operation could be different from that in cooling operation. Different airflow rates may be used for heating and cooling operation because of different indoor comfort needs in the heating season, and there may be a minimum heating airflow rate for electrical resistance heating safety that exceeds the cooling airflow rate. For ACUAC heat pumps, DOE’s current test procedure requires that indoor airflow and ESP first be set up within required tolerances for the full-load cooling test condition, by adjusting both the unit under test and the test facility’s airflow-measuring apparatus (see Section 6(i) of Appendix A). The DOE test procedure further requires that, unless the unit is designed to operate at different airflow rates for cooling and heating modes, the airflow-measuring apparatus (but not the unit under test) be adjusted to achieve an airflow in heating mode equal to the cooling full-load airflow rate within the specified tolerance, without regard to changes in ESP (see Section 6(ii), Appendix A).

Issue 9: DOE requests comments on whether there are SPVHPs for which the heating airflow rate is designed to be different from the cooling airflow rate. If so, DOE seeks comments on whether provisions similar to those required for ACUACs would be appropriate for determining airflow rate and minimum ESP for heating mode tests for SPVHPs.

3. Outdoor Air Enthalpy Method

ANSI/AHRI 390–2003 references ANSI/ASHRAE Standard 37–1988, “Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment” (“ANSI/AHRI 37–1988”) for methods of testing SPVUs. Section 7.2 of ANSI/ASHRAE 37–1988 specifies that for equipment with cooling capacity less than 135,000 Btu/h, primary and secondary capacity measurements are required. Specifically, the indoor air enthalpy method must be used as the primary method for capacity measurement, and Table 3 of ANSI/ASHRAE 37–1988 specifies the applicable options for selecting a secondary method. Section 10.1.2 of ANSI/ASHRAE 37–1988 then requires that the two test methods agree within 6 percent. DOE understands that the outdoor air enthalpy test method is commonly used as a secondary test method for determining capacity for

SPVUs. The outdoor air enthalpy method requires the use of an air-side test apparatus that is connected to the unit under test. Due to concerns about the impact of the air-side test apparatus on performance as compared to performance in the field without the air-side test apparatus connected, section 8.5 of ANSI/ASHRAE 37–1988 (which is referenced by ANSI/AHRI 390–2003) specifies testing with and without the air-side test apparatus connected. First, ANSI/ASHRAE 37–1988 requires a one-hour preliminary test be conducted without the outdoor air-side test apparatus connected. Then, ANSI/ASHRAE 37–1988 specifies a one-hour test be conducted with the outdoor air-side test apparatus connected, which will serve as the official test. ANSI/ASHRAE 37–1988 requires agreement between evaporating and condensing temperatures between the two tests for a valid test. In a test procedure final rule for CACs/HPs, DOE amended its requirements when using the outdoor air enthalpy method as the secondary test method for capacity measurement for CAC/HPs. 82 FR 1426, 1508–1509 (Jan. 5, 2017). Specifically, DOE's amended test procedure requires that a 30-minute official test be conducted without the outdoor air-side test apparatus connected, then a 30-minute test with the air-side test apparatus be conducted, the results of which are compared to the official, no air-side apparatus test. DOE is considering whether similar changes (*i.e.*, requiring that the official test be conducted without the outdoor air-side test apparatus connected) would be appropriate for the test procedure for SPVUs. DOE expects that such a change would make the test more representative of field use and would improve the repeatability of the test.

Issue 10: DOE seeks comment on whether modifications to the requirements for using the outdoor air enthalpy method as the secondary method for testing SPVUs (similar to those made for CAC/HPs) would be appropriate, including that the official test be conducted without the outdoor air-side test apparatus connected.

4. Air Temperature Measurements

Outdoor air temperature and humidity are key parameters that affect SPVU performance, and for this reason, ANSI/AHRI 390–2003 requires accurate outdoor air condition measurements. However, DOE is considering whether the method set forth in ANSI/AHRI 390–2003 would benefit from additional specification as to outdoor air temperature measurement. For air-cooled and evaporatively cooled

commercial unitary air conditioners, Appendix C of AHRI Standard 340/360–2015, “2015 Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,” (“AHRI 340/360–2015”) provides details on entering outdoor air temperature measurement, including air sampling tree and aspirating psychrometer requirements. DOE is considering whether similar requirements should be adopted for testing SPVUs. However, DOE notes that in such case, some of the requirements may have to be revised for application to SPVUs. For example, the requirement in section C3 of Appendix C of AHRI 340/360–2015 that “multiple individual reading thermocouples be installed around the unit air discharge perimeter so that they are below the plane of condenser fan exhaust and just above the top of the condenser coil” may not be appropriate for SPVUs, because the units typically exhaust outdoor air horizontally, instead of vertically as is the case for ACUACs.

While Appendix C of AHRI 340/360–2015 provides detailed requirements for measurement of entering outdoor air temperature, it provides no such requirements for measurement of entering indoor air temperature, leaving indoor air temperature, or leaving outdoor air temperature. These parameters have a significant impact on performance of an SPVU as measured by the indoor air enthalpy method and the outdoor air enthalpy method. Therefore, DOE is also considering whether the requirements contained in Appendix C of AHRI 340/360–2015 would be appropriate for measurement of these parameters for testing SPVUs.

Issue 11: DOE seeks comments regarding which, if any, requirements for outdoor air temperature measurement in Appendix C of AHRI Standard 340/360–2015 may or may not be appropriate for testing SPVUs. Specifically, DOE requests comment on whether any requirements in Appendix C of AHRI Standard 340/360–2015 would be appropriate for measurement of indoor air entering and leaving temperatures, as well as outdoor air entering and leaving temperatures.

C. Energy Efficiency Descriptor

EPCA requires that test procedures produce test results that reflect efficiency of equipment during a representative average use cycle. (42 U.S.C. 6314(a)(2)) DOE prescribes energy efficiency ratio (EER) as the cooling mode metric and coefficient of performance (COP) as the heating mode metric for SPVUs. 10 CFR 431.96. Correspondingly, ASHRAE 90.1–2016

only includes minimum efficiency levels in terms of the full-load metrics of EER and COP for SPVUs. In contrast, ASHRAE 90.1–2016 includes minimum cooling mode efficiency levels for CUACs and for variable refrigerant flow multi-split air conditioners and heat pumps in terms of both the full-load metric EER and the integrated energy efficiency ratio (IEER), which integrates the performance of the equipment when operating at part-load. IEER provides an indication of seasonal performance by integrating test results from four different load points with varying outdoor conditions and load levels (lower load for cooler conditions) in order to represent the equipment's average efficiency throughout the cooling season. ANSI/AHRI 390–2003 includes a part-load metric, integrated part-load value (IPLV) that integrates unit performance at each capacity step provided by the refrigeration system. However, the IPLV tests are all conducted at constant outdoor air conditions of 80 °F dry bulb temperature and 67 °F wet bulb temperature. DOE notes that some manufacturers make representations of part-load performance of SPVUs in product literature using IPLV, indicating a potential value in ratings that integrate performance of part-load operation. However, DOE also notes that IPLV was once used for rating CUACs but has since been removed from AHRI 340/360 in favor of IEER.

Issue 12: DOE requests comments on whether DOE should consider adopting for SPVUs a cooling-mode metric that integrates part-load performance to better represent full-season efficiency. If so, DOE requests comment on whether a part-load metric such as IEER or the current IPLV would be appropriate for SPVUs, and which of these would better represent actual performance.

DOE is aware that the energy use of field-installed fans will vary based on the use of the fan for various functions (*e.g.*, economizing, ventilation, filtration, and auxiliary heat). Consequently, DOE is investigating whether changes to the SPVU test procedure are needed to properly characterize a representative average use cycle, including changes to more accurately represent fan energy use in field applications. DOE also seeks comment on any anticipated burdens associated with such potential changes to the SPVUs test procedure. DOE also requests information as to the extent that accounting for the energy use of fans in commercial equipment such as SPVUs would be additive of other existing accountings of fan energy use. DOE also seeks information as to

whether accounting for the energy use of fan operation in SPVUs would alter measured efficiency, and if so, to what extent.

Issue 13: DOE seeks information, including any available data, on how frequently SPVU supply fans are operated when there is no demand for heating or cooling (*i.e.*, for fresh air ventilation or air circulation/filtration), and what the typical operating schedules or duty cycles are for this function. Additionally, DOE requests data or information regarding how frequently auxiliary heating is installed with SPVUs and whether its operation is dependent on the supply fan of the SPVU. DOE requests data or information regarding how frequently the systems are used with economizers, how the economizers are integrated with the systems, and what control logic is typically used on the economizers. DOE further seeks comment as to whether or what portion of such fan operation is part of a “representative average use cycle.” DOE also seeks information as to whether accounting for the energy use of fan operation in SPVUs would alter measured efficiency, and if so, to what extent.

Issue 14: Assuming DOE has authority to address fans embedded in other commercial equipment such as SPVUs (a conclusion the agency has not yet reached), DOE is interested in receiving comment and other information on this topic. DOE requests comment on whether any of the issues considered in this section would result in double regulation of the energy use of fans in SPVUs, and if so, how.

SPVHPs generally include a defrost cycle to periodically defrost the outdoor coil when operating in outdoor ambient conditions in which frost collects on it during heating operation. Based on preliminary DOE review of product literature, the time between defrost cycles can be between 30–90 minutes, and defrost cycle duration may be roughly 10 minutes. During the defrost cycle, the SPVHP is consuming energy but not providing heat, unless it also energizes auxiliary heat during defrost. DOE’s test procedure for SPVUs is based on testing in outdoor air conditions for which defrost is not necessary (*i.e.*, 47 °F outdoor air dry-bulb temperature). Hence, any differences in defrost cycle performance between different SPVHP models is not reflected in the heating mode metric, COP. DOE’s test procedure for CACs/HPs includes measurement of average delivered heat and total energy use, including for defrost cycles, during operation in outdoor conditions for which frost forms on the outdoor coil. In contrast, DOE’s test procedures for

commercial heat pumps do not include consideration of defrost.

Issue 15: DOE seeks information regarding the types of buildings most commonly served by SPVHPs and the annual heating and cooling loads for such buildings, including information or data for SPVHP cooling and heating seasonal energy use therein. DOE also seeks information on the impact on heating mode efficiency associated with the defrost cycle for SPVHPs, including impacts associated with the potential use of resistance heating during defrost.

D. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedure for SPVUs not already addressed by the specific areas identified in this document. DOE particularly seeks information that would improve the repeatability, reproducibility, and consumer representativeness of the test procedures. DOE also requests information that would help DOE create a procedure that would limit manufacturer test burden through streamlining or simplifying testing requirements. Comments regarding the repeatability and reproducibility are also welcome. DOE also requests comment on the benefits and burdens of adopting any industry based or other appropriate test procedure, without modification.

DOE also requests feedback on any potential amendments to the existing test procedure that could be considered to address impacts on manufacturers, including small businesses. Regarding the Federal test method, DOE seeks comment on the degree to which the DOE test procedure should consider and be harmonized with the most recent relevant industry standards for SPVUs and whether there are any changes to the Federal test method that would provide additional benefits to the public. DOE also requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification. As discussed, the Federal test procedure for SPVUs currently incorporates by reference ANSI/AHRI 390–2003 (omitting section 6.4) and includes additional provisions to provide the method for an optional break-in period and to provide specifications for addressing key information typically found in the installation and operation manuals. Section 6.4 of ANSI/AHRI 390–2003 specifies the maximum deviation of published efficiency ratings from measured test results; therefore, this

section is omitted from DOE’s current test procedure because it conflicts with DOE’s certification, compliance, and enforcement regulations at 10 CFR part 429.

Additionally, DOE requests comment on whether the existing test procedure limits a manufacturer’s ability to provide additional features to consumers of SPVUs. DOE particularly seeks information on how the test procedures could be amended to reduce the cost of new or additional features and make it more likely that such features are included on SPVUs.

III. Submission of Comments

DOE invites all interested parties to submit in writing by September 4, 2018, comments and information on matters addressed in this notice and on other matters relevant to DOE’s consideration of an amended test procedure for SPVACs and SPVHPs. These comments and information will aid in the development of a test procedure notice of proposed rulemaking (NPR) for SPVACs and SPVHPs if DOE determines that an amended test procedure may be appropriate for this equipment.

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

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

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments

submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

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

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

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

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

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

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt

by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

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

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287-1445 or via email at ApplianceStandardsQuestions@ee.doe.gov.

Signed in Washington, DC, on July 12, 2018.

Kathleen B. Hogan,

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

[FR Doc. 2018-15584 Filed 7-19-18; 8:45 am]

BILLING CODE 6450-01-P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Mailpieces Containing Liquids: Extension of Comment Period

AGENCY: Postal Service™.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On July 9, 2018, the United States Postal Service (USPS®) published a **Federal Register** proposed rule titled, "New Mailing Standards for Mailpieces Containing Liquids." The USPS has received several requests to extend the comment period for this proposed rule and is, accordingly, extending the comment period scheduled to close on August 8, 2018, until September 30, 2018.

DATES: Submit comments on or before September 30, 2018.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260-5015. If sending comments by email, include the name and address of the commenter and send to ProductClassification@usps.gov, with a subject line of "New Standards for Liquids." Faxed comments are not accepted.

You may inspect and photocopy all written comments, by appointment only, at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202-268-2906.

FOR FURTHER INFORMATION CONTACT: Direct questions to Wm. Kevin Gunther at wkgunther@uspis.gov or phone at (202) 268-7208, or Michelle Lassiter at michelle.d.lassiter@usps.gov or phone at (202) 268-2914.

SUPPLEMENTARY INFORMATION: This document extends the public comment period for the proposed rule entitled "New Mailing Standards for Mailpieces Containing Liquids," published in the **Federal Register** On July 9, 2018. USPS is extending the comment period to ensure that the public has sufficient time to review and comment on the proposal. USPS is proposing this rule under the authorities listed in the July 9th document. Further information on this proposal may be found in the USPS notice published in the **Federal Register** on July 9, 2018 (83 FR 31712).

USPS solicits comments on all aspects of the proposal and specifically on

recommendations that reflect industry best practices for shipping liquids.

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2018-15548 Filed 7-19-18; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2018-0422; FRL-9981-04-Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New York; Determination of Attainment of the 2008 8-Hour Ozone National Ambient Air Quality Standard for the Jamestown, New York Marginal Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make a determination that the Jamestown, New York Marginal Nonattainment Area (Jamestown Area or Area) has attained the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data that shows the Area has monitored attainment of the 2008 8-hour ozone NAAQS for both the 2012–2014 and 2015–2017 monitoring periods. This action does not constitute a redesignation to attainment. The Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Jamestown Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. This action is being taken under the CAA.

DATES: Written comments must be received on or before August 20, 2018.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2018-0422 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, (212) 637-3381, or by email at wieber.kirk@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years) to provide increased protection of public health and the environment. 73 FR 16436 (March 27, 2008).¹ The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. On May 21, 2012 (77 FR 30088), effective July 20, 2012, EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data. The Jamestown Area (specifically, Chautauqua County) was designated as a marginal ozone nonattainment area. See 40 CFR 81.333.

Marginal areas designated in the May 21, 2012 rule are required to attain the 2008 8-hour ozone NAAQS by the applicable deadline of July 20, 2015. See 40 CFR 51.903. On May 4, 2016, EPA determined that complete, quality-assured, and certified air quality monitoring data from the 2012–2014 monitoring period indicated that the Jamestown Area attained the 2008 8-hour ozone NAAQS by that attainment date. See 81 FR 26697.

Under the provisions of EPA's ozone implementation rule (40 CFR 51.918), if EPA also issues a determination (as it is proposing to do here) that an area is attaining the relevant standard through a rulemaking that includes public notice and comment (known informally as a Clean Data Determination), the

requirements for a State to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress plans and contingency measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above.²

This suspension remains in effect until such time, if ever, that EPA (i) redesignates the area to attainment, at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 2008 8-hour ozone NAAQS. Although these requirements are suspended, if the State provides these submissions to EPA for review and approval at any time, EPA is not precluded from acting upon them. The determination of attainment is not equivalent to a redesignation under section 107(d)(3) of the CAA. The designation status of the Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

Additionally, the determination of attainment is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the Jamestown Area based on any new or revised ozone NAAQS, and it remains in effect regardless of whether EPA designates this Area as a nonattainment area for purposes of any new or revised ozone NAAQS.

II. EPA's Evaluation

For ozone, an area may be considered to be attaining the 2008 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR part 50, based on three complete, consecutive calendar years of quality-assured ambient air monitoring data. Under EPA regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.075 ppm. See 40 CFR part 50, appendix P. This 3-year average is referred to as the design value. When the design value is less than or equal to

² For more information on the EPA's Clean Data Policy, see <https://www.epa.gov/ozone-pollution/redesignation-and-clean-data-policy-cdp> for documents such as the Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995).

¹ For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, appendix I.

0.075 ppm at each monitor within the area, then the area is attaining the NAAQS. Also, the data meets the regulatory completeness requirement when the average percent of days with valid ambient monitoring data is greater than or equal to 90 percent (%), and no single year has less than 75% data completeness as determined in appendix P of 40 CFR part 50. The data must be collected and quality-assured in accordance with 40 CFR part 58, and

recorded in the EPA Air Quality System (AQS).

EPA has reviewed the complete, quality-assured, and certified ozone ambient air monitoring data for the monitoring periods for both 2012–2014 and 2015–2017 for the Jamestown Area. For both monitoring periods, the design values for the Jamestown monitor in Chautauqua County are less than or equal to 0.075 ppm, and the monitor meets the data completeness

requirements (see Table 1). Based on the 2012–2014 data from the AQS database and consistent with the requirements contained in 40 CFR part 50, EPA has concluded that this Area attained the 2008 8-hour ozone NAAQS. In addition, complete, quality-assured, and certified data through the 2017 ozone season demonstrate that the area continues to attain the standard.

TABLE 1—JAMESTOWN AREA 2008 8-HOUR OZONE DESIGN VALUES

County	Site ID	2012–2014 Design value (ppm)	2012–2014 Average percent data completeness	2015–2017 Design value (ppm)	2015–2017 Average percent data completeness
Chautauqua	36-013-0006	0.071	97	0.068	96

The data in Table 1 are available in EPA's AQS database. The AQS report with this data is available in the docket for this rulemaking under docket number EPA-R02-OAR-2018-0422 and available online at www.regulations.gov, docket number EPA-R02-OAR-2018-0422.

III. Proposed Action

EPA is proposing to make a determination that the Jamestown Area has attained the 2008 8-hour ozone NAAQS. This proposed determination (informally known as a Clean Data Determination) is based upon complete, quality assured, and certified ambient air monitoring data that show the Jamestown Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 and 2015–2017 monitoring periods. Complete and quality assured and certified data for these periods demonstrate that the area continues to attain the standard during both time periods. As provided in 40 CFR 51.918, if EPA's determination that this area has attained the 8-hour ozone standard is made final, it would suspend the requirements under CAA section 182(b)(1) for submission of a reasonable further progress plan and ozone attainment demonstration. In addition, such a final determination would mean the requirements of CAA section 172(c)(9) concerning submission of contingency measures and any other planning SIP relating to attainment of the 2008 8-hour ozone NAAQS shall be suspended for so long as the Jamestown Area continues to attain the 2008 8-hour ozone NAAQS. Although these requirements would be suspended, EPA would not be precluded from acting upon these elements at any time if

submitted to EPA for review and approval.

Finalizing this determination would not constitute a redesignation of the Jamestown Area to attainment for the 2008 8-hour ozone NAAQS under CAA section 107(d)(3). This proposed determination of attainment also does not involve approving any maintenance plan for the Jamestown Area and does not determine that the Jamestown Area has met all the requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable measures. Therefore, the designation status of the Jamestown Area will remain nonattainment for the 2008 8-hour ozone NAAQS until such time as EPA takes final rulemaking action to determine that such Area meets the CAA requirements for redesignation to attainment. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

This action proposes to make an attainment determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

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

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

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

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 3, 2018.

Peter D. Lopez,

Regional Administrator, Region 2.

[FR Doc. 2018–15623 Filed 7–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–9981–00–Region 1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Union Chemical Co., Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 1 is issuing a Notice of Intent to Delete the Union Chemical Co., Inc. Superfund Site (Site) located in South Hope, Maine, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Maine, through the Department of Environmental Protection (MEDEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring and Five-Year Reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 20, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0011, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting

comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

- **Email:** connelly.terry@epa.gov or purnell.zanetta@epa.gov.
- **Mail:**

Terrence Connelly, U.S. EPA, 5 Post Office Square, Suite 100, Mail Code OSSR 07–1, Boston, MA 02109–3912
ZaNetta Purnell, U.S. EPA, 5 Post Office Square, Suite 100, Mail Code OSSR 01–1, Boston, MA 02109–3912

Hand delivery: U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1989–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and

made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Region 1, Superfund Records Center, 5 Post Office Square, Suite 100, Boston, MA 02109, Phone: 617–918–1440, Monday– Friday: 9:00 a.m.–5:00 p.m., Saturday and Sunday—Closed.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, Mail Code OSSR 07–1, 5 Post Office Square, Boston, MA 02109–3912, (617) 918–1373, email connelly.terry@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion

I. Introduction

EPA Region 1 announces its intent to delete the Union Chemical Co., Inc Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR

300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts Five-Year Reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such Five-Year Reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete.

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of Maine, through its Department of Environmental Protection (MEDEP), has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the Bangor Daily News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repository identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repository listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Union Chemical Co., Inc. Superfund Site, CERCLIS ID: MED042143883, is located in South Hope, Knox County, Maine, on the south side of Route 17 in a rural residential area. The Site is bounded by Quiggle Brook, a southerly flowing

stream, on the east and southeast, by undeveloped forested land to the south and southwest and a vacant residential lot to the west.

Union Chemical Company began operations in 1967, as a paint stripping and solvent manufacturing business. Initially, patented solvents were manufactured and utilized on the premises, and distributed nationally. The Company expanded operations to include the recycling of used stripping compounds and solvents from other businesses. Operations were further expanded in 1982 to include a full-scale, fluidized-bed incinerator to treat waste solvents and other compounds. Operations ceased in 1985.

The risk assessment conducted during EPA's Remedial Investigation indicated that there would be unacceptable carcinogenic and non-carcinogenic risks from future ingestion of the groundwater at the Site due to concentrations of contaminants.

On June 24, 1988, EPA proposed the Site for listing on the NPL and on October 4, 1989, listing on the NPL was finalized. The **Federal Register** citations for these notices are FR Vol. 53, No. 122, 23978–23986 and FR Vol. 54, No. 191, 41015–41025, respectively.

MEDEP closed the hazardous waste treatment operations at the Site in June 1984. At that time approximately 2,000–2,500 55-gallon drums and 30 liquid storage tanks were present at the Site. These drums, their contents, and the contents of the storage tanks were removed by EPA and MEDEP by the end of November 1984.

At present, contamination remains in the groundwater at the Site that EPA, with consent from MEDEP, determined in 2013 to be technically impracticable to restore. In 2017, a Declaration of Environmental Covenant, which among other things, prohibits the use of groundwater, was recorded in the chain of title for the properties comprising the Site. This deed restriction limits how the Site can be redeveloped.

Remedial Investigation and Feasibility Study (RI/FS)

The scope of the Remedial Investigation was comprehensive, evaluating the nature and extent of contamination in the facility's buildings and underlying soils, unsaturated and saturated soils on the rest of the property, in groundwater in the overburden soils and in bedrock, and in surface water. Additionally, the Remedial Investigation collected soil samples from nearby properties to identify potential airborne contamination which may have occurred as a result of Union Chemical

Company's past operation of the Site's hazardous waste incinerator.

The Feasibility Study screened seven on-site soil remedial alternatives, six alternatives for groundwater and surface water, five alternatives for the facilities, and two alternatives for off-site soils. All but one on-site soil alternative was retained for detailed analysis. The on-site soil alternatives analyzed in detail included No-Action; Limited Action; Site Capping; Soil Excavation and Low-Temperature Thermal Aeration Treatment; In-Situ Soil Aeration; and Soil Excavation and High-Temperature Thermal Treatment. The groundwater and surface water alternatives analyzed in detail included No-Action; Limited Action; Groundwater Extraction with On-Site Treatment and Discharge to Quiggle Brook; Vacuum-Enhanced Groundwater Extraction with On-Site Treatment and Discharge to Quiggle Brook; Groundwater Extraction with On-Site Treatment and Reinjection; and Vacuum-Enhanced Groundwater Extraction with On-Site Treatment and Reinjection. The five alternatives for the facilities included No-Action; Limited Action; Facilities Decontamination only; Facilities Decontamination and Demolition; and Facilities Demolition and Disposal without Decontamination. The two off-site soil alternatives were No Action and Limited Action.

Selected Remedy

In the 1990 Record of Decision (ROD) EPA selected a remedy that specified decontamination and demolition of facilities with off-site disposal of debris; soil excavation with on-site low-temperature thermal aeration; vacuum-enhanced groundwater extraction, on-site treatment, and discharge of treated groundwater to Quiggle Brook with institutional controls; and limited action for off-site soils.

The Remedial Investigation identified eight Remedial Action Objectives:

1. Prevent further leaching and migration into the groundwater of contaminants in the soils on the Site, by removal and treatment of contaminants above specific concentrations throughout the Site.
2. Provide rapid restoration of the contaminated groundwater throughout the Site, to concentrations that will protect current and future users, as well as natural resources (*i.e.*, wildlife) that come into contact with the contaminants contained within the groundwater.
3. Protect off-site groundwater and surface waters (particularly Quiggle Brook) by preventing further migration of the contaminated on-site groundwater.

4. Prevent ingestion or absorption of contaminants (particularly dioxins) contained within the incinerator equipment remaining on the Site.

5. Prevent inhalation of friable asbestos from the Still Building.

6. Remove all existing structures located on the Site to allow for the cleanup of contaminated soils found throughout the Site.

7. Remove all other contaminated materials from the facilities so that the Site will be suitable for all potential future uses.

8. Further evaluate and, if necessary, minimize and/or mitigate any potential risks to public health and the environment from potential soil impacts due to contaminants which were previously emitted from the Union Chemical Company incinerator.

In 1992, EPA entered into a Consent Decree with certain Settling Defendants to conduct Remedial Design and Remedial Action at the Site under EPA oversight.

The remedy selected in the 1990 ROD was modified in 1994, 1997, and 2001 by three Explanations of Significant Differences (ESD) and in 2013 by a ROD Amendment. In June 1994 EPA approved a request from the Settling Defendants to change the soil cleanup technology from low-temperature thermal aeration to soil vapor extraction (SVE) with hot air injection. In addition to the change in technology, EPA also set a deadline of five years for achieving the soil cleanup standards.

EPA issued a second ESD for the Site in September 1997 that modified the remedy for off-site soils. The 1997 ESD changed the length of time specified in the ROD for meteorological data collection from five years to three years, thus moving forward the timeframe for collection of off-site soil samples to determine whether the operations of the Union Chemical Company incinerator resulted in deposition of contaminants off-site.

A third ESD was issued in September 2001 that documented a change in the technical approach for treatment of contaminated groundwater and changed the location for discharge of treated groundwater. Three innovative *in situ* addition treatment technologies, (*i.e.*, potassium and sodium permanganate, concentrated hydrogen peroxide, and molasses and sodium lactate) were injected into groundwater in specific portions of the Site to treat contaminated groundwater. With fewer extraction wells needed to control contaminant migration, discharge of treated water changed from surface water discharge to reinjection into the

ground upgradient of the extraction wells.

In November 2013, EPA issued a ROD Amendment in which it waived groundwater cleanup levels due to technical impracticability. The ROD Amendment was necessary because (1) the original groundwater remedy had reached the limits of its effectiveness, (2) the three innovative *in situ* technologies had proven unsuccessful in attaining the groundwater cleanup standards, and (3) an evaluation of cleanup alternatives indicated that no technology was available for achieving groundwater cleanup standards in a reasonable timeframe due to Site-specific hydrogeological and contaminant conditions. The ROD Amendment also adjusted institutional control requirements for the Site.

Response Actions

In October 1993 EPA approved the Facilities Remedial Design, and the decontamination and demolition of facilities and off-site disposal of debris was completed in the spring of 1994.

Beginning in 1994 and continuing into 1996, on-site meteorological data was collected to support the off-site soils component of the ROD. In October 1996 EPA and the Settling Defendants performed joint off-site soil investigation and in September 1997 EPA issued an ESD documenting no further action was necessary for the off-site soils.

In April 1995 EPA approved the SVE and groundwater Remedial Design. Construction included 28 SVE wells, 94 hot air injection points, 33 groundwater extraction wells, and the integrated treatment system and was completed in December 1995. Both systems began operation in January 1996. In April 1997 EPA and MEDEP performed a final inspection for both systems and declared that the remedy was operational and functional.

The rate of mass removal of VOCs decreased dramatically between 1996 and 1999 using the groundwater extraction system, indicating that the extraction system was becoming less efficient due to the Site-specific hydrogeologic and chemical limitations. EPA and MEDEP approved the Settling Defendants' request to employ innovative *in situ* technologies to enhance the reduction of contaminant concentrations. The first technology involved the injection of permanganate. As a strong oxidizer, the permanganate was expected to accelerate the destruction of dissolved chlorinated VOCs. A potassium permanganate pilot study was completed in October 1997. Based on the results of that study,

potassium and sodium permanganate were used on an expanded basis in the summers of 1998, 1999, and 2000 in an attempt to achieve further reductions in VOC concentrations.

The second *in situ* approach was carried out in June 2000 with the injection of 5% hydrogen peroxide solution into injection well P-17. This well was selected as it is in the central area of the source area where the highest VOC concentrations had been detected. Due to the low capacity of P-17 and concerns about the integrity of the mixing tank, EPA decided to discharge the remaining solution to several additional wells located immediately adjacent to well P-17. Comparison of baseline sampling results to four-week post addition results revealed VOC concentrations rebounded to their baseline levels, indicating that the VOC reductions initially achieved were short-term and not sustained.

Given the relative short half-lives of permanganate and hydrogen peroxide, carbon sources in the form of molasses and sodium lactate were added in August and November 2001 to create a reducing environment to enhance degradation of chlorinated ethane compounds by reductive dechlorination. Lactate addition was carried out again in August 2002.

Cleanup Levels

After EPA and MEDEP approval in March 1998, the Settling Defendants' operation of the SVE system and hot air injection was discontinued to allow the soils to return to equilibrium prior to the closure-sampling program. Closure sampling was completed in the fall of 1998. Statistical analysis of the data by three groups working independently indicated that the soils had been cleaned up to below the ROD-specified cleanup levels.

Post-ROD groundwater and surface water monitoring began in the summer of 1992. The monitoring well network includes wells in the source area, in areas with the highest groundwater concentrations, and perimeter wells, near the downgradient boundaries of previously detectable concentrations. The monitoring leading up to the 2007 Five-Year Review did not show any concentration increases in the perimeter wells, indicating that the plume had not expanded since the extraction system was deactivated in 2000. Subsequent monitoring has confirmed that the plume has stabilized, yet remains above the ROD-established performance standards. Consequently, EPA issued the ROD Amendment in 2013 that included a Technical Impracticability waiver recognizing groundwater

performance standards would not be attained in a reasonable timeframe because of Site geology, hydrology, and characteristics of the contaminants. Long-term groundwater monitoring will continue to be performed to ensure that the plume is stable and not migrating out of a designated Technical Impracticability Zone, which reaches the Site property boundaries except for the upgradient northwest corner of the Site.

Operation and Maintenance

The Operation and Maintenance (O&M) activities associated with the Site have been periodically updated as the on-site soil component was completed and again when active groundwater restoration ceased. O&M activities now consist of annual inspections, long-term monitoring of groundwater and surface water every other year, and ongoing decommissioning of the treatment building and redundant monitoring wells. These activities are outlined in bi-annual work plans that are submitted and implemented after EPA and MEDEP review and approval.

Following acceptance of the soil closure sampling results, unused wells and piping were decommissioned in accordance with the O&M Plan.

The extraction system has been deactivated. The effluent discharge line from the treatment building was flushed out, then disconnected below the ground surface and grouted. The external piping from the groundwater extraction wells was removed, and groups of extraction wells were decommissioned in 2005, 2006, and 2010.

The 1990 ROD and 2013 ROD Amendment required the implementation of institutional controls for the Site Property and nearby properties to protect human health and the environment. On August 2, 2017, MEDEP recorded a Declaration of Environmental Covenant in the chain of title for the two lots comprising the Site (collectively, Site Property) at the Knox County Registry of Deeds (Volume 5192, Page 306). Pursuant to Maine's Uniform Environmental Covenants Act, MEDEP, as the receiver of the Site Property pursuant to a 1986 court order, granted the property rights under the Declaration of Environmental Covenant to itself, and will also serve as the holder of these property interests. EPA has third party rights of enforcement under the instrument. Among other things, the Declaration of Environmental Covenant: (1) Prohibits the extraction of groundwater; (2) prohibits the destruction, obstruction, tampering, or disruption of wells; (3) prohibits the

discharge or injection of liquids to the subsurface; (4) prohibits the accumulation, storage, or stockpiling of wastes, as defined in Maine Solid Waste Management Rules, Chapter 400, and operation of a junkyard or automotive scrapyards, as defined in 30 M.R.S. § 3752; (5) requires a sub-slab vapor barrier and ventilation system or a sub-slab depressurization system for any constructed buildings, and (6) provides for EPA and MEDEP access to the Site Property.

In addition to institutional controls for the Site Property, the 1990 ROD also identified a number of institutional controls that could be taken for properties beyond the Site Property. These controls included a restriction on the use of groundwater from existing bedrock wells that are hydraulically connected to the Site, specifically the well on Town of Hope's Tax Map 8 Lot 45, and advisory controls (*e.g.*, well advisories) on surrounding properties.

The Settling Defendants entered into a Lease and Indenture Agreement with the owners of Map 8 Lot 45 on May 18, 1992 and the State of Maine, acting by and through MEDEP. This agreement prohibited the use of the bedrock well in perpetuity unless released by the Settling Defendants and MEDEP.

The 2013 ROD Amendment also calls for environmental deed restrictions or other mechanisms to limit the use of properties adjacent to the Site, as deemed necessary by EPA based on new information including but not limited to the development (or installation of drinking water wells) on properties adjacent to the Site or movement of the leading edge of either plume. To date, EPA has not determined that it is necessary to implement other land use restrictions on the properties adjacent to the Site.

With the recording of the Declaration of Environmental Covenant, the criteria for EPA's Sitewide Ready for Anticipated Use Government Performance and Results Act Measure were complete, and EPA Region 1 signed the Superfund Property Reuse Evaluation Checklist for Reporting on August 17, 2017.

Five-Year Review

EPA conducts Five-Year Reviews of the Site because hazardous substances, pollutants, or contaminants remain on-site above levels that allow for unlimited use and unrestricted exposure. These reviews are statutory and four have been completed with the most recent one completed in September 2017.

The 2017 Five-Year Review concluded the remedy currently

protects human health and the environment because MEDEP is the court-appointed receiver of the Site Property and as such, use of the Site Property is controlled by MEDEP, there is no evidence of current exposure, institutional controls are in place, access to the Site is assured, and long-term monitoring continues. The 2017 Five-Year Review identified one issue, the potential presence of the chemicals perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), and 1,4-dioxane, and recommended they be included in an upcoming monitoring event to determine if these compounds are associated with the Site.

Pursuant to that Five-Year Review recommendation, on October 23, 2017, the Settling Defendants collected groundwater and surface water samples for PFOA and PFOS from two overburden wells, two bedrock wells, and two surface water locations. The samples were analyzed via EPA Method 537, Version 1.1. Modified, and QA/QC review determined that results were of acceptable quality. Three of the four wells had concentrations below EPA's drinking water advisory level of 70 ng/L (nanograms per liter or parts per trillion) for both PFOA and PFOS.

The overburden well with the exceedance of both PFOA and PFOS is historically the most contaminated well in the ongoing long-term Site monitoring and is located immediately downgradient of the former facility's discharge trench. The other overburden well and the two bedrock wells are located 150–450 feet farther downgradient from the well with the exceedance (and for the bedrock wells, the property boundary is another 200 feet or more downgradient beyond them). All the wells are within the Technical Impracticability Zone created under the 2013 ROD Amendment.

In the two surface water samples collected from Quiggle Brook, PFOS and PFOA were not individually detected at concentrations exceeding the method detection limit of 1.0 ng/L but had estimated PFOA concentrations at the instrument detection limit of 1.0 ng/L at the location upstream of the Site and 0.8 ng/L at the long-term surface water monitoring location. There is no EPA advisory level for surface water. Maine Center for Disease Control has established a surface water advisory level of 170 ng/L based on recreational exposure (swimming and wading) and these sample results are below that surface water advisory level.

In 2010, 1,4-dioxane was added to the monitoring program. Due to the elevated levels of other compounds in eight of the ten wells in the monitoring program,

the samples were diluted for analysis and correspondingly, the Reported Detection Limits (RDL) were raised. Consequently, the 1,4-dioxane levels were reported as below the specific reporting limit, ranging from <20 ppb to <2,000 ppb. However, in the four monitoring events, 2010, 2012, 2014, and 2016, as the RDL has dropped in five of the eight wells, 1,4-dioxane remained below the reporting limit. Of the two wells where 1,4-dioxane has been detected, the concentrations have decreased so that the latest results are now also below their respective reporting limits of <20 and <100 ppb. There is no Maximum Contaminant Level standard for 1,4-dioxane nor was 1,4-dioxane included in the 1992 Maine Maximum Exposure Guidelines (ME MEGs), which is the Applicable or Relevant and Appropriate Requirement. The current, but un promulgated ME MEG for 1,4-dioxane is 4 ppb.

With the recent PFAS sampling indicating one exceedance in four monitoring wells in the Technical Impracticability Zone, PFAS will be added to the long-term monitoring program coincident with every monitoring event that precedes a Five-Year Review.

Community Involvement

There was an established community group, Hope Committee for a Clean Environment (HCCE) that was active during the RI/FS and received support through an EPA technical assistance grant. From 1992 through the early 2000s, while Remedial Design and then active remediation of the on-site soils and groundwater, and investigation of the off-site soils were underway, HCCE met regularly with EPA, MEDEP, and the Settling Defendants' Project Coordinator. With the termination of the *in situ* technologies, these meetings ceased. Communication between HCCE, EPA, and MEDEP is now primarily through email. In 2005–2006, EPA convened meetings with community members to develop re-use options.

EPA and MEDEP have met frequently with the Hope Town Administrator and have periodically updated the Board of Selectmen. In June 2015, EPA and MEDEP attended the Town of Hope's Annual Meeting. At that meeting, the Town voted not to assume ownership of the Site Property should MEDEP's receivership of the Site Property end. The Town reaffirmed this position in an October 10, 2017 letter to MEDEP. Beyond these meetings and periodic communication with HCCE and owners of a right-of-way easement across the Site Property, there has been little

participation or involvement from other members of the local community.

EPA discussed the deletion process with the Town Administrator and offered to meet with the Board of Selectmen if the Town desired a presentation. Additionally, EPA contacted the HCCE to inform the group of EPA's plan to delete the Site.

Determination That the Site Meets the Criteria for Deletion in the NCP

Remedial Design and Remedial Action (RD/RA) activities at the Site were consistent with the ROD, as modified by the ESDs and the ROD Amendment, and consistent with EPA RD/RA Statements of Work provided to the Settling Defendants. RA plans for all phases of construction included a Quality Assurance Project Plan (QAPP) dated February 17, 1995 and QAPP Revision 1, dated September 22, 2001. The QAPP incorporated all EPA and Maine quality assurance and quality control procedures and protocols (where necessary). All procedures and protocols were followed for soil, groundwater, and surface water sampling during the RA. EPA analytical methods were used for all validation and monitoring samples during all RA activities. EPA has determined that the analytical results are accurate to the degree needed to assure satisfactory execution of the RA, and are consistent with the ROD and the RD/RA plans and specifications.

All institutional controls are in place and currently EPA expects that no further Superfund response is needed to protect human health and the environment, except future Five-Year Reviews and ongoing long-term monitoring. O&M activities were agreed upon by EPA and the Settling Defendants and are documented in the October 2006 O&M Manual. These activities include continuing decommissioning of redundant wells, securing the functioning wells, and maintenance of the soil cap.

This Site meets all the site completion requirements as specified in OSWER Directive 9320.2–09–A–P, Close Out Procedures for National Priorities List Sites. All cleanup actions specified in the ROD, as modified by the ESDs and ROD Amendment have been implemented and the implemented remedy has achieved the degree of cleanup or protection specified in the ROD, as modified by the ESDs and ROD Amendment, for all pathways of exposure.

Confirmatory groundwater monitoring and institutional controls provide further assurance that the Site no longer poses any threats to human health or the

environment. The only remaining activity to be performed are Five-Year Reviews, monitoring, and O&M activities described above. A bibliography of all reports relevant to the completion of this Site under the Superfund program is in the administrative record for this deletion.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 9, 2018.

Alexandra Dunn,

Regional Administrator, Region 1.

[FR Doc. 2018–15622 Filed 7–19–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL–9981–02–Region 1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Old Southington Landfill Superfund Site

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 1 is issuing a Notice of Intent to Delete the Old Southington Landfill Superfund Site (Site) located at Old Turnpike Road, Southington, Connecticut (CT), from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL was promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Connecticut, through the CT Department of Energy and Environmental Protection (CT DEEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance, monitoring, and five-year reviews, have been completed. However, this deletion

does not preclude future actions under CERCLA.

DATES: Comments must be received by August 20, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2005–0011, by one of the following methods:

- *Online:* <http://www.regulations.gov>

—Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

- *Email:* silva.almerinda@epa.gov or Purnell.ZaNetta@epa.gov
- *Mail:*

Almerinda Silva, U.S. EPA, Region 1—New England, 5 Post Office Square, Suite 100, Mail Code OSSR–07–4, Boston, MA 02109–3912

ZaNetta Purnell, U.S. EPA, Region 1—New England, 5 Post Office Square, Suite 100, Mail Code OSSR–ORA01–1, Boston, MA 02109–3912

- *Hand delivery:* U.S. EPA, Region 1—New England, 5 Post Office Square, Suite 100, Boston, MA. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Region 1—New England, Superfund Records Center, 5 Post Office Square, Suite 100, Boston, MA 02109, Phone: 617–918–1440, Hours: Monday–Friday: 9:00 a.m.–5:00 p.m., Saturday and Sunday—Closed.

Southington Public Library, 255 Main Street, Southington, CT, Phone: 860–628–0947, Hours: Monday–Thursday 9:00 a.m.–9:00 p.m., Friday–Saturday 9:00 a.m.–5:00 p.m., and Sunday Closed.

FOR FURTHER INFORMATION CONTACT:

Almerinda Silva, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1—New England OSRR07–4, 5 Post Office Square, Boston, MA 02109–3912, Phone: (617) 918–1246, email silva.almerinda@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
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I. Introduction

EPA Region 1 announces its intent to delete the Old Southington Landfill Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated by EPA pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions should future conditions warrant such actions. EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Old Southington Landfill Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. all appropriate Fund-financed response under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above

levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures apply to deletion:

(1) EPA consulted with the State before developing this Notice of Intent to Delete;

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today;

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State has concurred with deletion of the Site from the NPL;

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, The Southington Observer. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL; and

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate.

The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

CERCLIS ID: CTD980670806

The Old Southington Landfill Superfund Site is in the Town of Southington, Hartford County, Connecticut, and is approximately 13 miles southwest of Hartford, Connecticut. From 1920 to 1967, residents and area businesses used portions of the landfill for disposal of waste materials. During this time frame, the landfill was known as the Old Turnpike Landfill. Based upon historical information, Remedial Investigation (RI) data, and differences in ownership between the northern and southern portion of the Site, it is clear that the northern and southern portions of the landfill were used for distinct and separate purposes. The northern portion of the landfill was a "stump dump" that was used for the disposal of wood and construction debris. The southern portion of the landfill was used throughout the period the landfill was in operation for the co-disposal of municipal and industrial waste. Historical information, interviews with current and past Town employees, and information contained in public documents on disposal practices indicate that for a short period of time (1964–1967) two areas (SSDA 1 and SSDA 2) in the southern portion of the landfill were used for disposal of semi-solid industrial wastes. In 1967 (or shortly thereafter), the landfill was "closed" consisting of: Compacting disposed material, covering with 2 feet of clean fill, and seeding for erosion control.

Between 1973 and 1980, the landfill property was subdivided and sold for residential and commercial development. Several residential and commercial buildings were built on the Site and on adjacent areas.

The landfill is located approximately 700 feet southeast of the former Production Well No. 5, which was installed in 1965 by the Town of Southington Water Department and was used as a public water supply. The Connecticut Department of Public

Health and Addiction Services (then the Department of Health Services) sampled Well No. 5 on several occasions between December 1978 and March 1979.

Analyses of the samples indicated the presence of chlorinated volatile organic compounds (VOCs). Because of the detection of 1,1,1-trichloroethane (TCA) at levels that exceeded State standards, Well No. 5 was closed in August 1979. The well has been permanently closed since that time. A more detailed description of the Site history can be found in Section 1 of the *Supplemental Remedial Investigation (SRI) Report* (Kleinfelder, May 2006).

1. History of CERCLA Enforcement Activities

In February 1980, EPA authorized a hydrogeologic investigation aimed at defining the nature and extent of contamination in groundwater in the vicinity of Well No. 5. Analysis of groundwater samples collected from two monitoring wells installed between the landfill and Well No. 5 indicated the presence of VOCs (Warzyn Engineering, Inc., 1980). In November 1980, the Connecticut Department of Environmental Protection (now the CT DEEP) collected soil samples from a manhole excavation within the industrial park located on land that had previously been part of the landfill. Analysis of the soil samples indicated the presence of chlorinated and non-chlorinated VOCs.

The Old Southington Landfill was formerly known as the Old Turnpike Landfill. Based on the above findings and a hazardous ranking evaluation performed in 1982, EPA subsequently proposed the Site be placed on the National Priorities List (NPL), pursuant to Section 105(8)(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605(8)(b). On September 8, 1983, the Site was proposed to the NPL (48 FR 40674) and on September 21, 1984, the Old Turnpike Landfill was final listed on the NPL as the Old Southington Landfill Superfund Site (49 FR 37070). The Site includes two Operable Units (OUs); OU1 includes the landfill cap and permanent relocation of all on-site homes and businesses; and OU2 includes the groundwater.

In 1987, EPA entered into an Administrative Order on Consent (AOC) with three Potentially Responsible Parties (PRPs) to define the nature and extent of Site contamination. In 1993, the PRPs prepared a Remedial Investigation/Feasibility Study report (ES&E, 1993) that provided results of the RI, a Human Health Risk Assessment

(HHRA), an Ecological Risk Assessment (ERA), and a Feasibility Study (FS). EPA issued an Addendum to the RI/FS Report in 1994.

In September 1994, EPA issued the Interim Remedial Action for Limited Source Control Record of Decision (ROD) that addressed the landfill and included the following major remedy components and remedy objectives:

- Relocation of existing residences and businesses located on top of the landfill;
- Construction of a synthetic cap over the landfill to prevent human contact with contaminated subsurface soils, stop rainwater infiltration through the soil to the groundwater, and allow for the containment and collection of landfill gas;
- Excavation and consolidation of a highly contaminated area “hot spot” in a lined cell underneath the landfill cap;
- Removal of all buildings from the landfill;
- Installation of a soil gas collection system;
- Performance of long-term operation and maintenance (O&M);
- Performance of long-term monitoring;
- Development and implementation of institutional controls to ensure the remedy integrity by controlling future Site use and access; and
- Five-Year Reviews.

The remedy selected in the 1994 ROD also required additional groundwater studies be undertaken concurrent with the implementation of the cap on the landfill. In addition, because it was uncertain if the landfill gas collection system would be effective and protective of human health, the 1994 ROD required that an additional evaluation be conducted.

In 1998, a Consent Decree (CD) was entered between EPA and approximately 320 PRPs; two PRPs became the Performing Settling Defendants (PSDs) while the remainder were Contributing Settling Defendants. Pursuant to the CD, the PSDs were required to implement the remedy selected in the 1994 ROD. Construction of the remedy selected in the 1994 ROD was completed in 2001. Operation and maintenance as well as long-term monitoring are currently being conducted by the Performing Settling Defendants (PSDs). Institutional controls, consisting of Environmental Land Use Restrictions (ELURs), were implemented in 2010 and 2018 for parcels occupied by the landfill cap. Five-Year Reviews are being conducted by EPA. In June 1999, EPA entered into two additional settlements: One with six parties and the other with 119 *de*

minimis parties who all agreed to contribute to the cost of the remedial action in the 1994 ROD. Per the 1994 ROD, the PSDs performed the additional groundwater studies (*i.e.*, a second RI/FS) to address the remaining issues at the Site under the 1998 CD.

Accordingly, in 1999, the PSDs initiated the Supplemental Groundwater Investigations (SGI) which was completed in 2006. The 2006 SRI and the Amended Feasibility Study (AFS), (EPA, 2006) were completed in June 2006. In September 2006, a Final ROD was issued to address potential vapor intrusion risks from contaminants located in shallow groundwater (Operable Unit 2 [OU2]).

The 2009 CD required the PSDs to develop the Remedial Design and construct the selected remedy for the 2006 ROD. As part of the Remedial Design, a vapor intrusion groundwater investigation was completed for two properties immediately downgradient of the landfill that determined only vinyl chloride slightly exceeded a proposed State groundwater quality commercial/industrial volatilization criterion. Institutional controls in the form of ELURs would be implemented to prevent construction of new buildings to prevent future vapor intrusion risks (LEA, 2014). The ELURs were completed during 2017.

Remedial Investigation and Feasibility Study (RI/FS)

1. 1993 Remedial Investigation

Results from the 1993 RI concluded that the primary sources of groundwater contamination at the Site are wastes, including liquid organic solvents and semi-solid organic sludges, deposited in the landfill during its operation. Deposition of limited amounts of metal-containing wastes has also contributed to localized areas of elevated levels of certain metals in groundwater beneath the landfill.

Overall, the RI results indicated that industrial-related chemical waste was deposited primarily in the southern portion of the landfill. VOCs were detected in soils at sporadically high concentrations throughout this portion of the landfill. VOCs were detected in shallow, intermediate, and deep overburden groundwater exceeding the federal Maximum Contaminant Levels (MCLs).

Low to moderate concentrations of several other contaminants, including semi-volatile organic compounds (SVOCs) [primarily polycyclic aromatic hydrocarbons (PAHs)], polychlorinated biphenyl compounds (PCBs) and some metals, were also detected. The 1993 RI

also identified two areas (SSDA 1 and SSDA 2), where semi-solid industrial waste materials contaminated with relatively high levels of VOCs and/or SVOCs were deposited. EPA determined that SSDA 1 was to be considered a “hot spot” due to contaminants levels being substantially higher than those found throughout the landfill, whereas levels of contamination in SSDA 2 were consistent with those found throughout the southern portion of the landfill. Past records and results also indicated that the northern portion of the landfill was primarily used as a dump for stumps and demolition debris with waste materials including wood, ash, cinders, and some brick and asphalt. Moderate concentrations of PAHs were detected in soils at certain locations in the northern portion of the landfill. Approximately one third of the waste in the southern portion of the landfill remains below the water table.

2. 2006 Supplemental Remedial Investigation (OU2)

The results of the 2006 SRI confirmed that groundwater flow beneath the landfill is westerly; however, as groundwater flows away from the landfill towards the Quinnipiac River, the flow becomes northwesterly. Groundwater present near the Site includes an overburden aquifer and a bedrock aquifer. Overall, groundwater flow was postulated to generally follow the bedrock topography, flowing along a west-northwest trending bedrock trough, with the impact of the bedrock topography being potentially greater on the flow in the deeper portions of the aquifer. Hydrogeologic evaluations also indicated that the bedrock surface rises in the western part of the area studied, pinching out the overburden groundwater aquifer west of the Quinnipiac River.

Groundwater migrating westward from the Site contains dissolved contaminants derived from the waste disposed in the southern portion of the Site, and flows relatively quickly downward into the deeper overburden aquifer. This phenomenon appears to be due to significant differences in the relatively low permeability of the waste versus the high permeability of the underlying sand and gravel layer. Contaminants are then transported at depth to the west by regional groundwater flow. Contaminants from the northern portions of the landfill move downward more slowly and migrate greater distances through the shallow aquifer immediately west and northwest of the landfill.

3. 1994 Feasibility Study (OU1)

Using the information gathered from the 1993 RI, HHRA, and other technical documents, EPA identified several source control response objectives to use in developing alternatives to prevent or minimize the release of contaminants from the Site. A comprehensive evaluation of containment and management of contaminated groundwater migration from the landfill was addressed by the final response action. A presumptive remedy for CERCLA municipal landfills was selected, which consisted primarily of containment (capping) of the landfill waste and gas collection/treatment. Capping of the landfill waste along with collection of landfill gases, and if necessary, treatment, was the presumptive containment remedy selected in the FS for this Site. In this FS, the remedy was combined with other remedial actions that addressed source control of the landfill wastes. The presumptive remedy did not address exposure pathways outside the source area (landfill) such as groundwater. The following 2006 Amended Feasibility Study addressed groundwater.

4. 2006 Amended Feasibility Study (OU2)

In 2006, an Amended Feasibility Study (AFS) developed remedial alternatives for the remediation of groundwater, provided a detailed evaluation on the remedial alternatives, and performed a comparative analysis of the two remedial alternatives identified as (1) Alternative GW-1: No Action, and (2) Alternative GW-2: Institutional Controls/Groundwater Monitoring/Building Ventilation/Vapor Barriers. Alternative GW-2 was chosen as the selected groundwater remedy for the Site.

Selected Remedies

The September 1994, ROD for the Interim Remedial Action for Limited Source Control addressed the following Remedial Action Objectives (RAOs):

- Minimize the current and future effects of landfill contaminants on groundwater quality, specifically, reducing to a minimum the amount of precipitation allowed to infiltrate through the unsaturated waste column and contaminate the groundwater;
- eliminate potential future risks to human health through direct contact with landfill contaminants by maintaining a physical barrier;
- control surface water run-on, run-off, and erosion at the Site;
- prevent risks from uncontrolled landfill gas migration and emissions;

- comply with state and federal applicable or relevant and appropriate requirements (ARARs); and

- minimize potential impacts of implementing the selected limited source control alternative on adjacent surface waters and wetlands.

Additional groundwater studies followed and in September 2006, EPA issued a ROD for the final selected remedy that addresses potential risks from vapor intrusion into buildings above the shallow VOC plume in groundwater (2006 ROD). This remedy addressed the following remedial action objective (RAO): Prevent inhalation of VOCs by occupants of residential/commercial/industrial buildings resulting from volatilization of VOCs in groundwater, in excess of 10^{-4} to 10^{-6} cancer risk, a Hazard Index >1 , and/or comply with applicable or relevant and appropriate volatilization criteria.

Response Actions

1. 1994 ROD Findings & Remedial Activities

The remedial action selected in the 1994 ROD (for OU1, the landfill) was based principally upon EPA's *Presumptive Remedy for CERCLA Municipal Landfill Sites*, EPA Document No. 540-F-93-035. (Presumptive Remedy Guidance) (EPA, 1993). The 1994 ROD addressed all affected media (*i.e.*, soil, soil gas, surface water, and sediment) at the landfill, at the adjacent Black Pond, and at the Unnamed Stream across Old Turnpike Road west of the landfill. By July 2001 physical construction of the OU1 (landfill) remedy was substantially completed and the operation and maintenance (O & M) activities and long-term monitoring (LTM) had started.

The northern 4-acre portion of the landfill Site was redeveloped for passive recreational use. This part of the landfill is landscaped with trees and shrubs along its perimeter and abuts Black Pond. It is regularly mowed by the Town of Southington (a PSD). There is a 3-foot high chain link fence that encircles this part of the landfill along Old Turnpike Road to the west and Rejean Road to the north. The fence has an opening, which allows for pedestrian access. People can walk their dogs, sit and watch the naturally existing wildlife, and/or take their kayak or canoe out onto Black Pond. The southern portion of the landfill is secured with a 6-foot high chain link fence and public access is not allowed. The reason for prohibiting public access to this part of the landfill is to prevent potential damage to the low-permeability cap, which could in turn

allow rainwater infiltration and direct contact with highly contaminated industrial waste.

The 2006 SRI determined that there were no receptors downgradient of the Site that could be affected by the plume and that Site-related groundwater contaminants of concern (COCs) downgradient of the Site do not adversely impact environmental media other than groundwater. Groundwater COCs are transported as a narrow plume in the lower portion of the aquifer, remain in the lower portion of the aquifer, with ultimate discharge into the Quinnipiac River Basin west-northwest of the Site. The also determined that non-VOC COCs from the Site in groundwater do not exceed applicable regulatory criteria. Based on the SGI's hydraulic studies, it was determined that contaminated groundwater underlying the landfill does not discharge into Black Pond or the unnamed stream and wetlands.

Confirmation of the passive landfill gas collection system's effectiveness was conducted through several means. After the gas collection system was installed and the landfill was capped, three rounds of seasonal vapor data were collected directly from the landfill gas vents and a risk assessment was conducted. The data results indicated that the gas vents were operating effectively and there was no risk found to human health or to the environment.

As part of the 2010 Five-Year Review, a helium tracer study was conducted in the northern part of the landfill to simulate potential landfill gas migration, low levels of helium were detected outside the landfill. Therefore, as a precautionary measure, the PSDs installed an impermeable vertical gas barrier trench that extends into the water table just outside the landfill cap to prevent possible landfill gas from migrating off-Site to the northern neighborhood. The PSDs performed a similar evaluation of the gas vents data in the southern portion of the landfill and found no risk being posed to human health or the environment. All vents continue to be periodically checked through long-term monitoring (LTM) and O&M programs.

2. 2006 ROD Findings & Remedial Activities

This ROD memorialized the remedy to reduce potential risks from the migration of volatile contaminants to indoor air within buildings located above groundwater contamination. The components of this remedy complement those in the 1994 ROD.

The major components of the 2006 ROD are as follows:

i. Institutional controls, in the form of Environmental Land Use Restrictions (ELURs) as defined in Connecticut's Remediation Standard Regulations (CT RSRs) will be placed on properties or portions of properties where groundwater Volatile Organic Compound (VOC) concentrations exceed the CT RSR volatilization criteria for residential or commercial/industrial use, or criteria listed in Table L-1 of the 2006 ROD. Periodic inspections are required to ensure compliance with the institutional controls and to ensure proper notification to EPA and the State, as necessary.

ii. Building ventilation (sub-slab depressurization systems or similar technology) will be used in existing buildings located over portions of properties where VOCs in groundwater exceed the CT RSR's volatilization criteria or criteria listed in Table L-1 of the 2006 ROD to prevent migration of VOC vapors into buildings. Similarly, vapor barriers (or similar technology) or sub-slab depressurization (or similar technology) will be used to control vapors in new buildings.

iii. Groundwater monitoring will be conducted in areas where the potential for vapor intrusion is a concern. Such areas include, but are not limited to, the two parcels that are the initial focus of this remedial action Chuck & Eddy's (C&E) and the Radio Station. Compliance wells will be installed at appropriate locations, to collect groundwater to evaluate long-term fluctuations in accordance with the monitoring requirements of the CT RSRs and other federal requirements to ensure the protectiveness of the remedy in the future.

iv. Conduct operation, maintenance, and monitoring of engineering and institutional controls to ensure remedial measures are performing as intended and continue to protect human health and the environment in the long-term.

v. Five-year reviews.

The 2006 ROD addresses the threat presented by vapor intrusion through engineering controls, institutional controls, long-term monitoring, and Five-Year Reviews to prevent potential exposure to contamination that presents an unacceptable risk to human health. Engineering controls (*i.e.*, vapor mitigation systems) will only be installed in the future if criteria listed in Table L-1 of the 2006 ROD are exceeded and/or if new buildings are constructed on properties of concern.

In August 2010 further testing was performed at the Highland Hills neighborhood and the results confirmed that there is no vapor intrusion risk to this neighborhood and thus no further

action is necessary in this area. To confirm that any groundwater contamination that far from the landfill edge would be at depths greater than 15 feet and not pose a vapor intrusion risk, groundwater samples were collected sequentially in discrete vertical intervals and analyzed and compared to criteria presented in Table L-1 of the 2006 ROD. Groundwater samples from two consecutive 1 foot intervals and subsequently every 5 feet down to 60 feet were collected and analyzed. There were no exceedances of any of the volatilization criteria in the upper 30 feet of the aquifer. These results confirm the conceptual Site model that there is no vapor intrusion pathway in groundwater below the Highland Hills subdivision and therefore no vapor intrusion risk.

An investigation was conducted by the PSDs with EPA oversight in 2011 to confirm that the Site's groundwater plume was not migrating towards the portion of the aquifer classified by the State as GA [potable], situated to the south and southwest of the landfill. The investigation results demonstrated that the groundwater that is moving through the Landfill moves in a west/northwest direction, which continues to support the conceptual Site model for groundwater flow and contaminant transport. Thus, the Site groundwater plume does not flow toward or impact the GA aquifer. A more detailed description of this investigation and findings can be found in the *GA Boundary Investigation Report* (LEA, September 2011).

A Vapor Intrusion Groundwater Investigation was performed by the PSDs during 2011 to assess the potential for vapor intrusion at the C&E's Property, the Radio Station Property, and at two locations along Nunzio Drive and Barbara Lane (located southwest of the Site). Soil boreholes were advanced at select locations and monitoring wells were installed. Soil and groundwater samples were collected from these locations for analysis. Soil vapor probes were installed in occupied structures at the C&E's Property and the Radio Station Property. Four quarterly rounds of soil vapor and groundwater samples were collected from June 2010 through September 2011. Only vinyl chloride was identified as slightly exceeding the criteria presented in Table L-1 of the 2006 ROD. No VOCs were detected at concentrations exceeding the State RSRs for soil vapor (LEA, 2014). Therefore, construction of remedial vapor mitigation systems for existing structures at the C&E's Property and the Radio Station Property identified in the 2006 ROD was unnecessary. However, a

passive vapor barrier was installed under the concrete slab for a new structure built in 2010 at the C&E's Property.

Residents and businesses have been permanently relocated from the landfill. The landfill has been properly capped and a soil gas collection system and impermeable gas barrier have been installed at the landfill. Therefore, there is no risk to human health or the environment from coming in contact with the landfill soil or landfill gas. In addition, everyone who lives or works in the area over the groundwater plume is connected to a municipal water supply, and so there is no ingestion or dermal contact with the contaminated groundwater. The route of potential exposure to human health is through vapor intrusion in the shallow groundwater that could potentially migrate into buildings. The 2006 remedy addresses this issue through long-term monitoring and implementation of vapor intrusion engineering controls and institutional controls. The components of 1994 and the 2006 remedies are functioning effectively as designed.

Cleanup Levels

Attainment of Groundwater Restoration Cleanup Levels is not a Remedial Action Objective at this Site. The final groundwater remedy is not designed to clean up or restore groundwater but to address potential risks from vapor intrusion into buildings located above shallow groundwater contaminated from the Site (EPA, 2006).

Operation and Maintenance

There is an ongoing O&M program instituted for the 1994 remedy that includes landfill cover maintenance, cap effectiveness monitoring (groundwater monitoring and gas vent monitoring), and landfill inspection. An Operation and Maintenance Plan was prepared in 2001 that details the inspections, maintenance, and monitoring activities (CRA, 2001). An inspection plan was developed to ensure integrity of the cover system. Routine inspections of the Site include observing and recording the height of grass cover and areas of settlement and/or ponding. A security inspection that includes a fence perimeter inspection and a visual inspection of trespasser or disturbance activity is also conducted periodically. The PSDs' contractor performs the cap effectiveness monitoring, inspections, non-routine maintenance. One PSD (Town of Southington) performs the soil cover

maintenance on a routine basis (removal of debris and grass cutting).

For the 2006 remedy, it was determined that no sub-slab vapor mitigation system was required for either the existing C&E property or the Radio Station buildings. However, as a preventative measure any new construction of new buildings or additions to existing buildings would require sub-slab and/or engineering vapor intrusion mitigation measures. In 2010, a pre-fabricated building was constructed at the C&E property with the placement of a passive vapor barrier. This barrier was installed under the direction of the C&E property owner without EPA or CT DEEP oversight. As a result, in 2011 a second geomembrane was proposed for installation under the concrete slab as a passive vapor intrusion barrier. EPA and CT DEEP reviewed and approved the design. The installation with oversight, was approved by EPA and CT DEEP. A Vapor Intrusion Inspection Plan (VIIP) was developed by LEA in March 2018 that specifies inspection frequency on a biennial basis with mitigation steps as necessary. The VIIP is included in Appendix N of the Remedial Action Completion Report (LEA, 2018).

Institutional Controls Implemented

Institutional controls have been implemented for properties that comprise the Site and two properties located downgradient of the capped landfill to prevent consumption of groundwater, prevent activities that would compromise the integrity of the landfill cap, and restrict construction of structures over contaminated groundwater that exceed state groundwater standards with regard to preventing vapor intrusion exposures. These institutional controls address the requirements of both the 1994 and 2006 RODs. The institutional controls are environmental restrictions in the forms of "Declarations of Land Use Restrictive Covenants or "Declarations of Environmental Land Use Restrictions (ELURs)".

The September 14, 2010 ELURs were executed by the Town of Southington for the three Town-owned parcels located in the northern area of the capped landfill. In the ELURs, the Town agreed to: (1) Place notice of the restrictions on the deed, title, or other instrument and have it continue into perpetuity; (2) prohibit any use of any portion of the property that will disturb any of the remedial measures (except for maintenance and repair upon prior approval by EPA); (3) prohibit any activities that could result in exposure to contaminants in the subsurface soils

and groundwater; (4) prohibit any future residential and commercial development on the property; (5) prohibit use or consumption of contaminated groundwater underlying the property; and (6) grant access to EPA, including its contractors, and the State for the purpose of conducting any activity related to the CDs. Finally, EPA, the State, and/or the PSDs have the right to enforce the ELURs. The April 9, 2018 ELURs were implemented for one Town-owned parcel located in the southern area of the capped landfill, which has the same restrictions as the September 14, 2010 ELURs.

In September 17, 2015 ELURs were implemented by the CT DEEP for the remaining 9 state-owned parcels of the landfill. These ELURs have the same six restrictions as those described in the September 14, 2010 ELURs, plus an additional restriction that requires any new structure to be constructed in accordance to a plan approved by EPA that minimizes the risk of inhalation of contaminants. In addition, this ELUR indicates EPA and/or the PSDs have the right to enforce the restriction.

The April 19, 2017 ELUR was recorded by the owners of the Radio Station Property. In this ELUR, the owners agreed to: (1) Restrict the construction of a building over groundwater at the Subject Area where volatile organic compounds concentrations exceed the RCSA Section 22a-133k-1(75) Volatilization Criteria (unless a release is obtained from the CT DEEP); (2) allow no action or inaction which would allow a risk of pollutant migration, or potential hazard to human health or the environment; or result in the disturbance of structural integrity of engineering controls used to contain pollutants or limit human exposure; (3) in the event of an emergency, notify the CT DEEP, implement measures to limit actual or potential risks to human health and the environment, implement a plan to ensure restoration of the property to conditions prior to the emergency; (4) not allow alterations to the property inconsistent with the ELUR until a release is approved by the CT DEEP; (5) allows access to the CT DEEP agents that perform pollution remediation activities; (6) allow access onto the property by the CT DEEP upon reasonable notice; and (7) require the property owner to notify any future interests of the ELUR requirements. This ELUR is enforceable by the CT DEEP.

The June 22, 2017 Declaration of ELUR was recorded by the owner of the property where the C&E's Used Auto Parts business is located. This ELUR has the same seven restrictions as described in the April 2017 ELUR.

Five-Year Review

Hazardous substances will remain at the Site above levels that allow unlimited use and unrestricted exposure after the completion of the action. Pursuant to CERCLA § 121(c) and as provided in the current guidance on Five-Year Reviews (OSWER Directive 9355.7-03B-P, June 2001), EPA must conduct statutorily required Five-Year Reviews. The first Five-Year Review was conducted in September 2005. The second and third Five-Year Reviews were completed in September 2010 and in September, 2015, respectively. The September 2015 Five-Year Review found the Site remedy currently protective of human health and the environment. There was one issue and recommendation, to complete the Institutional Controls at the C&E property and the Radio Station Property. The PSDs continued to work collaboratively with CT DEEP and the property owners at these two properties and in June 2017 institutional controls, in the form of ELURs, were finalized. These actions completed the 2015 Five-Year Review recommendation. The remedy is protective of human health and the environment. The next Five-Year Review is scheduled for September 2020.

Community Involvement

From approximately 1988 through 2002, community concern and involvement was high at this Site. EPA kept the community and other interested parties apprised of the Site's activities through informational meetings, fact sheets, press releases and public meetings. In October 1988, EPA released a community relations plan that outlined a program to address community concerns to keep citizens informed and involved with remedial activities. On December 14, 1988, EPA held an informational meeting in the Southington Public Library to describe the plans for the Remedial Investigation and Feasibility Study. In January 1993, a \$50,000 technical assistance grant was awarded by EPA to a local group of citizens who called themselves, Southington of Landfill Victims, (SOLV) to hire a technical consultant to help them better understand the Site's technical data and information. This consultant provided the group technical assistance in interpreting technical documents relating to the remedial investigation, human and ecological risk assessments, remedial design, and remedial action. On May 23, 1994, EPA completed the administrative record which included documents that were used by EPA to propose the remedy for

the Site. These documents were available for public review at EPA's offices in Boston, Massachusetts and at the Site Repository at the Southington Public Library, Southington, CT.

The Proposed Plan was made available to the public on May 23, 1994. On June 14, 1994, EPA held a public meeting to discuss the results of the Remedial Investigation, the cleanup activities presented in the FS and to present the Agency's Proposed Plan. This was followed by a 30-day comment period. On June 29, 1994 residents requested an additional 30-day comment period to August 13, 1994, which was granted by EPA.

On July 12, 1994, the Agency held a public hearing to discuss the Proposed Plan and to accept oral comments. A transcript of this hearing and comments, along with the Agency's response to comments are included in the Responsiveness Summary found in Appendix A of the 1994 ROD.

In June 2006 EPA issued a second Proposed Plan with a 60-day comment period from June 22, 2006 through August 24, 2006 for the final remedy to address vapor intrusion at properties downgradient of the landfill. On July 6, 2006 a public hearing was conducted to accept verbal comments. All comments were addressed in the responsiveness summary included in PART 3 of the 2006 ROD.

After the 1994 ROD remedy was implemented, community involvement and interest decreased significantly. EPA continues to conduct community outreach through its Five-Year Reviews or any time there is new information to share with the public.

EPA has worked closely with CT DEEP and the PSDs throughout the preparation of documentation for the deletion process. The community is being notified of EPA's intent to delete the Site from the NPL through the publication of this Notice of Intent to Delete and the public will be provided with a 30-day comment period. EPA will take all of received comments into consideration and in consultation with CT DEEP, and will respond, as appropriate, to the comments in a responsiveness summary.

Determination That the Site Meets the Criteria for Deletion in the NCP

All Remedial Design and Remedial Action (RD/RA) activities at the Site were consistent with the 1994 ROD, the 2006 ROD, as well as all respective EPA Statements of Work provided by the PSDs. All selected remedial and removal action objectives and associated cleanup levels are consistent with agency policy and guidance. RA plans

for all phases of construction included Quality Assurance Project Plans (QAPPs) which incorporated all EPA quality assurance and quality control procedures and protocols (where necessary). All procedures and protocols were followed for soil, groundwater, surface water, sediment, soil gas, and fish tissue sampling. EPA analytical methods were used for all validation and monitoring during all RA activities. EPA has determined that the analytical results were accurate to the degree needed to assure satisfactory execution of the RAs, and were consistent with the RODs and RD/RA plans and specifications.

All Institutional Controls are in place and currently EPA expects that no further Superfund response is needed to protect human health and the environment, other than future Five-Year Reviews, ongoing long-term monitoring, O&M, and inspections. Confirmatory groundwater monitoring and institutional controls provide further assurance that the Site no longer poses any threats to human health or the environment. Operation and maintenance activities were agreed upon by EPA, in consultation with CT DEEP, and the PSDs in the 2001 O&M Plan and the 2018 Vapor Intrusion Monitoring Plan (VIIP).

EPA has followed the procedures required by 40 CFR 300.425(e). The Site meets all Site completion requirements as specified in OSWER Directive 9320.2-09-A-P, Close Out Procedures for National Priorities List Sites. All cleanup actions specified in the 1994 and 2006 RODs have been achieved for all pathways of exposure. Therefore, no further Superfund response is needed to protect human health and the environment.

A bibliography of all reports relevant to the completion of this Site under the Superfund program are included in the administrative record for this deletion.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 9, 2018.

Alexandra Dunn,

Regional Administrator Region 1.

[FR Doc. 2018-15628 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25 and 30

[GN Docket No. 14-177; WT Docket No. 10-112; FCC 18-73]

Use of Spectrum Bands Above 24 GHz for Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on proposed service rules to allow flexible fixed and mobile uses in additional bands and on refinements to the adopted rules in this document. A Final rule document for the Third Report and Order (3rd R&O) related to this document for the Third Further Notice of Proposed Rulemaking (3rd FNPRM) is published in this issue of this **Federal Register**.

DATES: Comments are due on or before September 10, 2018; reply comments are due on or before September 28, 2018.

ADDRESSES: You may submit comments, identified by GN Docket No. 14-177, by any of the following methods:

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

- *Federal Communications Commission's Website:* <https://www.fcc.gov/ecfs/>. 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, 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: John Schauble of the Wireless Telecommunications Bureau, Broadband Division, at (202) 418-0797 or John.Schauble@fcc.gov, Michael Ha of the Office of Engineering and Technology, Policy and Rules Division, at 202-418-2099 or Michael.Ha@fcc.gov, or Jose Albuquerque of the

International Bureau, Satellite Division, at 202-418-2288 or Jose.Albuquerque@fcc.gov. For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418-2918 or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order (3rd FNPRM), GN Docket No. 14-177, FCC 18-73, adopted on June 7, 2018 and released on June 8, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The complete text is available on the Commission's website at <http://wireless.fcc.gov>, or by using the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs/>. Alternative formats are available to persons with disabilities by sending an email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

Comment Filing Procedures

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: <https://www.fcc.gov/ecfs/filings>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, GN Docket No. 14-177.

- *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 Dr., Annapolis Junction, Annapolis MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

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), 888-835-5322 (tty).

Ex Parte Rules—Permit-But-Disclose

Pursuant to § 1.1200(a) of the Commission's rules, this 3rd FNPRM 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 § 1.1206(b). In proceedings governed by § 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.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present 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 attached *3rd FNPRM*. 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 as specified in the *3rd FNPRM*. The Commission will send a copy of this *3rd FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *3rd FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Paperwork Reduction Act

The *3rd FNPRM* contains proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this proceeding. 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

Synopsis

I. 42–42.5 GHz Band

A. Introduction

1. The 42–42.5 GHz band (42 GHz band) consists of 500 megahertz, allocated to non-Federal fixed and mobile services on a primary basis, and it contains no current Federal allocation or service rules. The adjacent 42.5–43.5

GHz band is allocated to the Radio Astronomy Service (RAS) on a primary basis for Federal and non-Federal use and to the Federal fixed, fixed-satellite (Earth-to-space), and mobile except aeronautical mobile services on a primary basis. The allocations footnote corresponding to the 42.5–43.5 GHz band also requires that any assignments to the stations of other services also allocated to the band take all practicable steps to protect the RAS from harmful interference. Out-of-band signals into allocated radio astronomy bands can cause interference to radio astronomy observations. The Commission also notes that radio astronomy as a service frequently makes use of observations (passive) in bands not allocated to the RAS. This practice is a result of scientifically valuable signals being subject to the Doppler Effect and shifted in frequency outside radio astronomy-allocated bands. In its 2016 *FNPRM*, the Commission sought comment on a proposal to authorize flexible fixed and mobile operations in the band under the new part 30 Upper Microwave Flexible Use Service (UMFUS) rules, but only on the condition that adjacent channel RAS at 42.5–43.5 GHz could be protected. The *FNPRM* also sought specific comment and detailed study on what protections should be established for this adjacent band—for example, whether out-of-band emission limits into the 42.5–43.5 GHz band should be established or whether it was necessary or appropriate to create a guard band below 42.5 GHz. In addition to the appropriate licensing and technical rules, the Commission also sought comment on the appropriate band plan for the 42 GHz band—including whether the band should be licensed as a single channel, split into two channels, or split into multiple 100 megahertz channels—and whether to license the band geographically using Partial Economic Areas (PEAs). Although the Commission received comment on these various issues, in its *3rd FNPRM*, the Commission seeks further comment on several of these proposals and issues, in light of recently enacted legislation that addresses the 42 GHz band.

2. The MOBILE NOW Act, passed as part of the RAY BAUM'S Act of 2018 provides that, within two years of its enactment, the Commission shall publish an NPRM “to consider service rules to authorize mobile or fixed terrestrial wireless operations, including for advanced mobile service operations,” in the 42 GHz band. Section 604(b) of the MOBILE NOW Act provides that, in conducting this

rulemaking, the Commission shall: “(1) consider how the band described in subsection (a) may be used to provide commercial wireless broadband service, including whether — (A) such spectrum may be best used for licensed or unlicensed services, or some combination thereof; and (B) to permit additional licensed operations in such band on a shared basis; and (2) include technical characteristics under which the band described in subsection (a) may be employed for mobile or fixed terrestrial wireless operations, including any appropriate coexistence requirements.” Consistent with the MOBILE NOW Act, and out of an abundance of caution, the Commission issues this *3rd FNPRM* to seek further comment on how the 42 GHz band could be used to provide commercial wireless broadband service including possible opportunities for unlicensed and/or shared use of the 42 GHz band.

B. Suitability for Mobile and Fixed Use

3. *Background.* The Commission previously proposed to authorize fixed and mobile service operations in the 42 GHz band under the part 30 UMFUS rules. In response to the Commission's *FNPRM*, most commenters generally supported establishing service rules that would allow the band to be flexibly licensed for fixed and mobile operations under part 30. Qualcomm and T-Mobile argue that flexible use will allow individual licensees to shape the nature of the services they provide. Intel and Samsung argue that authorizing UMFUS expansion in the 42 GHz band would place it within the ‘tuning range’ of radio equipment designed for the 37–40 GHz bands, accelerating the deployment of technology capable of serving these bands. CTIA, Ericsson, Intel, and Samsung, among others, point to the International Telecommunication Union's (ITU) WRC–19 identification of the entire 37–42.5 GHz band as a candidate to study for mobile services, and they argue for similar treatment domestically. Commenters supporting geographic area licensing explained why they believe the alternatives of unlicensed or shared licensed use were not appropriate.

4. Various commenters view the global harmonization of this band, and 5G spectrum generally, as an important step towards greater manufacturing efficiencies and more rapid development and deployment of services. For example, Samsung notes that the Commission has frequently highlighted international harmonization of spectrum as a key policy goal and endorsed its benefits. Commenters present different views, however, on the

timing of U.S. action on the band relative to ITU action. One commenter argues the FCC's studying bands like 42 GHz will supplement and advance the study efforts of ITU study groups. Lockheed Martin, however, opposes taking action in bands currently subject to ITU study because the Commission allegedly has provided no evidence it will protect incumbent services in these bands or respect the outcome of these studies. Alternatively, T-Mobile argues the Commission must address domestic wireless capacity requirements and should not await input from the ITU given that the international process can be manipulated to delay the designation of spectrum for terrestrial use.

5. Certain FSS operators argue that the band should be licensed for satellite uses, and they raise arguments similar to those raised in petitions for reconsideration of the Commission's decision not to allocate the 42 GHz band for FSS. FWCC argues the band by itself is too narrow for fixed duplex operations and that, accordingly, the 42 GHz band should be combined with the adjacent 42.5–43.5 GHz band to create a single band with rules for fixed operations. The Commission notes that although in its *R&O*, the Commission deleted the broadcasting and broadcasting-satellite service allocations from the 42–42.5 GHz band (42 GHz band) and declined to allocate the band to the fixed-satellite service (space-to-Earth), the Commission again declines to reverse those decisions. The Commission also declines to revisit its decision to deny FWCC's prior request that it establish service rules to enable fixed service at 42 GHz under part 101 of its Rules.

6. *Discussion.* The Commission tentatively concludes that its part 30 UMFUS Rules provide the best opportunity to provide commercial wireless broadband service to the public in this band. The ability to use this band together with the existing 37 GHz and 39 GHz bands, the international consideration of this band for mobile use, and the availability of 500 megahertz of unassigned spectrum all support the Commission's conclusion that this band is suitable for flexible use. In view of the extensive support in the record, the Commission proposes to authorize fixed and mobile licensed operations in this band under part 30, and the Commission seeks comment on this tentative conclusion and on alternate proposals. In particular, consistent with the MOBILE NOW Act, the Commission seeks comment on whether unlicensed services should be permitted in the band under part 30, or whether licensed services, unlicensed

services, or other types of sharing besides unlicensed and licensed should be permitted under other rule parts as well. Proponents of unlicensed uses or sharing in the band between various types of operations should provide technical studies describing how such operations should coexist and share this band.

7. The Commission also seeks to refresh the record on the previous proposal in the 2016 *FNPRM* to add Federal fixed and mobile allocations in this band and a framework under which both Federal and non-Federal operations could share. Under this proposal, the Commission would add a Federal allocation to the fixed and mobile services on a primary basis for Federal use in addition to the current non-Federal allocation.

C. Licensing, Technical, and Service Rules

8. *Introduction.* In the *FNPRM*, the Commission previously sought comment on licensing the 42 GHz band under the part 30 UMFUS licensing and technical rules. The Commission sought comment on whether the 42 GHz band should be licensed for exclusive use by PEAs, and commenters have generally supported this proposal. The *FNPRM's* proposal contemplated that licensing and operations in the 42 GHz band would be subject to the part 30 rules concerning permissible communications, initial authorizations, license term, construction requirements, partitioning and disaggregation, discontinuance of service, equipment authorization, power limits, emission limits, field strength limits, international coordination, RF safety, flexible duplexing, and competitive bidding procedures. Commenters have thus far generally supported applying the existing licensing and technical rules to the 42 GHz band. The Commission will consider those comments in resolving those issues, as well as additional comments. Further, as described below, the Commission seeks comment on additional considerations regarding protection of radio astronomy at 42.5–43.5 GHz, and the band plan for the 42 GHz band.

9. *Protecting RAS Services at 42.5–43.5 GHz.* As noted above, the Commission previously proposed to authorize flexible mobile and fixed operations in the 42 GHz band, as long as RAS could be protected in the adjacent 42.5–43.5 GHz band, and it sought comment on and invited detailed study of the forms that such protection should take given the location of RAS observatories. In response, The National Academy of Sciences' Committee on

Radio Frequencies (CORF) informed the Commission that RAS observations are currently made at a limited set of observatories around the U.S. These sites are the GBT in Green Bank, WV, the VLA at Socorro, NM, the Haystack Observatory in Westford, MA, and ten sites of the Very Long Baseline Array (VLBA), noted in the Table of Allocations footnote US 131. CORF asserted that frequency lines at 42.519, 42.821, 43.122, and 43.424 GHz are of the greatest importance for the detection of strong silicon monoxide maser emissions from stars and star forming regions—important for measuring stellar temperature, density, wind velocity and other parameters. The 42 GHz band also is one of the preferred bands for measuring continuum observations. Because of the very low signal levels being measured, RAS telescopes are particularly vulnerable to in-band emissions, spurious out-of-band emissions, and emissions producing harmonics, making protection all the more important. CORF stated that the detrimental levels for continuum and spectral line radio astronomy observations for single dishes are -227 dBW/m²/Hz and -210 dBW/m²/Hz, respectively, for the average across the full 1 gigahertz of the 42.5–43.5 GHz band and the peak level in any single 500 kHz channel, as based upon ITU–R RA.769, Tables 1 and 2, respectively. For observations using the entire VLBA, the corresponding limit is -175 dBW/m²/Hz.

10. Proponents of using the 42 GHz band for flexible terrestrial wireless use generally agree that there are various effective means to protect RAS, including use of exclusion zones, coordination zones, and aggregate emissions limits—particularly since RAS sites are generally in remote locations. No commenter, however, provided studies or examples showing how these proposed methods would work in practice in this particular band. T-Mobile suggested that coordination with RAS should be required within a defined coordination distance. The Commission notes that CORF and T-Mobile agree that the relevant received power spectrum density at the RAS receiver should be the parameters established by ITU–R RA.769. The Commission agrees with CORF and T-Mobile that RAS bands can be protected by limiting UMFUS operations near a RAS. However, because no one has submitted technical studies regarding protection of RAS in this band, the Commission does not currently have sufficient information to propose specific rules to protect RAS facilities.

The Commission seeks comment on how it can protect RAS facilities in the 42.5–43.5 GHz band from UMFUS operations in 42–42.5 GHz. Should the Commission's rule be based on the ITUR RA.769 parameters or are there alternative protection criteria? The Commission also seeks comment on establishing coordination zones around the relevant RAS facilities, and on the appropriate distance at which coordination with RAS should be required.¹ Interested parties should provide detailed technical analysis of the coexistence of RAS with terrestrial mobile operations that fully supports any proposed distance or methodology. The Commission also seeks comment on other proposals for ensuring protection of RAS facilities in the 42.5–43.5 GHz band.

11. *Band Plan.* In the *FNPRM*, the Commission sought comment on whether the band's 500 megahertz of spectrum should be licensed as a single channel, split in two, or broken into various multiple sizes. In response, several commenters noted the value of 100 megahertz channels as an acceptable outcome, particularly in a band such as 42 GHz where less spectrum is available. The Commission proposes to license the 42 GHz band as 100 megahertz channels because this size would be consistent with developing industry standards that maximize spectral efficiency, all the while permitting interested parties to aggregate these channels should they desire larger bands. The Commission seeks comment on this proposal. Commenters seeking alternative-e band plans should justify why they believe other channel sizes would better serve future services they envision for this band.

II. 37–37.6 GHz (Lower 37 GHz Band)—Licensing Frameworks

12. *Background.* The Federal and non-Federal allocations of the 37–38.6 GHz Band (37 GHz Band) are as follows: The entire 37 GHz band (37–38.6 GHz) is allocated to the fixed and mobile services on a primary basis for Federal and non-Federal use.² Portions of the 37

GHz band are also allocated to the Space Research Service (SRS) (space-to-Earth) on a primary basis for Federal use (37–38 GHz) and to the Fixed-Satellite Service (FSS) (space-to-Earth) on a primary basis for non-Federal use (37.5–38.6 GHz). The use of this FSS downlink allocation is limited to individually licensed earth stations and is also subject to other limitations. In addition, the 37 GHz band is adjacent to the 36–37 GHz band, where passive sensors in the Earth exploration satellite service (EESS) and SRS are located.

13. In the *R&O*, the Commission adopted rules to permit fixed and mobile terrestrial operation in the 37 GHz band. The Commission also adopted a licensing regime for the 37.6–38.6 GHz portion of the band (Upper 37 GHz Band), which would be licensed in five 200 megahertz blocks on a geographical area basis, and made the Lower 37 GHz band available for coordinated co-primary sharing between Federal and non-Federal users. The Commission identified non-Federal users as Shared Access Licensees (SAL) and decided that such users would be licensed by rule. The Commission explained that Federal and non-Federal users will access the Lower 37 GHz Band through a coordination mechanism, which it would develop more fully through government/industry collaboration. The Commission adopted the same technical rules for the Lower 37 GHz Band and the Upper 37 GHz Band.

14. In the *FNPRM*, the Commission stated that Federal and non-Federal fixed and mobile users would access the Lower 37 GHz Band by registering individual sites through a coordination mechanism. The Commission explained that the coordination mechanism is the regulatory, technical, or procedural tool necessary to actually facilitate coordinated access, will authorize a particular user to use a particular bandwidth of spectrum at a particular location. The Commission stated that the coordination mechanism must; (1) be able to obtain information about the type of equipment used, the signal contour from the coordinated location, and the bandwidth requested compared with the bandwidth available; (2) be capable of regularly updating the status of a coordinated location (on/off or authorized/unauthorized); and (3) be able to incorporate this type of information for both Federal and non-Federal fixed and mobile uses. The Commission sought comment on the coordination mechanism and the functions that it should be able to perform. The Commission also proposed that registered non-Federal sites must be

put into service within seven days of coordination and that registered and coordinated sites must reassert their registration every seven days. The Commission sought comment on: Whether a portion of the lower band segment should be made available for priority access by Federal users, whether an enforcement mechanism in the lower band segment is necessary to help identify and rectify interference events, and whether and how to apply secondary market rules to the lower band segment.

15. Two commenters, Starry and Intel, offer recommendations on the specific regulatory, technical, or procedural tool necessary to facilitate coordinated access in the Lower 37 GHz band. Starry proposes site-based registration through a third-party coordinator. Under its proposal, licensees would file “specific information about each site sufficient for a third-party coordinator to conduct an interference analysis,” including its location, height above ground level, EIRP, transmitter azimuth, and channel size. In addition, “end points operating under the control of a registered transmitter” would not be registered individually, and would instead fall under the authorization of the transmitter.” The third-party coordinator would conduct an interference analysis under which previously registered sites would be protected at a modeled receive signal strength of –79 dBm/10 MHz assuming a test antenna at the end points with a gain of 25 dBi, at a height of 10 meters above ground. Also, under this proposal, licensees would be able to negotiate alternative sharing arrangements and sites would be required to be constructed and in operation within 120 days after the registration is accepted. Under Starry's proposal, there would be clear penalties for registering unused sites. Starry also offers additional ideas for an enhanced sharing framework that could be implemented over time. No party responded to Starry's proposal. Intel's proposal would use a database similar to the database used for the 70 GHz and 80 GHz bands, except that the database would also play a role in frequency coordination.

16. *Discussion.* The Commission concludes that it is appropriate to further develop the record regarding the coordination mechanism that it would expect to use, as between either two or more non-Federal entities or between Federal and non-Federal entities. In order to facilitate shared use of the Lower 37 GHz band between Federal and non-Federal users, as well as among non-Federal users, the Commission

¹ The National Radio Quiet Zone (NRQZ) has special protections afforded outside the allocated bands requiring coordination. The NRQZ does work with mobile radio providers, but coordination is required for operation of any mobile radio service above 24 GHz in the NRQZ. Also, as with the existing coordination requirements for the 37–38 GHz band, any coordination requirement would require licensees to coordinate all operations.

² The Commission has modified the mobile service allocation in the 37–38 GHz band to exclude the aeronautical mobile service, *i.e.*, the 37–38 GHz band is allocated to the mobile except aeronautical mobile service.

seeks comment on a proposed coordination mechanism and alternatives, as set forth below. The Commission anticipates that a sharing mechanism would facilitate quick access to spectrum without unreasonable processing delays and a predictable path for future coordination in the band among stakeholders. The Commission recognizes the importance of the Lower 37 GHz band to future Federal operations, and it will work in partnership with NTIA, DoD, and other Federal agencies to develop a sharing approach that allows for robust Federal and non-Federal use in this band.

17. In designing a licensing mechanism for the Lower 37 GHz Band, the Commission seeks to accommodate a variety of use cases that may develop for this band—in essence, the Commission envisions Lower 37 GHz as an innovation band in the mmW spectrum. In particular, the Commission anticipates that there will be at least four types of non-Federal deployments in the Lower 37 GHz Band: Point-to-point links (for example backhaul and backbone links); fixed wireless broadband systems (generally consisting of a fixed access point and fixed subscriber units); single base station IoT-type systems (for example, in a factory); and carrier-based deployments of mobile systems using the Lower 37 GHz Band as supplemental capacity tied to other bands that are licensed on a geographic area basis. The Commission seeks comment on whether there are additional types of deployments contemplated for this band. If so, what would those additional uses be, and how would they affect the licensing of the Lower 37 GHz Band?

18. As detailed above, Starry proposes a model in which proposed facilities would be registered with a third-party coordinator. Another possible model, under which the Commission would issue licenses authorizing operations, would be the coordination model used in part 101 point-to-point bands. In order to complete frequency coordination, an applicant must give prior notice to nearby licensees and other applicants for licenses of the proposed applicant's operations, make reasonable efforts to avoid interference and resolve conflicts, and certify to the Commission that the proposed operation has been coordinated. Once the applicant has completed frequency coordination, the applicant must file an application for authorization with the Commission, specifying the latitude and longitude of the transmitter to be used to an accuracy of one second. The applicant must coordinate each operation, including any change in the

location of the transmitter of more than five seconds in latitude or longitude or both, and must apply for a modification of their license. Similarly, if the applicant later seeks to deploy additional transmitters, the Commission's part 101 rules require coordination of those facilities and the applicant must apply for modification of the license. The Commission seeks comment on the relative merits of using these coordination models in the Lower 37 GHz band. The Commission also seeks comment on the criteria that it should use to determine whether predicted interference would be harmful. If actual harmful interference occurs after successful coordination, how should the interference be resolved? How will future Federal operations be accommodated in the sharing framework and what parameters will be used to develop a trigger for required coordination? Given that the Commission is proposing construction requirements for non-Federal licensees in this band, as discussed below, the Commission seeks comment on how best to enforce those requirements in an environment where registrations are not filed with the Commission.

19. For the four types of deployments, the Commission seeks comment on a first-come-first-served licensing or registration scheme, in which actual users have a right to interference protection, but no right to exclude other users. The Commission seeks comment on subsequent users being required to coordinate with previously registered non-Federal and Federal sites through part 101 notice and response rules or on the alternative of registering facilities with a third-party coordinator.

20. With regard to Federal sites, the Commission proposes to require non-Federal users to work with Federal users in good faith to coordinate any new system Federal users may seek to deploy. The Commission anticipates that non-Federal users would not be required to agree to coordination requests that would carry a significant risk of harmful interference. The Commission seeks comment on the criteria that it should use to determine whether interference is harmful. Is the coordination trigger that Starry proposes appropriate, or should the Commission use an alternative set of criteria? The Commission seeks comment on the best means of coordinating with Federal operations. The Commission intends to adopt as part of the rules a coordination methodology that will facilitate coordination for the kinds of cases that it anticipates may be typical. This will allow us to test the assumption that any coordination zone typically "can be

measured in meters rather than kilometers." To do so, the Commission will work with NTIA, on behalf of Federal users, and with industry to identify those cases. DoD has expressed an interest in a possible aeronautical allocation in the Lower 37 GHz band, so the Commission anticipates including aeronautical cases in its consideration of coordination methodologies.

21. The Commission expects the identification and analysis of these cases to be a critical component to its understanding of the extent that the band can be shared dynamically. Commenters should address how to prevent "warehousing," whereby a licensee preserves its rights without providing actual service. Should licensees receive any protection before they have completed construction and begun operations? How should "operation" be defined and how can the Commission plan to monitor compliance, including whether operations have been discontinued? Should the Commission put limits on the aggregate area, or amount of spectrum, that any one licensee or its affiliates can protect? These issues are critical to establishing the co-primary sharing rights that the Commission envisions for this band.

22. To the extent that the solution to preserving Federal entity's options may be to reserve a part of the band for their priority use, the Commission seeks comment on how to define such priority rights. Are there geographic areas where such priority rights would have little or no adverse impact on non-Federal operations and, if so, what should be the process for identifying those areas? The Commission seeks comment on alternative approaches that can be used to ensure Federal and non-Federal users will have access to the band to meet their needs.

23. Below, the Commission seeks comment on whether offering three types of non-Federal licenses—point-to-point licenses; base stations licenses; and site-cluster licenses—would facilitate deployment in the Lower 37 GHz band.

24. *Point-to-point licenses.* The Commission seeks comment on requiring individual point-to-point links to be coordinated with previously licensed or registered sites using part 101 notice and response rules. If it is determined that the proposed link would not interfere or could be modified not to interfere with previously licensed or registered sites, then a license would be issued for the specific point-to-point link in the Commission's Universal Licensing System (ULS) to establish future

interference protection rights. A point-to-point licensee would be required to construct its sites within 18 months from the date the site was registered. If the licensee fails to construct these sites within the 18 months, the licensee might be prohibited from reapplying for that specific link for 12 months. The Commission seeks comment on this approach, as well as alternatives. Are there other methods that would facilitate licensing of point-to-point links? The Commission also seeks comment on whether it should require licensees to file individual construction notices in order to facilitate enforcement of construction obligations. The Commission seeks comment on the relative costs and benefits of this licensing mechanism.

25. *Base station licenses.* The Commission seeks comment on permitting an applicant to select a point around which it would get a license for a specific site with either a 360 degree radius or a defined sector of a 360 degree radius. This license also would authorize any customer premises equipment (such as equipment used for point-to-multipoint networks) or mobile devices operating in conjunction with the licensed base station. The licensee would receive interference protection for a certain specified distance, for example one kilometer, that would then be a protection zone. The Commission proposes to require that individual base stations be coordinated with previously licensed or registered sites using part 101 notice and response rules. If it is determined that the proposed base station license would not interfere or could be modified to not interfere with a previously licensed or registered site, then a license would be issued in ULS to establish future interference protection rights. Under this licensing scheme, a subsequent licensee would not be precluded from licensing either a point-to-point link or a base station, or from registering a facility under a site-cluster license (discussed below) within a previously established protection zone, as long as it can be coordinated successfully with any previously licensed or registered facilities. The Commission proposes to require that a base station licensee must construct its site within 18 months from the date the site was licensed. If the licensee fails to construct its site within the 18 months, the Commission proposes that the licensee be prohibited from reapplying for a base station license covering any portion of the same area for 12 months. The Commission seeks comment on this approach, as well as alternatives commenters might propose. Are there

other means or requirements that would facilitate licensing of these types of deployments? The Commission seeks comment on whether it should require licensees to file individual construction notices. If so, should these construction notices be filed with the Commission or with a third-party database administrator? The Commission seeks comment on the relative costs and benefits of this licensing mechanism.

26. *Site-cluster licenses.* The Commission recognizes that operators proposing 5G deployments may have difficulties determining the precise locations of their facilities, particularly in instances where they are deploying a large number of facilities. Requiring licensees to identify specific locations, file applications for each individual facility, and then wait 30 days for each application to undergo the mandatory public notice period may not promote efficient deployment of 5G services. Accordingly, the Commission seeks comment on the use of a novel concept to address this issue: The site-cluster license. Under a site-cluster license, instead of licensing individual base stations or point-to-point links, the applicant would license a larger (e.g., 5 km) non-exclusive point-radius license within which it could register individual base stations and/or point-to-point links. Much like the licensing paradigm for the 70–80 GHz band, a non-exclusive point and radius license would not authorize operation, but rather would authorize the licensee to register individual base stations and/or point-to-point links within its non-exclusive site cluster area. A site-cluster licensee would not have the right to preclude facilities proposed by other licensees. To receive interference protection for specific facilities within the site-cluster, the applicant would have to coordinate those facilities with other Federal and non-Federal Lower 37 GHz licensees (point-to-point, base station, or site-cluster) within the radius of its site cluster area, and register each specific facility. First-in-time rights would be triggered only for those facilities that are successfully registered. The Commission proposes that applicants for site-cluster licenses would file in ULS and would be issued a non-exclusive site-cluster license for a specific radius. Should individual base stations or point-to-point links registered under the umbrella of the site cluster license be registered either in ULS or, alternatively in a third-party database? The Commission seeks comment on the relative costs and benefits of either approach. Is this

concept an effective means of facilitating large deployments?

27. The Commission seeks comment on two buildout requirements for site-cluster licenses. First, a buildout period by which an applicant with a site-cluster license must register and construct a minimum of one specific facility within its site cluster area. Second, a buildout period for each specific site that the applicant registers, which would require the applicant to build that site within a specified period after registration. The Commission seeks comment on what those buildout periods should be. The Commission proposes that failure to meet its buildout requirement would preclude the applicant from reapplying for a non-exclusive license in that area for a certain period. The Commission seeks comment on what that period of time should be. The Commission also seeks comment on whether it should require licensees to file individual construction notices. If so, should these construction notices be filed with the Commission or with a third-party database administrator? The Commission also seeks comment on alternative means of enforcing construction requirements. As mentioned above, the Commission seeks comment on what rights a registrant should have before it actually constructs its facility and begins operations.

III. 37.0–38.6 GHz (37 GHz Band)

28. With regard to Federal co-primary access to the 37 GHz band, the *R&O* adopted rules that establish the coordination zones for the 14 military sites and three scientific sites identified by NTIA, and noted the ability for Federal agencies to add future sites on a coordinated basis. The Commission seeks comment on how best to accommodate coordination zones for future Federal operations at a limited number of additional sites. For instance, should the Commission supplement § 30.205 to add more specific sites for Federal operations, or should it establish a process that would permit Federal entities in the future to identify a limited number of additional sites on an as-needed basis? The Commission also seeks comment on whether the coordination zones previously established in § 30.205 might be reduced to better accommodate nearby non-Federal operations without adversely impacting Federal operations at those sites.

IV. 25.25–27.5 GHz Band (26 GHz Band)

A. Suitability for Mobile Use

29. *Background.* In this proceeding, the Commission has authorized mobile services in the 700 megahertz of spectrum in the 24 GHz band and 850 megahertz of spectrum in the 28 GHz band). In the U.S., the 25.25–27.5 GHz (“26 GHz”) band is allocated primarily for Federal government services, but Commenters in this proceeding note that there is a growing international consensus that terrestrial mobile services should be authorized in the broader 24.25–27.5 GHz band. This year the European Conference of Postal and Telecommunications Administrations (CEPT) has adopted a preliminary determination to make the 24.25–27.5 GHz band a “clear priority” for harmonization of 5G services throughout Europe and to promote it for worldwide harmonization at WRC–19. In addition, at least eight countries in other parts of the world are also preparing to authorize terrestrial mobile services in that range. In February, 2018, ITU–R Task Group 5/1 issued a set of preliminary technical analyses concluding that the band can be shared among terrestrial mobile and incumbent services. Most of the contributors represented national governments, including the U.S.

30. *Discussion.* As noted above, in regional and international forums leading to the World Radiocommunication Conference 2019 (WRC–19), the frequency range from 24.25–27.5 GHz has emerged as the leading candidate for 5G services, referred to in ITU parlance as “International Mobile Telecommunication 2020” (IMT–2020). The international momentum presents the Commission with an opportunity to consider whether the 26 GHz band would be suitable for flexible fixed and mobile use. The Commission notes that in the U.S., the 25.25–27.5 GHz (“26 GHz”) band is allocated primarily for Federal government services.

31. Equipment manufacturers indicate that they can readily integrate the 26 GHz band into a tuning range that includes two bands that the United States has already authorized for mobile services, the 24 GHz band (24.25–24.45 GHz and 24.75–25.25 GHz) and the 28 GHz band (27.5–28.35 GHz). That presents three opportunities—first, to achieve manufacturing economies by covering several bands with a single radio; second, to provide international roaming capability in affordable user devices, and third, to accelerate the availability of equipment in newly

authorized bands that share a tuning range with early-deployed bands. Some commenters also contend that the 26 GHz band has better coverage characteristics than other bands that might potentially be available at higher frequencies.

32. The Commission will continue to actively support the 24 GHz and 28 GHz bands. At the same time, the Commission believes the 26 GHz band could be suitable for flexible fixed and mobile use. It is relatively near to the 24 GHz and 28 GHz bands, which the Commission has already found suitable for fixed and mobile use. The amount of spectrum potentially available (over two gigahertz) could make this band a useful addition to UMFUS. The Commission recognizes that it would need to work out suitable sharing or protection arrangements with Federal incumbents in the band. Accordingly, the Commission seeks comment on whether the 26 GHz band could be made available for non-Federal fixed and mobile use.

B. Spectrum Sharing and Compatibility

33. Existing allocations for the 26 GHz band in this country are mostly Federal. While Federal use of the 26 GHz band to this point has been fairly limited, the Commission recognizes that Federal agencies may aspire to make heavier use of that band in the future. Any exploration of private sector opportunities in the band must therefore address the potential for spectrum sharing and compatibility among diverse participants.

1. Protection of Incumbents

34. *Background.* The Federal allocations for the 25.25–27.5 GHz bands in this country generally follow the ITU’s international allocations. In the Federal column of the U.S. Table of Allocations, the entire 25.25–27.5 GHz band has primary allocations for Fixed (FS), Mobile (MS), and Inter-Satellite (ISS) services, with Inter-Satellite limited to space research and Earth exploration-satellite applications, along with transmissions of data originating from industrial and medical activities in space. The 25.5–27 GHz band has a primary allocation for both Federal and non-Federal Space Research service (SRS) (space-to-Earth), with non-Federal Earth exploration-satellite service (EESS) subject to case-by-case electromagnetic compatibility analysis.

35. Consistent with the international community’s focus on making the 24.25–27.5 GHz band available for terrestrial mobile services, a.k.a. IMT, ITU–R’s Study Group 5 Task Group 5/1 (TG 5/1) has been conducting

extensive studies to evaluate the potential for sharing and compatibility in that range between mobile and EESS, SRS, FS, FSS, and ISS. As directed by WRC–15 Resolution 238, TG 5/1 has focused on ensuring the protection of EESS and SRS earth stations operating in the 25.5–27 GHz band segment. The U.S. contribution to the EESS/SRS Study found that the coordination distances necessary to prevent IMT from causing interference is 52 km for SRS and 7 km for EESS.

36. *Discussion.* The Commission seeks comment on the best ways to protect existing incumbent operations and systems that Federal agencies might choose to deploy in the future, including identifying appropriate separation distances. The Commission invites comment on steps it could take to facilitate sharing now and in the future. For example, should the Commission give priority to Federal operations at certain locations such as military bases and test ranges? Alternatively, can the Commission strike an appropriate balance by ensuring deployment of Federal operations provided they do not affect more than a certain amount of population? Or might the Commission provide priority to non-Federal operations in a certain number of markets, with priority to Federal operations elsewhere? To what extent would it be possible to develop coordination mechanisms between licensees and Federal operations?

37. The Commission notes that the United States and other governments have submitted detailed sharing and compatibility studies for a frequency range that includes the 26 GHz band, which are being evaluated by that group. In general, it appears that protection zones around existing EESS and SRS earth stations would affect only small percentages of the overall U.S. population, though their impact on specific localities could be significant for the affected populations. The protection radiuses being considered by TG 5/1 are generally intended to serve only as triggers to begin a coordination process. The final definitions of exclusion zones around particular earth stations will need to take into account a variety of local factors, including terrain, clutter, and network design features that could mitigate the effect of IMT deployment inside coordination zones. The Commission also seeks comment on the best means of protecting existing fixed links in the band. The Commission notes that there are well-established protocols for coordinating Federal and non-Federal point-to-point services.

38. The 26 GHz band currently has Federal fixed and mobile allocations in addition to the EESS, ISS, and SRS allocations. While Federal use of the 26 GHz band appears to be fairly limited to this point, the Commission recognizes that Federal agencies may be considering various potential uses for this spectrum in the future. It is difficult to predict what those services might be, their characteristics, and where they may be deployed. Nevertheless, the Commission believes that the nature of the technology apt to be used in this region of the spectrum is likely to enable sharing using such techniques as geographic separation, highly directional antennas, and taking advantage of the relatively high path losses to enable operation in close proximity. This should make sharing between Federal and non-Federal systems easier than it has been at lower frequencies. Nevertheless, sharing the 26 GHz band between Federal and non-Federal systems will still require a carefully developed framework. The Commission intends to work closely with NTIA to enable UMFUS use of the 26 GHz band while preserving the ability of Federal users to develop and deploy new technologies and services in the 26 GHz band. The Commission intends to explore a number of different approaches for sharing the band. For example, this may involve sharing the band using a framework similar to what the Commission is proposing for the lower 37 GHz band. Alternately, the Commission may set aside portions of the 26 GHz band for exclusively Federal use while making other portions available exclusively for non-Federal use. The Commission may limit non-Federal use of the band to certain geographic areas while reserving use of the band in other areas for Federal use. The Commission request comments on various approaches to sharing the 26 GHz band between UMFUS licensees and both existing and future Federal operations.

2. Spectrum Sharing and Compatibility With Other New Services

39. *Background.* Elefante proposes to deploy what it calls “persistent stratospheric-based communications infrastructure” at altitudes below 20 km in the 26 GHz band, and it says that ITU study groups are conducting studies for stations that would operate at altitudes between 20 and 50 km. Having analyzed the band with Lockheed Martin, Elefante concludes that spectrum sharing between unaffiliated mobile deployments and persistent stratospheric communications systems may not be possible absent an extremely

high degree of dynamic coordination and information sharing. On that basis, Elefante recommends that UMFUS not be authorized in the 26 GHz band.

40. *Discussion.* Where a high-altitude platform stations (HAPS) or Elefante-style platform is deployed above the center of an urban area, ground stations in the urban core would presumably communicate with the airborne station at relatively high elevation angles, which would allow shorter separation distances from terrestrial mobile equipment. By contrast, ground stations in the periphery of the urban area would likely require lower elevation angles to communicate with the airborne platform and would therefore require larger separation distances. A HAPS operator or Elefante might also choose to deploy some of their airborne platforms away from urban cores, which would enable some ground stations in exurban or rural areas to communicate at high elevation angles and with limited separation from terrestrial systems.

41. In light of the above, the Commission invites comment on Elefante’s conclusion that spectrum sharing between airborne platform services (*i.e.*, both HAPS and systems such as Elefante’s that would operate at lower altitudes) and unaffiliated UMFUS operators would be infeasible, and that UMFUS should therefore not be authorized in the 26 GHz band.³ Alternatively, the Commission inquires whether it should prohibit airborne platform systems in the band, or authorize airborne platform services only if they are affiliated with UMFUS licensees. The Commission also invites comment on any additional spectrum-sharing techniques that might reduce the required separation distances between UMFUS equipment and ground stations communicating with airborne platforms. Finally, the Commission invites comment on any other new or proposed services, Federal or non-Federal, that should be given priority over UMFUS in the band or, alternatively, would be compatible with UMFUS and with incumbent services.

C. Licensing the 26 GHz Band

42. *Background.* In the *R&O*, the Commission noted that in recent years it has sought greater consistency in its approach to geographic license area sizes in order to help providers

³ On May 31, 2018, Elefante filed a petition for rulemaking to establish the Stratospheric-Based Communications Services (SBCS). This petition is pending, and the Commission has not initiated the requested rulemaking proceeding at this time. The Commission sees no basis for deferring initial consideration of flexible fixed and mobile use of the 26 GHz band, as Elefante requests.

aggregate licenses in a more targeted and efficient manner, and that it has gravitated toward license areas that are derived from Economic Area (EA) units. Because Partial Economic Areas (PEAs) nest into EAs but can also be broken down into counties, the Commission found that choosing them would strike the right balance by facilitating access to spectrum by large and small providers, simplifying frequency coordination, and incentivizing investment. By contrast, the Commission decided to license the 28 GHz band by counties, primarily because the band was already licensed by Basic Trading Areas (BTAs), which could not readily be reformed into either EAs or PEAs. In the *Second Report and Order*, the Commission selected PEAs as the geographic unit for UMFUS licenses in two other bands, the 24 GHz and 47 GHz.

43. *Discussion.* The Commission seeks comment on using geographic area licensing and adopting PEAs as the geographic license area size for UMFUS licenses in the 26 GHz band. The Commission also seeks comment on site-based licensing, as well as other licensing mechanisms. Geographic area licensing may provide licensees with the flexibility to provide a variety of services, and will foster innovation and investment and thereby spur deployment. Will geographic area licensing facilitate coexistence between Federal and non-Federal uses? If the Commission decides to use geographic area licensing, PEAs also appear to provide a balance between the larger areas that can encourage more investment, and the smaller areas that can more efficiently accommodate mmW propagation characteristics. To the extent licensees are interested in smaller areas, partitioning is an available option. Commenters favoring site-based licensing or other licensing methods should set forth specific proposals for licensing the 26 GHz band. Given the amount of spectrum available, should the Commission consider using different licensing approaches in different parts of the band?

D. Band Plan

44. *Background.* In the *Second Report and Order*, the Commission acknowledged that most millimeter-wave mobile design work is being built around 100-megahertz building blocks. It chose to license the 700 megahertz in the 24 GHz band as seven 100-megahertz channels and to license the 1,000 megahertz in the 47.2–48.2 GHz band as five 200-megahertz channels. In the *R&O*, the Commission decided to issue new licenses for the 28 GHz band in two 450-megahertz blocks, and it

divided the 39 GHz band into seven 200-megahertz channels.

45. *Discussion.* If carriers will eventually require 200 megahertz bandwidths to meet their customers' needs, the Commission recognizes that the necessity of combining smaller channels to achieve the requisite scale could involve transaction costs that might eventually be passed on to consumers. On the other hand, 100 megahertz channels would increase the opportunity for competitive entry into the band and provide flexibility for uses that might require less spectrum. With those countervailing considerations in mind, the Commission seeks comment on adopting channel bandwidths of 100 megahertz or, in the alternative, 200 megahertz for the 26 GHz band.

V. 50.4–51.4 GHz Band

46. *Background.* The 50.4–51.4 GHz band includes primary Federal and non-Federal allocations for fixed and mobile services, as well as primary Federal and non-Federal allocations for fixed-satellite (Earth-to-space) and mobile satellite (Earth-to-space) services. In 1998, in the *V-Band First Report and Order*, the Commission designated the 50.4–51.4 GHz band for use by wireless (fixed and mobile) services. In the *FNPRM* in the Spectrum Frontiers proceeding, the Commission proposed to authorize fixed and mobile operations throughout the 50.4–52.6 GHz band in accordance with the part 30 UMFUS rules. The Commission also proposed to use geographic area licensing to license UMFUS stations on a PEA basis and sought comment on sharing with satellite services. The Commission has received eight satellite applications or market access requests and twenty earth station applications seeking to use the existing FSS (Earth-to-space) allocation in the 50.4–51.4 GHz band for delivery of broadband services.

47. In response to the *FNPRM*, certain satellite companies request that the Commission designate satellite services in the 50.4–52.4 GHz band currently allocated to FSS. EchoStar supports preserving the co-primary status of FSS and terrestrial fixed/mobile services in the 50.4–52.4 GHz band and recommends adopting spectrum sharing rules that recognize likely deployment scenarios by the different services. CTIA asserts that any technical requirements should be equivalent to the Commission's part 30 rules for other shared bands. To the extent the Commission decides to adopt a sharing framework in the band, Viasat urges the Commission to consider broader and more balanced sharing between the services on a true co-primary basis at

50.4–52.4 GHz instead of imposing the “three earth stations per license area” framework adopted for the 28 GHz Band.

48. *Discussion.* Although the 50.4–52.6 GHz band remains under consideration for UMFUS licensing, the Commission has throughout this proceeding sought to promote spectrum efficiency by permitting spectrum made available for UMFUS to be shared with other allocated services when possible. As in the case of other bands shared between co-primary terrestrial and fixed-satellite services, (e.g., 24.75–25.25 GHz, 37.5–40 GHz and 47.2–48.2 GHz), the Commission believes that in the 50.4–51.4 GHz band, where an FSS allocation already exists, that a limited number of individually licensed FSS earth stations can share the 50.4–51.4 GHz band with minimal impact on terrestrial operations. Therefore, the Commission proposes to adopt rules permitting licensing of individual FSS earth stations in the 50.4–51.4 GHz band using the criteria identical to those applicable in the 24.75–25.25 GHz band. Specifically, the Commission proposes to apply the permitted aggregate population limits within the specified earth station PFD contour on a per-county basis, similar to the requirement in the 27.5–28.35 GHz band. Additionally, as in the 47.2–48.2 GHz band, the Commission proposes to adopt constraints on the number of permitted earth stations, not only per county, but also per PEA in which the earth stations are located. To reflect these requirements, the Commission proposes to modify § 25.136(g) of the Commission's rules to include the 50.4–51.4 GHz band. The Commission also proposes to amend footnote NG65 to the U.S. Table to include the 50.4–51.4 GHz band, making clear the relative interference protection obligations between the co-primary services. The Commission seeks comment on these proposals.

VI. Mobile Spectrum Holdings Policies in the 26 GHz and 42 GHz Bands

49. In this *3rd R&O*, the Commission adopted its proposal to eliminate the pre-auction limit for the *R&O* bands, finding that entities bidding for licenses in the 24 GHz, 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands will not be subject to bright-line, pre-auction limits on the amount of spectrum they may acquire at an auction of these bands. Similarly, to the extent that the Commission adopts UMFUS rules for some portion or all of the 26 GHz and 42 GHz bands, it proposes to have no pre-auction limit on the amount of spectrum in these bands (or portions thereof) that an entity may

acquire through competitive bidding. The Commission believes that the reasons for eliminating the pre-auction limit for these five bands would apply equally to the 26 GHz and 42 GHz bands, given their technical characteristics relative to these other bands. The Commission seeks comment on this proposal.

50. To the extent that the Commission adopts UMFUS rules for some portion or all of the 26 GHz and 42 GHz bands, it proposes to include those bands (or portions thereof) in the mmW spectrum threshold for reviewing proposed secondary market transactions. The Commission notes that these bands share similar technical characteristics to the 24 GHz, 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands. The Commission seeks comment on this proposal.

VII. Initial Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present 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 attached *3rd FNPRM*. 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 as specified in the *3rd FNPRM*. The Commission will send a copy of this *3rd FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *3rd FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

52. In the *3rd FNPRM*, the Commission proposes to increase the Nation's supply of spectrum for mobile broadband by adopting rules for fixed and mobile services in the 25.25–27.5 GHz and 42–42.5 GHz band. The Commission proposes to include this band in the part 30 UMFUS. This additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service. It will also make possible new types of services for consumers and businesses. The Commission proposes to award Partial Economic Area-based licenses for these bands to best balance the needs of large and small carriers. The *3rd FNPRM* also proposes to include these bands, or portions of these bands, in the

mmW spectrum threshold for reviewing proposed secondary market transactions.

53. Until recently, the mmW bands were generally considered unsuitable for mobile applications because of propagation losses at such high frequencies and the inability of mmW signals to propagate around obstacles. As increasing congestion has begun to fill the lower bands and carriers have resorted to smaller and smaller microcells in order to re-use the available spectrum, however, the industry is taking another look at the mmW bands and beginning to realize that at least some of its presumed disadvantages can be turned to advantage. For example, short transmission paths and high propagation losses can facilitate spectrum re-use in microcellular deployments by limiting the amount of interference between adjacent cells. Furthermore, where longer paths are desired, the extremely short wavelengths of mmW signals make it feasible for very small antennas to concentrate signals into highly focused beams with enough gain to overcome propagation losses. The short wavelengths of mmW signals also make it possible to build multi-element, dynamic beam-forming antennas that will be small enough to fit into handsets—a feat that might never be possible at the lower, longer-wavelength frequencies below 6 GHz where cell phones operate today.

54. In the 3rd FNPRM, the Commission also seeks comment on developing the licensing framework it has adopted for the 37–37.6 GHz band. That framework creates an innovative shared space that can be used by a wide variety of Federal and non-Federal users, by new entrants and by established operators—and smaller businesses in particular—to experiment with new technologies in the mmW space. The Commission seeks comment on a first-come-first-served licensing or registration scheme, in which actual users have a right to interference protection, but no right to exclude other users. The Commission seeks comment on subsequent users being required to coordinate with previously registered non-Federal and Federal sites through part 101 notice and response rules or on the alternative of registering facilities with a third-party coordinator.

55. The 3rd FNPRM also proposes to adopt rules permitting licensing of individual FSS earth stations in the 50.4–51.4 GHz band using the criteria identical to those applicable in the 24.75–25.25 GHz band. Although the 50.4–52.6 GHz band remains under

consideration for UMFUS licensing, the Commission has throughout this proceeding sought to promote spectrum efficiency by permitting spectrum made available for UMFUS to be shared with other allocated services when possible. The Commission believes that in the 50.4–51.4 GHz band, where an FSS allocation already exists, that a limited number of individually licensed FSS earth stations can share the 50.4–51.4 GHz band with minimal impact on terrestrial operations.

56. Overall, this proposal is designed to provide for flexible use of this spectrum by allowing licensees to choose their type of service offerings, to encourage innovation and investment in mobile broadband use in this spectrum, and to provide a stable regulatory environment in which fixed, mobile, and satellite deployment would be able to develop through the application of flexible rules. The market-oriented licensing framework for these bands would ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of a wide variety of services, ultimately leading to greater benefits to consumers.

B. Legal Basis

57. The proposed action is authorized pursuant to sections 1, 2, 3, 4, 5, 7, 301, 302, 302a, 303, 304, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 153, 154, 155, 157, 301, 302, 302a, 303, 304, 307, 309, and 310, section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

58. 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 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.

59. Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission’s

actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

60. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

61. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

62. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard

under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

63. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the UMFUS the Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licensees, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus under this SBA category and the associated standard, the Commission estimates that the majority of fixed microwave service licensees can be considered small.

64. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the

rules and policies adopted herein. The Commission notes, however, that both the common carrier microwave fixed and the private operational microwave fixed licensee categories includes some large entities.

65. *Satellite Telecommunications.* This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

66. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 1,442 firms that operated for the entire year. Of these firms, a total of 1400 firms had gross annual receipts of under \$25 million and 42 firms had gross annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that a majority of "All Other Telecommunications" firms potentially affected by its actions can be considered small.

67. *Radio and Television Broadcasting and Wireless*

Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry is small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

68. The Commission expects the rules proposed in the 3rd FNPRM will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other licensees and applicants.

69. Applicants in the Lower 37 GHz band will be required to coordinate their proposed operations with other licensees and applicants. Such coordination is necessary to ensure that neighboring operations will not interfere with each other. Potential applicants will also be required to coordinate their operations with any Federal agencies with operations in the areas.

70. Small entities and other applicants in 26 GHz, 42 GHz, and Lower 37 GHz UMFUS will be required to meet buildout requirements. In doing so, they will be required to provide information to the Commission on the facilities they have constructed, the nature of the service they are providing, and the extent to which they are providing coverage in their license area. With respect to the 26 GHz performance requirements, the Commission believes such requirements are necessary to ensure that spectrum is being put into use and has proposed a variety of metrics to provide small entities as well as other licensees with a variety of means by which they may demonstrate compliance. The Commissions anticipates the performance requirements will encourage rapid deployment of next generation wireless services, including 5G, which will

benefit small entities and the industry as a whole.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

71. The RFA requires an agency to describe any significant alternatives for small businesses 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.

72. The Commission does not believe that its proposed changes will have a significant economic impact on small entities. The Commission believes the proposed site-based licensing scheme for the Lower 37 GHz band would facilitate access to spectrum by small businesses and a wide variety of other entities. However, to get a better understanding of costs and any burdens, the Commission seeks comment on whether any of burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small businesses. In particular, the Commission seeks comment on whether any of the costs associated with its construction or

performance requirements in the 26 GHz and Lower 37 GHz bands can be alleviated for small businesses. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the 3rd FNPRM.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

73. None.

VIII. Ordering Clauses

74. *It is ordered*, pursuant to the authority found in sections 1, 2, 3, 4, 5, 7, 301, 302, 302a, 303, 304, 307, 309, and 310 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 301, 302, 302a, 303, 304, 307, 309, and 310, section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and § 1.411 of the Commission's rules, 47 CFR 1.411, that this Third Report and Order, Third Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order *is hereby adopted*.

75. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order, Third Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, including the Final, Supplemental Final, and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

76. *It is further ordered* that the Commission *shall send* a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 2, 25 and 30

Communications common carriers, Reporting and recordkeeping requirements, Communications equipment.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 25, and 30 as follows:

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

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

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

■ 2. In § 2.106, the Table of Frequency Allocations is amended as follows:

■ a. Revise pages 54, 55, 58, and 60.

■ b. In the list of non-Federal Government (NG) Footnotes, footnote NG65 is revised.

§ 2.106 Table of Frequency Allocations.

The revisions read as follows:

* * * * *

24-24.05 AMATEUR AMATEUR-SATELLITE			24-24.05	24-24.05 AMATEUR AMATEUR-SATELLITE	ISM Equipment (18) Amateur Radio (97)
5.150 24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active)			5.150 US211 24.05-24.25 RADIOLOCATION G59 Earth exploration-satellite (active)	5.150 US211 24.05-24.25 Amateur Earth exploration-satellite (active) Radiolocation	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
5.150 24.25-24.45 FIXED			5.150 24.25-24.45 FIXED MOBILE RADIOLOCATION	5.150 24.25-24.45 FIXED MOBILE	RF Devices (15) Upper Microwave Flexible Use (30)
24.45-24.65 FIXED INTER-SATELLITE			24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIOLOCATION	24.45-24.65 INTER-SATELLITE RADIOLOCATION	RF Devices (15) Satellite Communications (25)
5.533			5.533	5.533	
24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE			24.65-24.75 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B INTER-SATELLITE MOBILE 5.533	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	
24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.532B			24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) NG65 MOBILE	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30)
25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 FIXED MOBILE Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)	RF Devices (15) Upper Microwave Flexible Use (30)
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space)			25.5-27 EARTH EXPLORATION- SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space)	25.5-27 FIXED MOBILE SPACE RESEARCH (space-to-Earth) Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space)	
5.536A			5.536A US258	5.536A US258	

Table of Frequency Allocations

27-34.7 GHz (SHF/EHF)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE 5.536 5.537 MOBILE		27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 FIXED MOBILE Inter-satellite 5.536	Upper Microwave Flexible Use (30) RF Devices (15)
27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE			27.5-30	27.5-28.35 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	RF Devices (15) Satellite Communications (25) Upper Microwave Flexible Use (30) Fixed Microwave (101)
5.538 5.540				28.35-29.1 FIXED-SATELLITE (Earth-to-space) NG165	Satellite Communications (25)
28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540				NG62	
29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541				29.1-29.25 FIXED FIXED-SATELLITE (Earth-to-space) NG166 MOBILE	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
5.540				29.25-29.5 FIXED-SATELLITE (Earth-to-space) NG535A	Satellite Communications (25)
29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space)	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space)		NG62	
5.540 5.542	5.525 5.526 5.527 5.529 5.540 5.542	5.540 5.542		29.5-30 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space)	
29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.543 5.525 5.526 5.527 5.538 5.540 5.542				5.525 5.526 5.527 5.529 5.543	
30-31 FIXED-SATELLITE (Earth-to-space) 5.338A MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth)			30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth)	30-31 Standard frequency and time signal-satellite (space-to-Earth)	
5.542			G117		

40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B MOBILE MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth)			40-40.5 EARTH EXPLORATION-SATELLITE (Earth-to-space) FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) SPACE RESEARCH (Earth-to-space) Earth exploration-satellite (space-to-Earth) G117	40-40.5 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)
40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile	40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B BROADCASTING BROADCASTING-SATELLITE Mobile Mobile-satellite (space-to-Earth)	40.5-41 FIXED FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Mobile	40.5-41 FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth)	40.5-41 FIXED-SATELLITE (space-to-Earth) BROADCASTING BROADCASTING-SATELLITE Fixed Mobile Mobile-satellite (space-to-Earth)	
5.547	5.547	5.547	US211 G117	US211	
41-42.5 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B BROADCASTING BROADCASTING-SATELLITE Mobile			41-42.5	41-42 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE BROADCASTING BROADCASTING-SATELLITE US211	Upper Microwave Flexible Use (30)
5.547 5.551F 5.551H 5.551I				US211	
42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.552 MOBILE except aeronautical mobile RADIO ASTRONOMY			42.5-43.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile RADIO ASTRONOMY	42.5-43.5 RADIO ASTRONOMY	
5.149 5.547			US342	US342	
43.5-47 MOBILE 5.553 MOBILE-SATELLITE RADIONAVIGATION RADIONAVIGATION-SATELLITE			43.5-45.5 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) G117	43.5-45.5	
5.554			45.5-46.9 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIONAVIGATION-SATELLITE 5.554		RF Devices (15)

* * * * *
Non-Federal Government (NG)
Footnotes

* * * * *
 NG65 In the bands 24.75–25.25 GHz, 47.2–48.2 GHz and 50.4–51.4 GHz, stations in the fixed and mobile services may not claim protection from individually licensed earth stations authorized pursuant to 47 CFR 25.136. However, nothing in this footnote shall limit the right of UMFUS licensees to operate in conformance with the technical rules contained in 47 CFR part 30. The Commission reserves the right to monitor developments and to undertake further action concerning interference between UMFUS and FSS, including aggregate interference to satellite receivers, if appropriate.
 * * * * *

PART 25—SATELLITE COMMUNICATIONS

- 3. The authority citation for part 25 continues to read as follows:
Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.
- 4. Amend § 25.136 by revising the section heading and paragraph (g), and adding paragraph (h) to read as follows:

§ 25.136 Earth Stations in the 24.75–25.25 GHz, 27.5–28.35 GHz, 37.5–40 GHz, 47.2–48.2 GHz and 50.4–51.4 GHz bands.

* * * * *
 (g) Notwithstanding that FSS is co-primary with the Upper Microwave Flexible Use Service in the 24.75–25.25 GHz and 50.4–51.4 GHz bands, earth stations in these bands shall be limited to individually licensed earth stations. An applicant for a license for a transmitting earth station in the 24.75–25.25 GHz or 50.4–51.4 GHz band must meet one of the following criteria to be authorized to operate without providing any additional interference protection to stations in the Upper Microwave Flexible Use Service:

- (1) The FSS licensee also holds the relevant Upper Microwave Flexible Use Service license(s) for the area in which the earth station generates a power flux density (PFD), at 10 meters above ground level, of greater than or equal to –77.6dBm/m²/MHz;
- (2) The earth station in the 24.75–25.25 GHz band was authorized prior to August 20, 2018; or the earth station in the 50.4.2–51.4 GHz band was authorized prior to [effective date of this rule]; or
- (3) The application for the earth station in the 24.75–25.25 GHz band was filed prior to August 20, 2018; or the application for the earth station in

the 50.4–51.4 GHz band was filed prior to [effective date for this rule]; or
 (4) The applicant demonstrates compliance with all of the following criteria in its application:

- (i) There are no more than two other authorized earth stations operating in the same frequency band within the county where the proposed earth station is located that meet the criteria contained in either paragraphs (g)(1) (g)(2), (g)(3) or (g)(4) of this section, and there are no more than 14 other authorized earth stations operating in the same frequency band within the Partial Economic Area where the proposed earth station is located that meet the criteria contained in paragraphs (g)(1) (g)(2), (g)(3) or (g)(4) of this section. For purposes of this requirement, multiple earth stations that are collocated with or at a location contiguous to each other shall be considered as one earth station;
- (ii) The area in which the earth station generates a power flux density (PFD), at 10 meters above ground level, of greater than or equal to –77.6 dBm/m²/MHz, together with the similar area of any other earth station operating in the same frequency band authorized pursuant to paragraph (e) of this section, does not cover, in the aggregate, more than the amount of population of the county within which the earth station is located as noted below:

TABLE 1 TO PARAGRAPH (g)(4)(ii)

Population within the County where earth station is located	Maximum permitted aggregate population within –77.6 dBm/m ² /MHz PFD contour of earth stations
Greater than 450,000	0.1 percent of population in county.
Between 6,000 and 450,000	450 people.
Fewer than 6,000	7.5 percent of population in county.

(h) If an earth station applicant or licensee in the 24.75–25.25 GHz, 27.5–28.35 GHz, 37.5–40 GHz, 47.2–48.2 GHz and/or 50.4–51.4 GHz bands enters into an agreement with an UMFUS licensee, their operations shall be governed by that agreement, except to the extent that the agreement is inconsistent with the Commission’s rules or the Communications Act.
 * * * * *

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

- 5. The authority citation for part 30 continues to read as follows:
Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.
- 6. Amend § 30.4 by:
 - a. Redesignating paragraphs (b) through (e) as paragraphs (c), (d), (f), and (g), and
 - b. Adding a new paragraph (b) and (e).
 The additions read as follows:

(b) 25.25–27.5 GHz band—25.25–25.45 GHz; 25.45–25.65 GHz; 25.65–25.85 GHz; 25.85–26.05 GHz; 26.05–26.25 GHz; 26.25–26.45 GHz; 26.45–26.65 GHz; 26.65–26.85 GHz; 26.85–27.05 GHz; 27.05–27.25 GHz; 27.25–27.45 GHz; 27.45–27.5 GHz.
 * * * * *

(e) 42–42.5 GHz band—42–42.1 GHz; 42.1–42.2 GHz; 42.2–42.3 GHz; 42.3–42.4 GHz; 42.4–42.5 GHz.
 * * * * *

§ 30.4 Frequencies.

* * * * *

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Request for Nominations of Members for the National Agricultural Research, Extension, Education, and Economics Advisory Board, Specialty Crop Committee, and National Genetics Advisory Council

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, the U.S. Department of Agriculture (USDA) announces the opening of the solicitation for nominations to fill vacancies on the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board and its subcommittees. There are eight vacancies on the NAREEE Advisory Board; three vacancies on the Specialty Crop Committee; six vacancies on the Citrus Disease Subcommittee; and two vacancies on the National Genetics Advisory Council.

DATES: All nomination materials should be submitted in a single, complete package and received or postmarked by August 10, 2018.

ADDRESSES: The nominee's name, resume or CV, completed and signed Form AD-755, and any letters of support must be submitted via one of the following methods: (1) Email to nareeeab@ars.usda.gov; (2) By fax to 202-720-6199; or (3) By mail delivery service to: REE Advisory Board Office, U.S. Department of Agriculture, Jamie L. Whitten Building, Room 332-A, 1400 Independence Avenue SW, Washington, DC 20250-2255.

FOR FURTHER INFORMATION CONTACT: Michele Esch, Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue SW, Room 332A, The Whitten Building,

Washington, DC 20250-2255; telephone: 202-720-3684; fax: 202-720-6199; email: nareeeab@ars.usda.gov.
Committee website:
www.nareeeab.ree.usda.gov.

SUPPLEMENTARY INFORMATION:

Instructions for Nominations: Nominations are solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category, will be accepted. Nomination letters must indicate the specific category(s) or subcommittee for which the nominee is applying (*i.e.*, for the Specialty Crop Committee or the National Genetics Advisory Council). Nominees may be considered for more than one category and/or subcommittee dependent on qualifications. Each nominee must submit a signed form AD-755, "Advisory Committee Membership Background Information," which can be obtained from the contact person below or from: <https://www.ocio.usda.gov/sites/default/files/docs/2012/AD-755%20-%20Approved%20Master%202015.pdf>.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure the recommendation of the Advisory Board take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

Please note, individuals may not serve on more than one USDA Federal Advisory Committee. Lobbyists who are registered with the Federal Government and who are selected to serve on committees to exercise their own individual best judgment on behalf of the government (*e.g.*, as Special Government Employees) are ineligible to serve.

All nominees will be carefully reviewed for their expertise, leadership, and relevance. All nominees will be vetted before selection.

Appointments to the NAREEE Advisory Board and its subcommittees will be made by the Secretary of Agriculture.

NAREEE Advisory Board: The NAREEE Advisory Board was established in 1996 via Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) to provide advice to the Secretary of Agriculture and land-grant colleges and universities on top priorities and policies for food and agricultural research, education, extension, and economics. Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 was amended by the Farm Security and Rural Investment Act of 2002 to reduce the number of members on the NAREEE Advisory Board to 25 members and required the Board to also provide advice to the Committee on Agriculture of the House of Representatives; the Committee on Agriculture, Nutrition, and Forestry of the Senate; the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies of the Committee on Appropriations of the House of Representatives; and the Subcommittee on Agriculture, Rural Development and Related Agencies of the Committee on Appropriations of the Senate.

Since the Advisory Board's inception by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996, and one-third of its members were appointed for a 1-, 2-, and 3-year term, respectively. The terms for eight members who represent specific categories will expire September 30, 2018. Nominations are for a 3-year appointment for these eight vacant categories. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category. Nominations for multiple categories is acceptable. Please note nomination

categories on the AD-755 or nomination letter.

The eight slots to be filled are:

- Category A. National Farm Organization
- Category C. Food Animal Commodity Producer
- Category I. National Human Health Association
- Category N. Non-Land Grant College or University With Historic Commitment to Research in Food and Agricultural Sciences
- Category O. Hispanic-serving Institutions
- Category Q. Transportation of food and agricultural products to domestic and foreign markets
- Category R. Food Retailing and Marketing Interests
- Category S. Food and Fiber Processors

Specialty Crop Committee: The Specialty Crop Committee was created as a subcommittee of the NAREEE Advisory Board in accordance with the Specialty Crops Competitiveness Act of 2004 under Title III, Section 303 of Public Law 108-465. The committee was formulated to study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The legislation defines “specialty crops” as fruits, vegetables, tree nuts, dried fruits and nursery crops (including floriculture). The Agricultural Act of 2014 further expanded the scope of the Specialty Crop Committee to provide advice to the Secretary of Agriculture on the relevancy review process of the Specialty Crop Research Initiative, a granting program of the National Institute of Food and Agriculture.

Members should represent the breadth of the specialty crop industry. Six members of the Specialty Crop Committee are also members of the NAREEE Advisory Board and six members represent various disciplines of the specialty crop industry. The terms of three members will expire on September 30, 2018. The Specialty Crop Committee is soliciting nominations to fill three vacant positions to represent the specialty crop industry. Appointed members will serve three years with their terms expiring in September 2021.

National Genetic Resources Advisory Council: The National Genetic Resources Advisory Council was re-established in 2012 as a permanent subcommittee of the NAREEE Advisory Board to formulate recommendations on actions and policies for the collection, maintenance, and utilization of genetic resources; to make recommendations for coordination of genetic resources plans of several domestic and international organizations; and to advise the Secretary of Agriculture and the National Genetic Resources Program,

part of the Agricultural Research Service, of new and innovative approaches to genetic resources conservation.

The National Genetic Resources Advisory Council membership is required to have two-thirds of the appointed members from scientific disciplines relevant to the National Genetic Resources Program, including agricultural sciences, environmental sciences, natural resource sciences, health sciences, and nutritional sciences; and one-third of the appointed members from the general public including leaders in fields of public policy, trade, international development, law, or management.

The terms of two members of the National Genetic Resources Advisory Council will expire on September 30, 2018. The two slots to be filled are to be composed of one scientific members and one general public member. Appointed members will serve three-year appointments expiring in September 2021.

Citrus Disease Subcommittee: The Citrus Disease Subcommittee was established by the Agricultural Act of 2014 (Sec. 7103) to advise the Secretary of Agriculture on citrus research, extension, and development needs, engage in regular consultation and collaboration with USDA and other organizations involved in citrus, and provide recommendations for research and extension activities related to citrus disease. The Citrus Disease Subcommittee will also advise the Department on the research and extension agenda of the Emergency Citrus Disease Research and Extension Program, a granting program of the National Institute of Food and Agriculture.

The subcommittee is composed of nine members who must be a producer of citrus with representation from the following States: Three members from Arizona or California, five members from Florida, and one member from Texas.

The terms of six Citrus Disease Subcommittee will expire on September 30, 2018. The Citrus Disease Subcommittee is soliciting nominations to fill six vacant positions for membership; three positions are to represent Florida, two positions are to represent California or Arizona, and one position is to represent Texas. Appointed members will serve three years with their terms expiring in September 2021.

Done at Washington, DC, this day of June 3, 2018.

Chavonda Jacobs-Young,

Acting Under Secretary, Research, Education, and Economics, Acting Chief Scientist.

[FR Doc. 2018-15551 Filed 7-19-18; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2018-0025]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full Committee and Subcommittees on August 7-10, 2018. The Committee will discuss and adopt: (1) Effective *Salmonella* Control Strategies for Poultry and (2) Virulence Factors and Attributes that Define Foodborne Shiga Toxin-producing *Escherichia coli* (STEC) as Severe Human Pathogens. The Committee will also discuss two new charges; the first charge is The Use of Water in Animal Slaughter and Processing. Regulatory agencies such as FSIS must also be able to provide supportable alternatives to current water consumption practices that allow industry to potentially use less and recycle water through developing criteria on the appropriate uses of varying water sources and treatment technologies in the processing of meat, poultry, and egg products. The second charge is Appropriate Product Testing Procedures and Criteria to Verify Process Control for Microbial Pathogens or appropriate indicator organisms in Ready-to-Eat (RTE) Foods under the U.S. Food and Drug Administration’s (FDA) jurisdiction.

DATES: The full Committee will hold an open meeting on Tuesday, August 7, 2018 from 10:00 a.m. to 12:00 p.m. EST. The Subcommittees on the Use of Water in Animal Slaughter and Processing, and Appropriate Product Testing Procedures and Criteria to Verify Process Control for Microbial Pathogens or appropriate indicator organisms in Ready-to-Eat (RTE) Foods under FDA’s jurisdiction, will hold concurrent open Subcommittee meetings on Tuesday, August 7, from 1:00 p.m. to 5:00 p.m., Wednesday, August 8, 2018; Thursday, August 9, 2018; and Friday, August 10,

2018 from 8:30 a.m. to 5:00 p.m. EST., respectively.

ADDRESSES: The Committee meetings will be held at the Patriot's Plaza 3, 1st Floor Auditorium and Conference Rooms, 355 E Street SW, Washington, DC 20250. Attendance is free. Attendees must show a valid photo ID to enter the building. Attendees with non-government ID may be required to pass through the security screening systems, please allow adequate time for this process.

FSIS invites interested persons to submit comments on the FSIS-2018-0025. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD-ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250-3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2018-0025. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 720-5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250-3700. All documents related to the full Committee meeting will be available for public inspection in the FSIS Docket Room. The NACMCF documents will also be available on the internet at <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notices>.

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS web page at <https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings>. Please note that the meeting agenda is subject to change due to the time required for Committee discussions; thus, sessions could start or end earlier or later than anticipated. Please plan accordingly if you would

like to attend a particular session or participate in a public comment period.

The official transcript of the August 7, 2018 full Committee meeting, when it becomes available, will be kept in the FSIS Docket Room at the above address and will also be posted on <https://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/nacmcf/meetings/nacmcf-meetings>.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments at the August 7, plenary session should contact Karen Thomas: Phone: (202) 690-6620; Fax (202) 690-6334; Email: Karen.thomas-sharp@fsis.usda.gov or at the mailing address: USDA, FSIS, Office of Public Health Science, 1400 Independence Avenue SW, Patriots Plaza 3, Mailstop 3777, Room 9-47, Washington, DC 20250. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas by July 30, 2018.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The charter for the NACMCF is available for viewing on the FSIS web page at <https://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/nacmcf/committee-charter>.

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides scientific advice and recommendations to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense. Questions from the Department of Agriculture and Health and Human Services agencies that are sponsors of the Committee are submitted as Charges to the Executive Committee for vetting and approval before they are presented to the full Committee during the plenary session.

The Committee is expected to respond to the questions during their two-year term.

Ms. Carmen Rottenberg, Acting Deputy Under Secretary for Food Safety, USDA, is the Committee Chair; Dr. Susan T. Mayne, Director of the Food and Drug Administration's Center for Food Safety and Applied Nutrition, is the Vice-Chair; and Dr. Mark Carter, FSIS, is the Designated Federal Officer.

Documents Reviewed by NACMCF

FSIS will make all materials reviewed and considered by NACMCF regarding its deliberations available to the public. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in electronic format on the FSIS web page (www.fsis.usda.gov), as well as in hard copy format in the FSIS Docket Room.

Disclaimer: NACMCF documents and comments posted on the FSIS website are electronic conversions from a variety of source formats. In some cases, document conversion may result in character translation or formatting errors. The original document is the official, legal copy.

To meet the electronic and information technology accessibility standards in Section 508 of the Rehabilitation Act, NACMCF may add alternate text descriptors for non-text elements (graphs, charts, tables, multimedia, etc.). These modifications only affect the internet copies of the documents.

Copyrighted documents will not be posted on the FSIS website, but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: <http://www.fsis.usda.gov/federal-register>. FSIS also will make copies of this publication available through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Constituent Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides

automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination, any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email: *Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410.

Fax: (202) 690-7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Paul Kiecker,

Acting Administrator.

[FR Doc. 2018-15594 Filed 7-19-18; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Malheur National Forest, Prairie City Ranger District; Oregon; Cliff Knox Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Malheur National Forest will prepare an environmental impact statement (EIS) to disclose the

environmental effects of proposed vegetation and fuels treatments, wildlife habitat designations, and road activities in the Cliff Knox project area located on the Prairie City and Emigrant Creek Ranger Districts. Proposed actions include timber harvest, small diameter thinning, aspen and mountain mahogany restoration, landscape underburning, road activities to support vegetation and fuels treatments, and road system changes. The intent of the project is to restore forest health, reduce fuels, increase the forest's resilience to wildfires and other disturbance, and enhance fish and wildlife habitats.

DATES: Comments concerning the proposed action in this notice must be received by August 20, 2018. The draft EIS is expected in December 2018 and the final EIS is expected in June 2019.

ADDRESSES: The preferred method to submit comments is via email to: comments-pacificnorthwest-malheur-prairiecity@fs.fed.us. You may also submit comments via mail to Ed Guzman, District Ranger, Prairie City Ranger District, P.O. Box 337, Prairie City, OR 97869; via facsimile to 541-820-4844; or by hand delivery to the Prairie City Ranger District, 327 SW Front St., Prairie City, Oregon.

FOR FURTHER INFORMATION CONTACT: Kathy Schnider, District NEPA Planner, 327 SW Front St., P.O. Box 337, Prairie City, OR 97869. Phone: 541-820-3821. Email: kschnider@fs.fed.us. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Cliff Knox Project encompasses approximately 40,000 acres across the Bluebucket Creek subwatershed (10,976 acres) and the Cliff Creek-Malheur River subwatershed (29,342 acres), and includes the Malheur River Inventoried Roadless Area and part of the Malheur River Wild and Scenic River corridor. The legal description for the planning area includes Townships 17 and 18 South and Ranges 33, 34, and 35 East, Willamette Meridian, Grant County, Oregon. The full scoping package is available on the Malheur National Forest website: <https://www.fs.usda.gov/project/?project=50433>.

Purpose and Need for Action

The project's purpose and need is represented by differences between existing and desired conditions based on forest plan management direction, other forest service policies, and best available science.

The purpose of the Cliff Knox Project is to improve forest health and increase

resilience to drought, fire, insects and diseases, and other disturbances by moving the project area toward its historical (natural) range of variability in forest structure, tree density, species composition, and associated wildlife habitat. Additionally, there is an opportunity to contribute to the economic stability of local communities that depend on timber resources for their livelihood and move the forest transportation system toward a more environmentally and fiscally sustainable state.

Specifically, there is a need in the project area to:

(1) Increase forest resilience to insect and disease outbreaks and uncharacteristic wildfires by moving the landscape toward a more historical range of variability for structure, density, and species composition. This includes special consideration for the Malheur River Wild and Scenic River, the Malheur Inventoried Roadless Area, riparian habitat conservation areas, dedicated and replacement old growth stands, aspen and mountain mahogany stands, and connectivity corridors.

(2) Enhance landscape resilience to wildfire by restoring fuel profiles to types primarily conducive to surface fire, with special attention to lands adjacent to strategic roads and areas identified as wildland-urban interface.

(3) Increase public and firefighter safety in the event of a wildfire in the project area.

(4) Restore and promote open stands dominated by large trees and fire-tolerant tree species, which were historically dominant across the project area.

(5) Maintain existing old forest stands and promote old trees (greater than 150 years old) to increase their abundance over the long term.

(6) Restore and promote regeneration of hardwoods, including quaking aspen, mountain mahogany, and riparian hardwoods.

(7) Treat vegetation to improve characteristics of the Malheur River Inventoried Roadless Area as defined by the 2001 Roadless Area Conservation Rule (36 CFR 294.11).

(8) Increase water availability for native vegetation by reestablishing historical openings and grasslands, thinning overstocked stands, and removing encroaching juniper and other conifers where they did not historically occur.

(9) Improve quantity and quality of forage for large ungulates, especially in big-game winter range management areas.

(10) Reduce road related impacts to the watershed (aquatic and terrestrial habitat, and water quality).

(11) Improve existing road networks to provide access to the forest while meeting forest plan standards and guidelines as well as regulatory direction.

(12) Capture the economic value of forest products and other resources to support local economies and provide employment opportunities.

(13) Provide safe access to the forest for public health, enjoyment, and stewardship.

Proposed Action

To meet the purpose and need for the Cliff Knox Project and to move the project area toward desired conditions, the Malheur National Forest is proposing activities including timber harvest, small diameter thinning, aspen and mountain mahogany restoration, landscape underburning, road activities to support vegetation and fuels treatments, and road system changes.

Approximately 27,000 acres of vegetation and fuel treatments are proposed to increase forest resilience to insect and disease outbreaks and uncharacteristic wildfires; restore fuel profiles, promote development of old stands and trees; and restore quaking aspen, mountain mahogany, and riparian hardwoods (related to the need). Treatments include stand improvement commercial thinning, biomass removal (biomass material may be removed during logging operations, by hand, or with small equipment such as all-terrain vehicles or small excavators or forwarders), and small diameter thinning where stands are above the appropriate management zone for stand density. In areas of high tree mortality due to insect infestations, dead lodgepole and ponderosa pine trees in excess of wildlife standards for downed and dead trees may be salvaged. Additionally, 3 units are identified as potential tree tipping units, where large wood could be placed in streams. Proposed vegetation and fuel treatments are located across the project area to address the purpose and need, including within the Malheur Wild and Scenic River, Malheur River Inventoried Roadless Area, the wildland-urban interface and adjacent to strategic roads, and riparian habitat conservation areas. These treatments would help move forest structure, composition, and density toward more resilient vegetative conditions.

Landscape underburning on approximately 40,000 acres is proposed to reduce surface fuel loading, reduce ladder fuels, and raise canopy base

height. Treated stands would see a combination of piled material burning and underburning. Those stands not mechanically treated would be managed exclusively with the use of underburning.

The proposed action includes wildlife habitat designations that include additions to replacement old growth (108 acres) and pileated woodpecker feeding areas (205 acres), establishment of connectivity corridors (4,950 acres) and wildlife habitat enhancement openings (1,020 acres). Preliminary connectivity corridors have been identified between late and old structure stands to allow for movement of old-growth dependent species. The goal of creating "connectivity" is to manage stands in corridors at higher canopy densities when compared to more intensively managed stands located outside of corridors. Habitat enhancement openings are proposed in areas where soil types point to a more open canopy in the past to create openings in coniferous forest to move areas that would have historically been more open towards desired vegetation communities. Most of these units are located in big-game winter range and are adjacent to or include existing openings.

Road activities to support vegetation and fuels treatments are also proposed to provide safe access and to reduce road-related impacts. Road maintenance and reconstruction for haul would occur on open or temporarily opened roads to provide safe access and adequate drainage. About 15 miles of temporary roads would be constructed to access some timber harvest units; these areas would be rehabilitated following use.

Multiple changes to the road system are proposed. This includes decommissioning about 9.5 miles of road that are not needed for future management actions and are either already in an overgrown state or are contributing to resource related impacts, such as delivering sediment to streams or disturbing wildlife. Also proposed is closing about 14 miles of currently open roads that may be needed for future management actions but are either currently in an overgrown state or contributing to resource related impacts, such as delivering sediment to streams or disturbing wildlife. Closed roads are to be left in a stable hydrologic state and are to be periodically maintained. The proposed action also includes confirming the previous administrative closure of 28 miles of road and opening about 2.5 miles of currently closed roads that show signs of moderate to high use, have little potential for resource impacts, and some of which provide access to dispersed camping sites, State

and Bureau of Land Management lands, and permittee allotments. Additionally, the proposed action includes decommissioning and relocating about 2 miles of road that are causing unacceptable resource damage in their current locations but provide access to essential management activities and dispersed campsites.

The Cliff Knox Project will also include a variety of project design criteria that serve to mitigate impacts of activities to forest resources, including wildlife, soils, watershed condition, aquatic species, riparian habitat conservation areas, heritage resources, visuals, rangeland, botanical resources, and invasive plants.

Possible Alternatives

A full range of alternatives to the proposed action, including a no action alternative, will be considered. The no action alternative represents no change and serves as the baseline for the comparison of the action alternatives. Alternatives may be developed in response to issues raised by the public during the scoping process or due to additional concerns for resource values identified by the interdisciplinary team.

Forest Plan Amendments

The proposed action may also include the following amendments to the 1990 Malheur National Forest Land and Resource Management Plan (Forest Plan), as amended:

(1) Designating management area 13 (old growth): Old growth changes are needed to maintain consistency with forest plan standards for dedicated and replacement old growth.

(2) Reducing cover below forest plan standards in big-game summer range and winter range: Reduction in satisfactory and/or total cover in big-game summer range and/or big-game winter range. Vegetation management treatments may initially reduce cover levels in some areas; however, these treatments would make it possible to achieve desired vegetative health conditions that may result in more abundant, higher quality cover with reduced insect activity in the future.

(3) Removal of trees greater than or equal to 21 inches diameter at breast height and harvest within late and old structure: Removal of trees greater than or equal to 21 inches diameter at breast height within specific stands with existing aspen and mountain mahogany is proposed to improve the growth of existing aspen and mountain mahogany by reducing competition for sunlight and water from large, young nearby trees, and to move stands with old forest multi-strata structure toward the old

forest single-stratum structure that is deficient in the project area.

(4) Not maintaining the current level of connectivity between late and old structure and old growth stands: Reduction in connectivity is proposed because the southern portion of the project area contains pockets of late and old structure stands within areas that developed over mollic soils, an indicator that these areas were grasslands and meadows within their historical range of variability, but are now experiencing encroachment from conifers. Connectivity does not exist in these areas, and therefore cannot be maintained.

When proposing a forest plan amendment, the 2012 Planning Rule (36 CFR 219), as amended, requires the Responsible Official to provide in the initial notice “which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment (§ 219.13(b)(5)).” Whether a rule provision is likely to be directly related to an amendment is determined by the purpose for the amendment, the beneficial effects or adverse effects of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale. The following substantive requirements would likely be directly related to the proposed amendments.

Substantive provisions that relate to all proposed amendments include: 219.8(a)(1)(ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area; 219.8(a)(1)(iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change; 219.9(a)(1) Ecosystem integrity; 219.9(a)(2) Ecosystem diversity; 219.10(a)(1) Aesthetic values, air quality, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, geologic features, grazing and rangelands, habitat and habitat connectivity, recreation settings and opportunities, riparian areas, scenery, soil, surface and subsurface water quality, timber, trails, vegetation, viewsheds, wilderness, and other relevant resources and uses; 219.10(a)(5) Habitat conditions, subject to the requirements of 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in collaboration with federally recognized

Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments); and 219.10(a)(8) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of the terrestrial and aquatic ecosystems on the plan area to adapt to change (219.8).

Substantive provisions that relate to the proposed amendments for reducing cover below forest plan standards in big-game summer range and winter range, removal of trees greater than or equal to 21 inches diameter at breast height and harvest within late and old structure, and not maintaining the current level of connectivity between late and old structure and old growth stands include: 219.8(a)(1)(iii) Conditions in the broader landscape that may influence the sustainability of resources and ecosystems within the plan area; 219.8(a)(1)(v) Wildland fire and opportunities to restore fire adapted ecosystems; 219.8(a)(1)(vi) Opportunities for landscape scale restoration; and 219.10(a)(7) Reasonably foreseeable risks to ecological, social, and economic sustainability.

Substantive provisions that relate to the proposed amendments for designating management area 13 (old growth), removal of trees greater than or equal to 21 inches diameter at breast height and harvest within late and old structure, and not maintaining the current level of connectivity between late and old structure and old growth stands include: 219.9(a)(2)(i) Key characteristics associated with terrestrial and aquatic ecosystem types.

Responsible Official

The Forest Supervisor of the Malheur National Forest, 431 Patterson Bridge Road, John Day, OR 97845, is the Responsible Official. The Responsible Official decides if the proposed action will be implemented and documents the decision and rationale for the decision in the record of decision. Responsibility for preparation of the draft EIS and final EIS has been delegated to the District Ranger, Prairie City Ranger District.

Nature of Decision To Be Made

Given the purpose and need of the project, the Responsible Official will review the proposed action, other alternatives, and the environmental effects analysis in order to determine: (1) Which alternative, or combination of alternatives, should be implemented; (2) the location and treatment methods for all proposed activities; (3) the design features, mitigation measures and

monitoring requirements; and, (4) consistency with the forest plan and the need for amendments.

Decisions by the Forest Supervisor to approve project-specific plan amendments are subject to the Project-level Predecisional Administrative Review Process of 36 CFR 218 Subpart A, in accordance with 36 CFR 219.59(b). The term “project specific” refers to amendments that would only apply to the proposed project and would not apply to any future management actions.

Per 36 CFR 218.7(a)(2), this is a project proposing to implement a land management plan and is not authorized under the Healthy Forests Restoration Act (HFRA). Therefore, it is subject to both subparts A and B of 36 CFR 218.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS for the Cliff Knox Project. The interdisciplinary team will continue to seek information and comments from Federal, State, and local agencies, in addition to Tribal governments and other individuals or organizations that may be interested in, or affected by, the proposed action. There is a collaborative group in the area that the interdisciplinary team will interact with during the analysis process.

Public meetings will occur in Prairie City and Burns, Oregon, during the scoping period for the purposes of discussing and gathering comments on the proposed action. Times and locations of scheduled meetings will be advertised through local media outlets and posted on the Malheur National Forest website. The intent of this comment period is to provide those interested in or affected by this proposed action with an opportunity to make their concerns known. Written, hand-delivered, electronic, and facsimile comments concerning this proposed action will be accepted. We invite you to provide any substantive comments you might have regarding the proposed action for the Cliff Knox Project; substantive comments are within the scope of the project and the decision to be made, are specific to the proposed activities and the project area, and have a direct relationship to the project. Please provide supporting reasons for us to consider. If you cite or include references with your comments, you need to state specifically how those references relate to the proposed action. Please include a copy of or an internet link for any references you cite.

It is important that reviewers provide their comments at such times and in

such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action, and may be released under the Freedom of Information Act. However, comments submitted anonymously will also be accepted and considered.

Dated: June 6, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

[FR Doc. 2018-15491 Filed 7-19-18; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-979, C-570-980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a request from Goal Zero LLC (Goal Zero), the Department of Commerce (Commerce) is initiating changed circumstances reviews to consider the possible revocation, in part, of the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (China) with respect to certain solar panels, as described below.

DATES: Applicable July 20, 2018.

FOR FURTHER INFORMATION CONTACT: Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1593.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, Commerce published AD and CVD orders on certain crystalline silicon photovoltaic

cells, whether or not assembled into modules, from China.¹ On April 17, 2018, Goal Zero, an importer of the subject merchandise, requested, through a changed circumstances review, revocation, in part, of the *Orders* pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b),² with respect to certain off-grid solar panels. On May 4, 2018, SolarWorld Americas, Inc. (the petitioner) submitted a letter stating that it did not oppose the partial revocation proposed by Goal Zero.³ On May 14, 2018, we issued a supplemental questionnaire to Goal Zero,⁴ to which it responded on May 23, 2018.⁵ On May 30, 2018,⁶ and again on June 29, 2018, we extended the deadline for determining whether to initiate the requested changed circumstances.⁷ The current deadline is July 16, 2018.⁸ On July 9, 2018, we received revised proposed partial revocation language from Goal Zero.⁹

Scope of the Orders

The merchandise covered by the *Orders* is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

The *Orders* cover crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (collectively, *Orders*).

² See Goal Zero's Letter, "Goal Zero LLC's Request for a Changed Circumstances Review," dated April 17, 2018.

³ See SolarWorld's Letter, "Support for Goal Zero LLC's Request for a Changed Circumstances Review," dated May 4, 2018.

⁴ See Commerce's Letter, dated May 14, 2018.

⁵ See "Goal Zero LLC's Response to Additional Questions Regarding the Changed Circumstances Reviews," dated May 23, 2018.

⁶ See Commerce's Letter, dated May 30, 2018.

⁷ See Commerce's Letter, dated June 29, 2018.

⁸ *Id.*

⁹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Comments on Goal Zero LLC's Request for a Changed Circumstances Review*, dated July 9, 2018; see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from The People's Republic of China; Goal Zero LLC's Comments Regarding the Proposed Scope of the Changed Circumstances Reviews*, dated July 9, 2018.

a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the *Orders*.

Excluded from the scope of the *Orders* are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the *Orders* are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Additionally, excluded from the scope of the *Orders* are panels with surface area from 3,450 mm² to 33,782 mm² with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by the *Orders*; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by the *Orders*.

Merchandise covered by the *Orders* is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the

written description of the scope of the *Orders* is dispositive.¹⁰

Proposed Revocation of the Orders

Goal Zero proposes that the *Orders* be revoked, in part, with respect to with certain off-grid solar panels. Goal Zero submitted its most recent proposed scope revocation language on July 9, 2018.¹¹ Should Commerce determine to revoke the *Orders*, in part, Goal Zero proposes that Commerce exclude the following products:

- (1) Off-grid CSPV panels in rigid form with a glass cover, with the following characteristics:
 - (A) A total power output of 100 watts or less per panel;
 - (B) A maximum surface area of 8,000 cm² per panel;
 - (C) do not include a built-in inverter;
 - (D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housing of different colors;
 - (E) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and
 - (F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and
- (2) Off-grid CSPV panels without a glass cover, with the following characteristics:
 - (A) A total power output of 100 watts or less per panel;
 - (B) a maximum surface area of 8,000 cm² per panel;
 - (C) do not include a built-in inverter;
 - (D) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and
 - (E) each panel is
 1. permanently integrated into a consumer good;
 2. encased in a laminated material without stitching, or
 3. has all of the following characteristics: (i) The panel is

encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB–A connector.

Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Orders in Part

Pursuant to section 751(b) of the Act, Commerce will conduct a changed circumstances review upon receipt of a request from an interested party¹² that shows changed circumstances sufficient to warrant a review of an order. In accordance with 19 CFR 351.216(d), Commerce determines that the information submitted by Goal Zero, and the petitioner's affirmative statement of no interest in the *Orders* with respect to the products described by Goal Zero, constitutes sufficient evidence to conduct changed circumstances reviews of the *Orders*.

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that Commerce may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In addition, in the event Commerce determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits Commerce to combine the notices of initiation and preliminary results. In its administrative practice, Commerce has interpreted “substantially all” to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.¹³

The petitioner states that it does not oppose the partial revocation request; however, because the petitioner did not indicate whether it accounts for substantially all of the domestic production of crystalline silicon photovoltaic cells, whether or not assembled into modules, we are not combining this notice of initiation with a preliminary determination, pursuant

to 19 CFR 351.221(c)(3)(ii), but will provide interested parties with an opportunity to address the issue of domestic industry support with respect to this requested partial revocation of the orders, as explained below. After examining comments, if any, concerning domestic industry support, we will issue the preliminary results of these changed circumstances reviews.

Public Comment

Interested parties are invited to provide comments and/or factual information regarding these changed circumstances reviews, including comments on industry support and the proposed partial revocation language. Comments and factual information may be submitted to Commerce no later than ten days after the date of publication of this notice. Rebuttal comments and rebuttal factual information may be filed with Commerce no later than seven days after the comments and/or factual information are filed.¹⁴ All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS).¹⁵ An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time on the due dates set forth in this notice.

Preliminary and Final Results of the Review

Commerce intends to publish in the **Federal Register** a notice of the preliminary results of the antidumping and countervailing duty changed circumstances reviews in accordance with 19 CFR 351.221(b)(4) and (c)(3)(i), which will set forth Commerce's preliminary factual and legal conclusions. Commerce will issue its final results of the changed circumstances reviews in accordance with the time limits set forth in 19 CFR 351.216(e). This initiation is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: July 16, 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.

[FR Doc. 2018–15572 Filed 7–19–18; 8:45 am]

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¹⁴ Submission of rebuttal factual information must comply with 19 CFR 351.301(b)(2).

¹⁵ See, generally, 19 CFR 351.303.

¹⁰ See *Orders*, 77 FR at 73018–73019, 77 FR at 73017 (footnote omitted).

¹¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from The People's Republic of China: Goal Zero LLC's Comments Regarding the Proposed Scope of the Changed Circumstances Reviews*, dated July 9, 2018.

¹² Goal Zero stated in its April 17, 2018 CCRs request that it is an importer of subject merchandise. As such, Goal Zero is an interested party pursuant to 19 CFR 351.102(b)(29).

¹³ See, e.g., *Certain Cased Pencils from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent To Revoke Order in Part*, 77 FR 42276 (July 18, 2012), unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order, in Part*, 77 FR 53176 (August 31, 2012).

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-983]

Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

DATES: Applicable July 20, 2018.

FOR FURTHER INFORMATION CONTACT: Joshua Tucker, 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) 482-2044.

SUPPLEMENTARY INFORMATION:**Background**

On April 11, 2013, Commerce published its antidumping duty order on drawn stainless steel sinks from China.¹ On March 5, 2018, Commerce published the notice of initiation of the first sunset review of the antidumping duty order on drawn stainless steel sinks from China pursuant to section 751(c) of the Act.² On March 16, 2018, Commerce received a notice of intent to participate from Elkay Manufacturing Company (Elkay), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).³ Elkay claimed interested party status under section 771(9)(C) of the Act as a producer of drawn stainless steel sinks in the United States.

On April 2, 2018, Commerce received an adequate substantive response to the notice of initiation from Elkay within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ We received no

substantive responses from respondent interested parties with respect to the order covered by this sunset review.

On April 10, 2018, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the antidumping duty order on drawn stainless steel sinks from China.

Scope of the Order

The merchandise covered by the order includes drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.⁶ For purposes of this scope definition, the term "drawn" refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as

"zero radius" or "near zero radius" sinks. The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting number 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum,⁷ which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the order were revoked. 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 in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the antidumping duty order on drawn stainless steel sinks from China would be likely to lead to the continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 76.53 percent.⁸

⁷ See Memorandum "Issues and Decision Memorandum for the Expedited First Sunset Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China," dated concurrently with this notice (Issues and Decision Memorandum).

⁸ The PRC-wide rate determined in the investigation was 76.53 percent. See *Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592, 21594 (April 11, 2013). This rate was adjusted for export subsidies and estimated domestic subsidy pass through to determine the cash deposit rate (76.45 percent) collected for companies in the PRC-wide entity. See explanation in *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final*

¹ See *Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592 (April 11, 2013) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 9279 (March 5, 2018).

³ See Letter from Elkay "First Five-Year ('Sunset') Review of Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China/Elkay Manufacturing Company's Notice of Intent to Participate," dated March 16, 2018.

⁴ See Letter from Elkay "First Five-Year ('Sunset') Review of The Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of

China/Substantive Response to the Notice of Initiation," dated April 2, 2018.

⁵ See Letter to the ITC re: "Sunset Reviews Initiated on March 5, 2018," dated April 10, 2018.

⁶ Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: July 2, 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.

[FR Doc. 2018-15569 Filed 7-19-18; 8:45 am]

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-060, A-533-875, A-580-893, A-583-860]

Fine Denier Polyester Staple Fiber From the People's Republic of China, India, the Republic of Korea, and Taiwan: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty orders on fine denier polyester staple fiber (fine denier PSF) from the People's Republic of China (China), India, the Republic of Korea (Korea), and Taiwan.

DATES: Applicable July 20, 2018.

FOR FURTHER INFORMATION CONTACT:

Edythe Artman at (202) 482-3931 (China), Patrick O'Connor at (202) 482-0989 (India), Karine Gziryan at (202) 482-4081 (Korea), Lilit Astvatsatrian at (202) 482-6412 (Taiwan), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Determination, 78 FR 13019, 13025 (February 26, 2013).

SUPPLEMENTARY INFORMATION:**Background**

In accordance with sections 735(a), 735(d), and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on May 30, 2018, Commerce published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of fine denier PSF from China, India, Korea and Taiwan.¹ On July 13, 2018, the ITC notified Commerce of its affirmative final determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of LTFV imports of fine denier PSF from China, India, Korea, and Taiwan.²

Scope of the Orders

The product covered by these orders is fine denier PSF from China, India, Korea, and Taiwan. For a complete description of the scope of these orders, see the Appendix to this notice.

Antidumping Duty Orders

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of fine denier PSF from China, India, Korea, and Taiwan.³ Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing these antidumping duty orders. Because the ITC determined that imports of fine denier PSF from China, India, Korea, and Taiwan are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, India, Korea, and Taiwan, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further

¹ See *Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018); *Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24737 (May 30, 2018); *Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24743 (May 30, 2018); and *Fine Denier Polyester Staple Fiber from Taiwan: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24745 (May 30, 2018).

² See Letter to Gary Taverman, Acting Assistant Secretary of Commerce for Enforcement and Compliance, from David S. Johanson, Chairman of the U.S. International Trade Commission, regarding fine denier polyester staple fiber from China, India, Korea, and Taiwan (July 13, 2018).

³ *Id.*

instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of fine denier PSF from China, India, Korea, and Taiwan. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of fine denier PSF from China, India, Korea, and Taiwan entered, or withdrawn from warehouse, for consumption on or after January 5, 2018, the date of publication of the preliminary determinations.⁴ Additionally, because the estimated weighted-average dumping for subject merchandise produced and exported by Tainan Spinning Co., Ltd. was determined to be zero in the investigation of fine denier PSF from Taiwan, and the estimated weighted-average dumping for subject merchandise produced and exported by Toray Chemical Kora Inc. was determined to be zero in the investigation of fine denier PSF from Korea, Commerce is directing CBP to not suspend liquidation of entries of subject merchandise from these exporter/producer combinations for each of the respective orders. Entries of subject merchandise exported to the United States by any other producer and exporter combination are not entitled to this exclusion from suspension of liquidation and are subject to the applicable cash deposit rates noted below.

⁴ See *Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 665 (January 5, 2018), and accompanying Preliminary Decision Memorandum (China Preliminary Determination); *Fine Denier Polyester Staple Fiber from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 662 (January 5, 2018), and accompanying Preliminary Decision Memorandum (India Preliminary Determination); *Fine Denier Polyester Staple Fiber from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 660 (January 5, 2018), and accompanying Preliminary Decision Memorandum (Korea Preliminary Determination); and *Fine Denier Polyester Staple Fiber from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 668 (January 5, 2018), and accompanying Preliminary Decision Memorandum (Taiwan Preliminary Determination).

Continuation of Suspension of Liquidation

Except as noted above and in the “Provisional Measures” section of this notice below, in accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of fine denier PSF from China, India, Korea, and Taiwan. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins, or cash deposits adjusted for subsidy offset, as applicable, indicated in the tables below. Given that the provisional measures period has expired, as explained below, effective on the date of publication in the **Federal Register** of the notice of the ITC’s final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins or cash deposits adjusted for subsidy offset, as applicable, listed in

the tables below.⁵ The relevant all-others rates apply to all producers or exporters not specifically listed. The China-wide entity rate applies to all exporter-producer combinations not specifically listed.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of fine denier PSF from China, India, Korea, and Taiwan, Commerce extended the four-month period to six months in each of these investigations. Commerce published the preliminary determinations in these investigations on January 5, 2018.⁶ Hence, the extended provisional measures period, beginning on the date of publication of the preliminary determinations, ended on July 3, 2018.

Therefore, in accordance with section 733(d) of the Act and our practice,⁷ Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of fine denier PSF from China, India, Korea, and Taiwan entered, or withdrawn from warehouse, for consumption after July 3, 2018, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC’s final affirmative injury determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC’s final determinations in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average antidumping duty margin percentages and cash deposit rates adjusted for subsidy offset, as applicable, are as follows:

China

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Jiangyin Hailun Chemical Fiber Co. Ltd.	Jiangyin Hailun Chemical Fiber Co. Ltd./Jiangyin Xinlun Chemical Fiber Co., Ltd./Jiangyin Yunlun Chemical Fiber Co., Ltd./Jiangyin Bolun Chemical Fiber Co., Ltd./Jiangyin Fenghua Synthetic Fiber Co., Ltd./Jiangyin Huamei Special Fiber Co., Ltd./Jiangyin Huasheng Polymerization Co., Ltd./Jiangyin Huayi Polymerization Co., Ltd./Jiangyin Huaxing Synthetic Co., Ltd./Jiangyin Xingsheng Plastic Co., Ltd.	72.22	72.22
Jiangyin Huahong Chemical Fiber Co., Ltd.	Jiangyin Huahong Chemical Fiber Co., Ltd./Jiangyin Huakai Polyester Co., Ltd./Jiangyin Hongkai Chemical Fiber Co., Ltd.	65.17	65.11
Hangzhou Best Chemical Fiber Co., Ltd.	Hangzhou Best Chemical Fiber Co., Ltd	68.70	68.64
Cixi Jiangnan Chemical Fiber Co. Ltd.	Cixi Jiangnan Chemical Fiber Co. Ltd	68.70	68.64
Jiangsu Xinsu Chemical Fiber Co., Ltd.	Jiangsu Xinsu Chemical Fiber Co., Ltd	68.70	68.64
Jiangyin Jinyan Chemical Fiber Co., Ltd.	Jiangyin Jinyan Chemical Fiber Co., Ltd./Jiangsu Xiang He Tai Fiber Technology Co., Ltd.	68.70	68.64
Jiangyin Yangxi International Trade Co., Ltd.	Jiangsu Hengze Composite Materials Technology Co., Ltd./Chuzhou Prosperity Environmental Protection Color Fiber Co., Ltd./Jiangsu Xiang He Tai Fiber Technology Co., Ltd./Jiangyin Hengfeng Chemical Fiber Co., Ltd./Jiangyin Shunze Chemical Fiber Co., Ltd.	68.70	68.64
Zhejiang Jinfuchun Industrial Co., Ltd.	Zhejiang Jinfuchun Industrial Co., Ltd	68.70	68.64
Nanyang Textile Co., Ltd	Nanyang Textile Co., Ltd	68.70	68.64
Ningbo Dafa Chemical Fiber Co. Ltd.	Ningbo Dafa Chemical Fiber Co. Ltd	68.70	68.64
Zhaoqing Tifo New Fibre Co., Ltd.	Zhaoqing Tifo New Fibre Co., Ltd	68.70	68.64
Unifi Textiles (Suzhou) Co., Ltd.	Jiangyin Yueda Chemical Fiber Limited Company/Hangzhou BenMa Chemical and Spinning Company Ltd./Yizheng Chemical Fiber Limited Liability Company.	68.70	68.64

⁵ See section 736(a)(3) of the Act.

⁶ See China Preliminary Determination, India Preliminary Determination, Korea Preliminary

Determination, and Taiwan Preliminary Determination.

⁷ See *Certain Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China,*

the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders, 81 FR 48390, 48392 (July 25, 2016).

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Yuyao Dafa Chemical Fiber Co., Ltd.	Yuyao Dafa Chemical Fiber Co., Ltd	68.70	68.64
Zhangjiagang City Hongtuo Chemical Fiber Co., Ltd.	Jiangyin Jindun Chemical Fiber Co., Ltd	68.70	68.64
Zhejiang Linan Foreign Trade Co., Ltd.	Zhejiang Huashun Technology Co., Ltd	68.70	68.64
Suzhou Zhengbang Chemical Fiber Co., Ltd.	Suzhou Zhengbang Chemical Fiber Co., Ltd	68.70	68.64
CHINA-WIDE ENTITY		103.06	103.00

India

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate adjusted for subsidy offset (percent)
Reliance Industries Limited	21.43	14.48
Bombay Dyeing & Manufacturing Company Limited	21.43	15.49
All-Others	21.43	14.67

Korea

Exporter/producer	Estimated weighted-average dumping margin (percent)
Toray Chemical Korea Inc	0.00
Huvis Corporation	45.23
Down Nara, Co., Ltd., Down-Nara, Co., Ltd	45.23
(AKA Koreco Synthetic Fiber Co., Ltd.)	30.15
All-Others	

Taiwan

Exporter/producer	Estimated weighted-average dumping margin (percent)
Tainan Spinning Co., Ltd	0.00
Far Eastern Textile Ltd. (AKA Far Eastern New Century Corporation)	48.86
All-Others	24.43

This notice constitutes the antidumping duty orders with respect to fine denier PSF from China, India, Korea, and Taiwan pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 16, 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—Scope of the Orders

The merchandise covered by these orders is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in

diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber

component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2018-15567 Filed 7-19-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967]

Aluminum Extrusions From the People's Republic of China: Initiation and Preliminary Results of Expedited Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating and issuing the preliminary results of a changed circumstances review (CCR) of the antidumping duty (AD) order on aluminum extrusions from the People's Republic of China (China), finding that the cash deposit rate for the 21 exporters/producers who retain a separate rate assigned in the less-than-fair value (LTFV) investigation should be recalculated to reflect the revised countervailing duty (CVD) export subsidy offsets from the amended final CVD determination. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 20, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Erin Kearney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6312 or (202) 482-0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2011, Commerce published AD and CVD orders on aluminum extrusions from China.¹ On October 23, 2015, the United States Court of International Trade (CIT) sustained Commerce's results of redetermination pursuant to court remand, which recalculated the all-

others subsidy rate in the CVD investigation of aluminum extrusions from China.² On November 10, 2015, Commerce published an amended final CVD determination, with an effective date of November 2, 2015.³

In the CVD investigation, the subsidy rate applied to "all other" companies was 374.15 percent,⁴ and the amount of export subsidies included in the all-others rate was 42.16 percent.⁵ Section 772(c)(1)(C) the Act provides that in determining export price (EP) or constructed export price (CEP), Commerce should adjust its calculations by "the amount of any countervailing duty imposed on the subject merchandise . . . to offset an export subsidy." Therefore, the AD cash deposit rate for companies eligible for a separate rate was calculated as the separate rate dumping margin determined in the LTFV investigation (*i.e.*, 32.79 percent), less the amount of export subsidies included in the all-others CVD rate (*i.e.*, 42.16 percent).⁶ However, as a result of Commerce's amended final CVD determination, the all-others CVD rate was determined to be 7.37 percent,⁷ and the amount of export subsidies included in the all-others rate was determined to be 0.28 percent.⁸

Of the companies that were granted a separate rate in the LTFV investigation, 21 companies have not been subject to an administrative review and, thus, continue to be assigned the separate rate cash deposit rate determined in the LTFV investigation.⁹ These companies are listed below in the "Preliminary

Results of Expedited Changed Circumstances Review" section.

Scope of the Order

The merchandise covered by the Order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or

² See *MacLean-Fogg Co. v. United States*, 100 F. Supp. 3d 1349 (CIT August 2015) (*MacLean-Fogg*).

³ See *Aluminum Extrusions from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision*, 80 FR 69640 (November 10, 2015) (*CVD Amended Final Determination*).

⁴ See *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521, 18523 (April 4, 2011).

⁵ See *Aluminum Extrusions from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 18524, 18531 (April 4, 2011).

⁶ *Id.*, 76 FR at 18531.

⁷ See *CVD Amended Final Determination*, 80 FR at 69640.

⁸ See Memorandum, "Preliminary Export Subsidy Offset Calculation Memorandum," dated concurrently with this notice (Preliminary Calculation Memorandum).

⁹ Two additional companies, China Square Industrial Ltd and USA Worldwide Door Components (PINGHU) Co., Ltd., are currently assigned the separate rate established in the LTFV investigation. However, both companies are currently under review in the 2015-2016 administrative review of aluminum extrusions from China, and their dumping margin will be determined in the final results of that review.

¹ See *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*the Order*); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011).

powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: Aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished

goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled "as is" into a finished product. An imported product will not be considered a "finished goods kit" and therefore excluded from the scope of the *Order* merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 millimeters ("mm") or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of this order are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00,

7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b) of the Act and 19 CFR 351.216 and 351.221(c)(3), Commerce is initiating a CCR of the antidumping duty order on aluminum extrusions from China. While Commerce was conducting the 2016–2017 administrative review,¹⁰ the Aluminum Extrusions Fair Trade Committee (the petitioner), brought to Commerce’s attention that, despite the issuance of the *CVD Amended Final Determination*, which modified the all-others CVD rate, Commerce never revised the export subsidy offset applied to the AD cash deposit rates determined for the 21 exporters/producers who retain a separate rate assigned in the LTFV investigation. In light of the issuance of the *CVD Amended Final Determination*, as well as the information raised by the petitioner in the 2016–2017 administrative review, we have determined that there is sufficient information of changed circumstances to warrant self-initiation

of a review to consider revision of the AD cash deposit rates applied to those exporters/producers who continue to be assigned a separate rate from the LTFV investigation.

Section 351.221(c)(3)(ii) of Commerce’s regulations permits Commerce to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if Commerce concludes that expedited action is warranted. In this instance, because we believe we have all the information necessary to make a preliminary finding, and that modification of the export subsidy offset was permitted on or after November 2, 2015 (the effective date of the *CVD Amended Final Determination*), we find that expedited action is warranted, and have combined the notice of initiation and the notice of preliminary results.

Preliminary Results of Expedited Changed Circumstances Review

When it concludes that expedited action is warranted, Commerce may

publish the notice of initiation and preliminary results of a CCR in a single notice.¹¹ As detailed below, expedited action is warranted in this instance to bring Commerce’s application of the export subsidy offset in accordance with the revised CVD rate issued in the *CVD Amended Final Determination*. Accordingly, we are combining the notice of initiation and the notice of preliminary results, in accordance with 19 CFR 351.221(c)(3)(ii).

Based on Commerce’s analysis of the information published in the *CVD Amended Final Determination*, in accordance with 19 CFR 351.216, we preliminarily determine that changed circumstances exist, and that the appropriate cash deposit rate for the 21 exporters/producers who retain a separate rate assigned in the LTFV investigation should be recalculated to include the revised CVD export subsidy offsets from the *CVD Amended Final Determination*.¹²

The preliminary cash deposit rates are listed below:

Exporter	Producer	Weighted-average dumping margin (percent)	Cash deposit rate (percent)
Changshu Changsheng Aluminium Products Co., Ltd	Changshu Changsheng Aluminium Products Co., Ltd	32.79	32.51
Cosco (J.M.) Aluminium Co., Ltd	Cosco (J.M.) Aluminium Co., Ltd/Jiangmen Qunxing Hardware Diecasting Co., Ltd.	32.79	32.51
First Union Property Limited	Top-Wok Metal Co., Ltd	32.79	32.51
Foshan Jinlan Non-Ferrous Metal Product Co., Ltd	Foshan Jinlan Aluminium Co., Ltd	32.79	32.51
Foshan Sanshui Fenglu Aluminium Co., Ltd	Foshan Sanshui Fenglu Aluminium CO., Ltd	32.79	32.51
Guangdong Hao Mei Aluminium Co., Ltd	Guangdong Hao Mei Aluminium Co., Ltd	32.79	32.51
Guangdong Weiye Aluminum Factory Co., Ltd	Guangdong Weiye Aluminum Factory Co., Ltd	32.79	32.51
Guangdong Xingfa Aluminium Co., Ltd	Guangdong Xingfa Aluminium Co., Ltd	32.79	32.51
Hanwood Enterprises Limited	Pingguo Aluminium Company Limited	32.79	32.51
Honsense Development Company	Kanal Precision Aluminium Product Co., Ltd	32.79	32.51
Innovative Aluminium (Hong Kong) Limited	Taishan Golden Gain Aluminum Products Limited	32.79	32.51
Jiangyin Trust International Inc	Jiangyin Xinhong Doors and Windows Co., Ltd	32.79	32.51
Longkou Donghai Trade Co., Ltd	Shandong Nanshan Aluminum Co., Ltd	32.79	32.51
Ningbo Yili Import and Export Co., Ltd	Zhejiang Anji Xinxiang Aluminum Co., Ltd	32.79	32.51
North China Aluminium Co., Ltd	North China Aluminium Co., Ltd	32.79	32.51
PanAsia Aluminium (China) Limited	PanAsia Aluminium (China) Limited	32.79	32.51
Pingguo Asia Aluminum Co., Ltd	Pingguo Asia Aluminum Co., Ltd	32.79	32.51
Popular Plastics Co., Ltd	Hoi Tat Plastic Mould & Metal Factory	32.79	32.51
Tai-Ao Aluminium (Taishan) Co., Ltd	Tai-Ao Aluminium (Taishan) Co., Ltd	32.79	32.51
Tianjin Ruixin Electric Heat Transmission Technology, Ltd.	Tianjin Ruixin Electric Heat Transmission Technology, Ltd.	32.79	32.51
Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	Zhejiang Yongkang Listar Aluminium Industry Co., Ltd	32.79	32.51

Public Comment

Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice.¹³ Rebuttal briefs, limited to the issues raised in the case briefs, may be filed no later than 5 days after the

submission of case briefs.¹⁴ Parties who submit case or rebuttal briefs in this CCR are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument with an electronic version included.¹⁵

All submissions, with limited exceptions, must be filed electronically using Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).¹⁶ ACCESS is available to registered users at <http://>

¹⁰ See *Aluminum Extrusions from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and*

Rescission of Review in Part; 2016–2017, 83 FR 5604 (February 8, 2018).

¹¹ See 19 CFR 351.221(c)(3)(ii).

¹² See Preliminary Calculation Memorandum.

¹³ See 19 CFR 321.309(c)(1)(ii).

¹⁴ See 19 CFR 351.309(d)(1).

¹⁵ See 19 CFR 351.309(c)(2), and (d)(2).

¹⁶ See 19 CFR 351.303(f).

access.trade.gov, and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the deadline.¹⁷ Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.¹⁸

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 37 days after the date of publication of this notice in the **Federal Register**, or the first business day thereafter. Persons interested in attending the hearing, if one is requested, should contact Commerce for the date and time of the hearing.

Notifications to Interested Parties

Unless extended, consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this review is initiated, or within 45 days after the date on which this review is initiated if all parties agree to our preliminary finding. The final results will include Commerce's analysis of issues raised in any written comments.

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and sections 351.216 and 351.221(c)(3) of Commerce's regulations.

Dated: July 16, 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.

[FR Doc. 2018-15573 Filed 7-19-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Survey To Collect Economic Data From Recreational Anglers Along the Atlantic Coast

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 18, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at pracomments@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sabrina Lovell, Economist, Office of Science and Technology, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910. Tel: (301) 427-8153 or sabrina.lovell@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The objective of the survey will be to understand how anglers respond to changes in management options and fishing regulations (*e.g.*, bag limits, size limits, dates of open seasons, etc.) along the Atlantic Coast. We are conducting this survey to improve our ability to understand and predict how changes in management options and regulations may change the number of trips anglers take for highly sought after recreational fish species. This data will allow fisheries managers to conduct updated and improved analysis of the socio-economic effects to recreational anglers and to coastal communities of proposed changes in fishing regulations. The recreational fishing community and regional fisheries management councils have requested more species-specific socio-economic studies of recreational

fishing that can be used in the analysis of fisheries policies. This survey will address that stated need for more species-specific studies. The population consists of those anglers who fish in saltwater along the Atlantic coast from Maine to Florida who possess a license to fish. A sample of anglers will be drawn from state fishing license frames. The survey will be conducted using both mail and email to contact anglers and invite them to take the survey online. Anglers not responding to the online survey may receive a paper survey in the mail.

II. Method of Collection

The survey will be conducted using two modes: Mail and internet.

III. Data

OMB Control Number: 0648-xxxx.

Form Number(s): None.

Type of Review: Regular (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,800.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 450 hours.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 16, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018-15474 Filed 7-19-18; 8:45 am]

BILLING CODE 3510-22-P

¹⁷ See 19 CFR 351.303(b).

¹⁸ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures: Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XG355

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings (webinars).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) will hold a series of meetings via webinar to discuss the ongoing development of salmon rebuilding plans for Klamath River fall Chinook, Sacramento River fall Chinook, Strait of Juan de Fuca natural coho, Queets River natural coho, and Snohomish River natural coho. These meetings are open to the public.

DATES: The STT webinar for Klamath River fall Chinook will be held Tuesday, August 14, 2018, from 9 a.m. to 12 p.m.

The STT meeting for Sacramento River fall Chinook will be held Tuesday, August 14, 2018, from 1 p.m. to 4 p.m.

The STT meeting for Strait of Juan de Fuca natural coho will be held Wednesday, August 15, 2018, from 9 a.m. to 12 p.m.

The STT meeting for Queets River natural coho will be held Wednesday, August 15, 2018, from 1 p.m. to 4 p.m.

The STT meeting for Snohomish River natural coho will be held Thursday, August 16, 2018, from 9 a.m. to 12 p.m.

ADDRESSES: The STT meetings will be held by webinar. To attend the webinars, (1) join the meeting by visiting this link <https://www.gotomeeting.com/webinar>, (2) enter the webinar ID: 726–810–643, and (3) enter your name and email address (required). After logging into the webinar, please (1) dial this TOLL number: 1–213–929–4212 (not a toll-free number); (2) enter the attendee phone audio access code: 716–619–777; and (3) then enter your audio phone pin (shown after joining the webinar). *Note:* We have disabled mic/speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or

Android tablet (see the <https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps>). You may send an email to Mr. Kris Kleinschmidt at Kris.Kleinschmidt@noaa.gov or contact him at (503) 820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Council; telephone: 503–820–2410.

SUPPLEMENTARY INFORMATION: Three natural coho stocks (Queets coho, Strait of Juan de Fuca coho, and Snohomish coho) and two Chinook stocks (Sacramento River fall Chinook and Klamath River fall Chinook) were found to meet the criteria for being classified as overfished in the PFM Review of 2017 Ocean Salmon Fisheries. Under the tenets of the Salmon Fishery Management Plan (FMP), the STT is required to develop a salmon rebuilding plan for each of these stocks and propose them to the Council within one year.

The STT will meet with tribal, state, and other management entities who are working together to develop the salmon rebuilding plans. These meetings will focus on progress made since the June 2018 meetings, and on additional analysis needed for plan development. Topics for discussion may include, but are not limited to, outstanding data needs, data analysis, and potential alternatives to rebuild the stocks. One meeting will occur for each of the five stocks; additional meetings will be scheduled as needed. These meetings are open to the public. All meetings will have the same webinar ID and access code.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820–2411) at least 10 days prior to the meeting date.

Dated: July 17, 2018.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–15590 Filed 7–19–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XG341

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel (OEAP) will hold a 2-day meeting in August to discuss the items contained in the agenda in the **SUPPLEMENTARY INFORMATION**.

DATES: The meetings will be held on August 9, 2018, from 10 a.m. to 4 p.m. and on August 10, 2018, from 9 a.m. to 3 p.m.

ADDRESSES: The meetings will be held at the CFMC Headquarters, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION:

August 9, 2018, 10 a.m.–4 p.m.

- Call to Order
 - Adoption of Agenda
 - OEAP Chairperson's Report
- Status of:
- OEAP members meeting attendance
 - Chair Report
 - GeoAmbiente video on Puerto Rico's fishers' contribution to fisheries management
 - Videos for St. Thomas/St. John and St. Croix
 - Meetings attended: Council Communication Coordination Group (CCG) Sitka, AK; Capitol Hill Ocean Week (CHOW) Washington, DC
 - CFMC Report 162nd Regular

- Meeting
- Status of fishing infrastructure post hurricanes in the region
- USVI activities
- Status of Island-Based Fishery Management Plans (IBFMPs)
- Status of Fishery Ecosystem Plan (FEP)
- Responsible Seafood Consumption Campaign

August 10, 2018, 9 a.m.–3 p.m.

- 2019 Calendar and CFMC web page Update—Natalia Perdomo
- Caribbean Fishery App
- CFMC Social Media communication Plan
- Facebook and YouTube channel
- MREP Caribbean
- Other Business

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on August 9, 2018 at 10 a.m. and will end on August 10, 2018 at 3 p.m. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated. In addition, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903; telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 17, 2018.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–15589 Filed 7–19–18; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds a product to the Procurement List that will be furnished by a nonprofit agency

employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* August 19, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Addition

On 4/20/2018 (83 FR 77), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of a qualified nonprofit agency to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.
2. The action will result in authorizing small entities to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

NSN(s)—Product Name(s): 6220–01–266–1651—Spotlight, .52 AMPS 28V BA15S bulb, yellow/white output, HMMWV
Mandatory Source(s) of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Mandatory for: 100% of the requirement of the Department of Defense
Contracting Activity: Defense Logistics

Agency Aviation
Distribution: C-List

Deletions

On 6/15/2018 (83 FR 116), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
 7520–01–496–5479—Planner, Hanging Kit, EA
 7520–01–584–0877—Planner, Hanging Kits, 20 Kits
Mandatory Source(s) of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: General Services Administration, Philadelphia, PA
NSN(s)—Product Name(s):
 7530–01–600–7616—Monthly Desk Planner, Dated 2018, Wire Bound, Non-refillable, Black Cover
 7530–01–600–7593—Weekly Desk Planner, Dated 2018, Wire Bound, Non-refillable, Black Cover
 7530–01–600–7583—Daily Desk Planner, Dated 2018, Wire bound, Non-refillable, Black Cover
 7530–01–600–7605—Weekly Planner Book, Dated 2018, 5" x 8", Black
 7510–01–600–7568—Monthly Wall Calendar, Dated 2018, Jan-Dec, 8–1/2" x 11"
 7510–01–600–7629—Wall Calendar, Dated 2018, Wire Bound w/Hanger, 12" x 17"
 7510–01–600–7563—Wall Calendar, Dated 2018, Wire Bound w/hanger, 15–1/2" x 22"
Mandatory Source(s) of Supply: Chicago

Lighthouse Industries, Chicago, IL
Contracting Activity: General Services
 Administration, New York, NY
NSN(s)—Product Name(s):
 7510-01-NIB-0613—Holder, Key and
 Credit Card, Custom Print, Black Leather,
 2-1/4" x 4"

Mandatory Source(s) of Supply: Travis
 Association for the Blind, Austin, TX
Contracting Activity: General Services
 Administration, New York, NY

Michael R. Jurkowski,
*Business Management Specialist, Business
 Operations.*

[FR Doc. 2018-15570 Filed 7-19-18; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Initial Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the service to the Government.

2. If approved, the action will result in authorizing a small entity to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the service proposed for addition to the Procurement List.

Item proposed for addition to the Procurement List:

Service

Service Type: Document Destruction Service
Mandatory for: Defense Logistics Agency,
 Defense Supply Center, 3990 East Broad
 Street, Columbus, OH

Mandatory Source(s) of Supply: Greene, Inc.,
 Xenia, OH

Contracting Activity: Defense Logistics
 Agency, DLA Contracting SVCS OFF
 Columbus

Deletions

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 8501-8506) in connection with the products and services proposed for deletion from the Procurement List.

Items proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):

6230-01-617-3776—Kit, Safety Flare,
 Programmable Flicker Pattern, Red LED,
 8in Diameter, AA Battery Operated
 6230-01-617-6959—Kit, Safety Flare,
 Programmable Flicker Pattern, Red LED,
 8in Diameter, Rechargeable Power Unit

Mandatory Source(s) of Supply: Tarrant
 County Association for the Blind, Fort
 Worth, TX

Contracting Activity: Defense Logistics
 Agency Troop Support

NSN(s)—Product Name(s):

6545-07-000-0762—USMC Individual
 First Aid Kit, Complete
 6545-09-000-2727—Minor First Aid Kit,
 USMC Individual First Aid Kit

Mandatory Source(s) of Supply: Chautauqua
 County Chapter, NYSARC, Jamestown,
 NY

Contracting Activity: Commander, Quantico,
 VA

NSN(s)—Product Name(s):

8415-01-502-3285—Silk/Lightweight
 Drawers, Size Small—Regular, Green
 8415-01-502-3287—Silk/Lightweight
 Drawers, Size Medium—Regular, Green
 8415-01-502-3288—Silk/Lightweight
 Drawers, Size Large—Regular, Green
 8415-01-502-3289—Silk/Lightweight
 Drawers, Size Large—Long, Green
 8415-01-502-3290—Silk/Lightweight
 Drawers, Size Extra Large—Regular
 8415-01-502-3292—Silk/Lightweight
 Drawers, Size Extra Large—Long, G
 8415-01-502-3321—Green, Midweight
 Undershirt, Size Short—Regular
 8415-01-502-3322—Green, Midweight
 Undershirt, Size Medium—Regular
 8415-01-502-3324—Green, Midweight
 Undershirt, Size Large—Regular
 8415-01-502-3325—Green, Midweight
 Undershirt, X-tra Large—Regular
 8415-01-502-3328—Green, Midweight
 Undershirt, Large—Long
 8415-01-502-3341—Green, Midweight
 Undershirt, X-Large—Long
 8415-01-502-4366—Silk/Lightweight
 Undershirts, Size Small—Regular,
 8415-01-502-4368—Silk/Lightweight
 Undershirts, Size Medium—Regular,
 8415-01-502-4370—Silk/Lightweight
 Undershirts, Size Large—Regular,
 8415-01-502-4371—Silk/Lightweight
 Undershirts, Size Large—Long, Green
 8415-01-502-4373—Silk/Lightweight
 Undershirts, Size Extra Large—Regular
 8415-01-502-4375—Silk/Lightweight
 Undershirts, Size Extra Large—Long

Mandatory Source(s) of Supply:

Peckham Vocational Industries, Inc.,
 Lansing, MI
 Southeastern Kentucky Rehabilitation
 Industries, Inc., Corbin, KY

Contracting Activity: Defense Logistics
 Agency Troop Support

NSN(s)—Product Name(s):

5340-01-230-0219—Bracket, Angle with
 Four Holes, Abrams M-1 Tank, Green
 5340-01-386-2917—Bracket, Angle,
 Command AAVC-7A1 Amphibious
 Assault Vehicle

5340-01-112-9693—Bracket, Angle,
 Bradley Fighting Vehicle System
 5340-01-525-0579—Bracket, Angle, Right
 Side, Medium Tactical Vehicles

5340-01-102-3483—Bracket, Angle with
 Two Holes, Abrams M-1 Tank

5340-01-525-0574—Bracket, Angle, Left
 Side, Medium Tactical Vehicles

5340-01-519-7318—Bracket, Angle, Truck
 1-1/4 Ton HMMWV Vehicle System

5340-01-162-7040—Bracket, Angle,
 Personnel M113A1, M113-A2, M-113A3
 Armored Carrier

5340-01-163-4245—Bracket, Double
 Angle, Hercules M88A2 Recovery
 Vehicle

5340-01-288-5231—Bracket, Double
 Angle, Bradley Fighting Vehicle System

5340-01-167-1810—Bracket, Mounting,
 Personnel M113A1, M113-A2, M-113A3
 Armored Carrier

5340-01-329-8589—Bracket, Mounting,
 Bradley Fighting Vehicle System

5340-01-084-1232—Bracket, Mounting,
 Cargo Truck

5340-01-500-4197—Bracket, Mounting,
 Mine Resistant Ambush Protected
 Fighting Vehicle

5340-00-627-5411—Bracket, Mounting,
 Stratofortress B-52 Aircraft

5340-01-347-9608—Bracket, Mounting,
 F-16 Aircraft

5340-00-602-4977—Bracket, Mounting,
 Hercules M88A2 Recovery Vehicle

5340-01-272-6634—Bracket, Mounting,
 Truck 1-1/4 Ton HMMWV Vehicle
 System

5340-01-098-5119—Bracket, Mounting,
 Howitzer M-109

5340-01-078-7642—Bracket, Mounting,
 Abrams M-1 Tank

5340-01-521-0196—Bracket, Mounting,
 Non-Weapons System

5340-01-458-0473—Bracket, Mounting,
 M-16 Rifle 5.56MM

Mandatory Source(s) of Supply: Unknown

Contracting Activity: Defense Logistics
 Agency Troop Support

NSN(s)—Product Name(s):

6840-00-NIB-0039—Disinfectant Spray,
 Aerosol, Lysol Brand III, Original Scent

6840-00-NIB-0040—Disinfectant Spray,
 Aerosol, Lysol Brand III, Fresh Scent

6840-00-NIB-0041—Disinfectant Spray,
 Aerosol, Lysol Brand III, Country Scent

6840-00-NIB-0042—Disinfectant Spray,
 Aerosol, Lysol Brand III, Crisp Linen
 Scent

6840-00-NIB-0043—Disinfectant Spray,
 Aerosol, Lysol Brand III, Spring
 Waterfall Scent

Mandatory Source(s) of Supply: LC
 Industries, Inc., Durham, NC

Contracting Activity: GSA/FSS OFC SUP
 CTR—Paper Products, New York, NY

Service

Service Type: Janitorial/Custodial Service
Mandatory for: USPS, Mail Transportation
 Equipment Center, 7600 West Roosevelt
 Road, Forest Park, IL

Mandatory Source(s) of Supply: Lester and Rosalie Anixter Center, Chicago, IL
Contracting Activity: U.S. Postal Service, Washington, DC

Service Type: Janitorial/Custodial Service
Mandatory for: Naval Air Reserve Center, 6201 32nd Avenue, Minneapolis, MN
Mandatory Source(s) of Supply:

AccessAbility, Inc., Minneapolis, MN
Contracting Activity: Dept of the Navy, U S Fleet Forces Command

Service Type: Laundry Service
Mandatory for: U.S. Army Aviation Support Command: CMPSC Commissary, Granite City, IL

Mandatory Source(s) of Supply: Unknown
Contracting Activity: Dept of the Army, W40M Northregion Contract OFC

Dated: July 17, 2018.

Michael R. Jurkowski,

Business Management Specialist, Business Operations.

[FR Doc. 2018-15571 Filed 7-19-18; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2018-0022]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection, titled, "Consumer and College Credit Card Agreements."

DATES: Written comments are encouraged and must be received on or before August 20, 2018 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** OIRA_submission@omb.eop.gov.

- **Fax:** (202) 395-5806

- **Mail:** Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided.

Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Documentation prepared in support of this information collection request is available at www.reginfo.gov (this link becomes active on the day following publication of this notice). Select "Information Collection Review," under "Currently under review, use the dropdown menu "Select Agency" and select "Consumer Financial Protection Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also available at <http://www.regulations.gov>. Requests for additional information should be directed to the Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, (202) 435-9575, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer and College Credit Card Agreements.

OMB Control Number: 3170-0052.

Type of Review: Extension without change of an existing information collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 430.

Estimated Total Annual Burden Hours: 430.

Abstract: Sections 204 and 305 of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) and 12 CFR 226.57(d) and 226.58 require card issuers to submit to the Bureau:

- Agreements between the issuer and a consumer under a credit card account for an open-end consumer credit plan; and
- any college credit card agreements to which the issuer is a party and certain additional information regarding those agreements.

The data collections enable the Bureau to provide consumers with a centralized depository for consumer and college credit card agreements. It also presents information to the public regarding the arrangements between financial institutions and institutions of higher education. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB

control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request For Comments: The Bureau issued a 60-day **Federal Register** notice on February 28, 2018 (83 FR 8656), Docket Number: CFPB-2018-0008. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: July 17, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2018-15581 Filed 7-19-18; 8:45 am]

BILLING CODE 4810-AM-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Segal AmeriCorps Education Award Commitment Form; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Application Package for Segal AmeriCorps Education Award Commitment Form for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments may be submitted, identified by the title of the information collection activity, by August 20, 2018.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

- (1) *By fax to:* 202-395-6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or
 (2) *By email to:* smar@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Rhonda Taylor, at 202-606-6721, or by email to RTaylor@cns.gov. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call 1-800-833-3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day notice requesting public comment was published in the **Federal Register** on February 18, 2018 at Vol. 83, No. 30. This comment period ended March 15, 2018. Zero public comments were received from this Notice.

Description: The information is provided by institutions of higher education that are requesting to be listed on the Segal AmeriCorps Education Award Matching Program section of the Corporation for National and Community Service website. The information will be collected

electronically by CNCS. CNCS seeks to renew the current information collection. The revisions are intended to renew the current information collection. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application expired on 5/31/2018.

Type of Review: Renewal.
Agency: Corporation for National and Community Service.

Title: Segal AmeriCorps Education Award Commitment Form.

OMB Control Number: 3045-0143.

Agency Number: None.

Affected Public: Institutions of higher education that provide incentives for AmeriCorps alumni, such as matching the AmeriCorps Education Award that members receive after successful completion of the AmeriCorps Program, and that request to be listed on the Segal AmeriCorps Education Award Matching Program section of the Corporation for National and Community Service website.

Total Respondents: Estimated 200 colleges and universities.

Frequency: Once every five years.

Average Time per Response: Average 30 minutes.

Estimated Total Burden Hours: 100 hours.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintenance): None.

Dated: June 25, 2018.

Rhonda Taylor,

Director of Partnerships and Public Engagement.

[FR Doc. 2018-15593 Filed 7-19-18; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF-2018-HQ-0006]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 18, 2018.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the HQ AFSPC/A4MC, ATTN: SMSgt. John Storm, 150 Vadenberg St., Ste. 1105, Peterson AFB CO 80914, or call HQ AFSPC/A4MC Nuclear C2 Systems Branch at (719) 554-4057.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Intercontinental Ballistic Missile Hardened Intersite Cable Right-of-Way Landowner Questionnaire; AF Form 3951; OMB Control Number 0701-0141.

Needs and Uses: This form collects updated landowner/tenant information as well as data on local property conditions which could adversely affect the Hardened Intersite Cable System (HICS) such as soil erosion, projected/building projects, evacuation plans, etc. This information also aids in notifying

landowners/tenants when HCIS preventative or corrective maintenance becomes necessary to ensure uninterrupted Intercontinental Ballistic Missile command and control capability. The information collection requirement is necessary to report changes in ownership/lease information, conditions of missile cable route and associated appurtenances, and projected building/excavation projects. The information collected is used to ensure system integrity and to maintain a close contact public relations program with involved personnel and agencies.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 1,125.

Number of Respondents: 4,500.

Responses per Respondent: 1.

Annual Responses: 4,500.

Average Burden per Response: 15 mins.

Frequency: On Occasion.

Dated: July 17, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018-15515 Filed 7-19-18; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE

Department of the Army

Special Communication and Contact Control Measures

AGENCY: Department of the Army, DoD.

ACTION: Notice; comment request.

SUMMARY: This directive establishes the Special Communications and Contacts Control Measures (SCCCM) program to provide specific limitations on the communications and contacts of Army Corrections Command (ACC) prisoners to protect national security, public safety, the good order, discipline and correctional mission of the Army Corrections System (ACS) facilities from acts of violence or terrorism.

DATES: Comments are due by August 20, 2018.

ADDRESSES: Mail comments to: Office of the Provost Marshal General (Gregory W. Limberis), 2800 Army Pentagon, Washington, DC 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Stroebel, (703) 545-5935.

SUPPLEMENTARY INFORMATION:

(a) Upon direction of the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA (M&RA)), the Commander, ACC, may authorize the Commander of an ACS Facility to implement SCCCMM that are reasonably

necessary to protect persons against the risk of death or serious bodily injury. These procedures may be implemented upon written notification to the Commander, ACC, by the ASA (M&RA), that there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons or substantial damage to property that would entail the risk of death or serious bodily injury to persons. These SCCCMM ordinarily may include housing the prisoner in administrative segregation and/or limiting certain conditions of confinement, including, but not limited to, correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to protect persons against the risk of death or serious bodily injury. The authority of the Commander, ACC under this paragraph may not be delegated.

(b) Designated ACS facility staff shall provide to the affected prisoner, as soon as practicable, written notification of the restrictions imposed and the basis for the restrictions. The notice's statement as to the basis may be limited in the interest of prison security or safety, to protect against acts of violence or terrorism that could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. The prisoner shall sign for and receive a copy of the notification. The prisoner's attorney(s) of record shall also provide a written acknowledgement of receipt of the notice and an agreement to abide by the SCCCMM.

(c) Initial placement of a prisoner in administrative segregation and/or any limitation of the prisoner's conditions of confinement in accordance with paragraph (a) of this section may be imposed for up to 120 days or, with the approval of the ASA (M&RA), a longer period of time not to exceed one year. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Commander, ACC, in increments not to exceed one year, upon receipt by the Commander, ACC of an additional written notification from the ASA (M&RA) that there continues to be a substantial risk that the prisoner's communications or contacts with other persons could result in death or serious bodily injury to persons or substantial damage to property that would entail the risk of death or serious bodily injury to persons. The authority of the Commander, ACC under this paragraph may not be delegated.

(d) In any case where the Secretary of the Army specifically so orders, based on information from the Provost Marshal General/Commanding General, United States Army Criminal Investigation Command (USACIDC) that reasonable suspicion exists to believe that a particular prisoner may use communications with attorneys or their agents to solicit, further, or otherwise facilitate acts of terrorism, the Commander, ACC, shall, in addition to the SCCCMM imposed under paragraph (a) of this section, provide appropriate procedures for the monitoring or review of communications between that prisoner and attorneys or attorneys' agents who are traditionally covered by the attorney-client privilege, for the purpose of deterring future acts of terrorism.

(1) The certification by the Secretary of the Army under this paragraph (d) shall be in addition to any findings or determinations relating to the need for the imposition of other SCCCMM as provided in paragraph (a) of this section, but may be incorporated into the same document.

(2) Except in the case of prior court authorization, the Commander, ACC, shall provide written notice to the prisoner and to the attorneys involved prior to the initiation of any such monitoring or review authorized under this paragraph (d). The notice shall explain:

(i) That, notwithstanding the provisions of DoDI 1325.07, AR 190-47, or other rules, all communications between the prisoner and attorneys may be monitored, to the extent determined to be reasonably necessary for the purpose of deterring future acts of terrorism;

(ii) That communications between the prisoner and attorneys or their agents are not protected by the attorney-client privilege if they would facilitate criminal acts or a conspiracy to commit criminal acts, or if those communications are not related to the seeking or providing of legal advice.

(3) The Commander, ACC, with the concurrence of the Judge Advocate General and the Army General Counsel, shall employ appropriate procedures to ensure that all attorney-client communications are reviewed for privilege claims and that any properly privileged materials (including, but not limited to, recordings of privileged communications) are not retained during the course of the monitoring. To protect the attorney-client privilege and to ensure that the investigation or judicial proceeding is not compromised by exposure to privileged material relating to the investigation, judicial

proceeding or to defense strategy, a privilege team shall be designated by the Judge Advocate General, consisting of individuals not involved in the underlying investigation or judicial proceeding. The monitoring shall be conducted pursuant to procedures designed to minimize the intrusion into privileged material or conversations. Except in cases where the person in charge of the privilege team determines that the acts of terrorism are imminent, the privilege team shall not disclose any information unless and until such disclosure has been approved by a federal or military judge presiding over the legal matter for which attorneys or their agents represent the particular prisoner.

(e) The affected prisoner may seek review of any specific limitation on communications or contacts imposed pursuant to this directive in accordance with AR 190-47, paragraph 10-14. The Commander, ACC will act on any request for review.

The Provost Marshal General is the proponent for this policy and will incorporate the provisions of this directive into AR 190-47 as soon as possible. This directive will be rescinded upon publication of the revised regulation.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018-15425 Filed 7-19-18; 8:45 am]

BILLING CODE 5001-03-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Final Environmental Impact Statement for the Northern Integrated Supply Project, Larimer and Weld Counties, Colorado

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Omaha District has prepared a Final Environmental Impact Statement (EIS) to analyze the direct, indirect, and cumulative effects of a water supply project called the Northern Integrated Supply Project (NISP or Project) in Larimer and Weld Counties, CO. The purpose of NISP is to provide the Participants, a group of 15 water providers and communities, with approximately 40,000 acre-feet (AF) per year of new, reliable municipal water supply through a regional project coordinated by the Northern Colorado Water Conservancy District (Northern

Water). NISP would result in direct impacts to jurisdictional waters of the U.S., including wetlands. The placement of fill material into waters of the U.S. requires authorization from the Corps under Section 404 of the Clean Water Act. Northern Water is the applicant for the Section 404 permit, acting on behalf of the Participants. In accordance with Section 176 of the Clean Air Act a Draft General Conformity Determination has been prepared for the Project.

DATES: Written comments on the Final EIS and the Draft General Conformity Determination will be accepted on or before September 4, 2018.

ADDRESSES: Send written comments regarding NISP, the Final EIS, and the Draft General Conformity Determination to John Urbanic, NISP EIS Project Manager, U.S. Army Corps of Engineers, Omaha District, Denver Regulatory Office, 9307 South Wadsworth Boulevard, Littleton, CO 80128, or by email to nisp.eis@usace.army.mil. Requests to be placed on or be removed from the NISP mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: John Urbanic, NISP EIS Project Manager, telephone 303-979-4120, fax at 303-979-0602, or email at nisp.eis@usace.army.mil.

SUPPLEMENTARY INFORMATION: The Final EIS was prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Corps' regulations for NEPA implementation (33 Code of Federal Regulations [CFR] Parts 230 and 325, Appendix B). The Corps, Omaha District, Denver Regulatory Office is the lead federal agency responsible for the Final EIS. Information contained in the EIS serves as the basis for a decision regarding issuance of a Section 404 Permit. It also provides information for local and state agencies that have jurisdictional responsibility for affected resources.

The Corps released a Draft EIS for NISP on April 30, 2008 and a Supplemental Draft EIS on June 19, 2015. The Corps has considered the comments received on the Draft and Supplemental Draft EIS in the development of the Final EIS. The purpose of the Final EIS is to provide decision-makers and the public with information pertaining to the Project, disclose environmental impacts of the alternatives, and identify mitigation measures to reduce impacts. In NISP, Northern Water proposes to construct Glade Reservoir with a total storage capacity of approximately 170,000 AF. The Project would also involve

rehabilitating the existing diversion and intake structure in the Cache la Poudre River as well as constructing a new diversion and intake structure, forebay, pumping facility, and outlet channel. Glade Reservoir would inundate approximately 7 miles of U.S. Highway 287 and a section of the Munroe (North Poudre Supply) Canal, requiring a relocation of the highway and the canal. Northern Water also proposes to construct the South Platte Water Conservation Project (SPWCP) which includes Upper Galetton Reservoir with a total storage capacity of approximately 45,624 AF. The SPWCP includes the construction of a new diversion and intake structure in the South Platte River, pumping facilities, and new pipelines for Upper Galetton Reservoir.

This FEIS evaluates the effects of the following alternatives to NISP: Alternative 1—No Action Alternative; Alternative 2M—Glade Reservoir with modified conveyance and the South Platte Water Conservation Project (Applicant's Preferred Alternative); Alternative 2—Glade Reservoir and the South Platte Water Conservation Project; Alternative 3—Cactus Hill Reservoir, Poudre Valley Canal Diversion, and the South Platte Water Conservation Project; and Alternative 4—Cactus Hill Reservoir, with multiple diversion locations, and the South Platte Water Conservation Project.

In accordance with Section 176 of the Clean Air Act and the Environmental Protection Agency's general conformity regulations (40 CFR part 93, subpart B), a Draft General Conformity Determination has been prepared for the Project. Section 176 of the Clean Air Act requires federal agencies to ensure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria air pollutants. The Corps has prepared a Draft Conformity Determination for the Project and has included it in Chapter 4.14.7 of the Final EIS. The Draft General Conformity Determination finds that all alternatives of the Project conform with the State Implementation Plan.

The U.S. Environmental Protection Agency Region VIII, U.S. Fish and Wildlife Service, Bureau of Land Management, Colorado Department of Transportation, Colorado Department of Natural Resources, Colorado Department of Public Health and Environment, and Larimer County participated as cooperating agencies in the development of the Final EIS.

Copies of the Final EIS will be available for review at:

1. Colorado State University Morgan Library, 1201 Center Avenue, Fort Collins, CO 80521.

2. Poudre River Public Library District—Old Town Library, 201 Peterson Street, Fort Collins, CO 80524.

3. Poudre River Public Library—Harmony Library, 4616 S. Shields Street, Fort Collins, CO 80526.

4. University of Northern Colorado, James A. Michener Library, 14th Avenue and 20th Street, Greeley, CO 80639.

5. Fort Morgan Public Library, 414 Main Street, Fort Morgan, CO 80701.

6. Windsor Recreation Center, 250 11th Street, Windsor, CO 80550.

7. Northern Colorado Water Conservancy District, 220 Water Avenue, Berthoud, CO 80513.

8. U.S. Army Corps of Engineers, Denver Regulatory Office, 9307 S. Wadsworth Boulevard, Littleton, CO 80128.

Electronic copies of the Final EIS and supporting documents may be obtained from the Denver Regulatory Office or its website at: <http://www.nwo.usace.army.mil/Missions/Regulatory-Program/Colorado/EIS-NISP>.

Dated: July 2, 2018.

Kiel Downing,

State Regulatory Program Manager, U.S. Army Corps of Engineers, Omaha District, Denver Regulatory Office.

[FR Doc. 2018-15427 Filed 7-19-18; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE

Department of the Army, Army Corps of Engineers

Notice of Availability of the Draft Feasibility Report and Integrated Environmental Impact Statement for the Adams and Denver Counties, Colorado General Investigation Study, Adams and Denver County, Colorado

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; extension of public comment deadline.

SUMMARY: The comment period for the Notice of Availability of the Draft Feasibility Report and Integrated Environmental Impact Statement for the Adams and Denver Counties, Colorado General Investigation Study, Adams and Denver County, Colorado published in the **Federal Register** on Monday, July 2, 2018, and required comments be postmarked on or before August 16, 2018. The Corps is extending the deadline for submitting public comments to August 28, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Bohlken, U.S. Army Corps of Engineers at (402) 995-2671 or by email at Jeffrey.C.Bohlken@usace.army.mil.

SUPPLEMENTARY INFORMATION: The Draft EIS can be downloaded from www.nwo.usace.army.mil/Missions/Civil-Works/Planning/Project-Reports/.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018-15429 Filed 7-19-18; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF ENERGY

[EERE-2013-BT-NOC-0005]

Solicitation of Nominations for Membership on the Appliance Standards and Rulemaking Federal Advisory Committee

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

ACTION: Solicitation of nominations for membership.

SUMMARY: To ensure a wide range of candidates and a balanced committee, the U.S. Department of Energy (DOE) announces the solicitation of nominations to fill upcoming vacancies on the Appliance Standards and Rulemaking Federal Advisory Committee (Committee).

DATES: All nomination information should be provided in a single, complete package submitted electronically or postmarked by August 20, 2018.

ADDRESSES: Nominations packages should be submitted either electronically or by mail, but not by both methods. Complete nomination packages identified by docket number “EERE-2013-BT-NOC-0005” may be submitted by any of the following methods:

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

2. *Email:* ASRAC@ee.doe.gov. Include docket number “EERE-2013-BT-NOC-0005” in the subject line of the message.

3. *Postal Mail:* Ms. Naeema Conway, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Naeema Conway, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, Suite 600,

Washington, DC 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies. No telefacsimiles (faxes) will be accepted.

It is recommended that nominations be submitted in electronic format via email to ASRAC@ee.doe.gov. Submissions submitted by mail are welcome, but may be delayed in delivery due to the DOE mail vetting procedures in place. For submission by mail, please send to Ms. Naeema Conway, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky by telephone at (202) 287-1692 or by email at asrac@ee.doe.gov.

SUPPLEMENTARY INFORMATION: The Committee will provide advice and recommendations to the Secretary of Energy on the DOE’s Appliance and Equipment Standards Program’s test procedures and rulemaking determinations. The Committee’s scope is to review and make recommendations on the: (1) Development of minimum efficiency standards for residential appliances and commercial equipment, (2) development of product test procedures, (3) certification and enforcement of standards, (4) labeling for various residential products and commercial equipment, and (5) specific issues of concern to DOE as requested by the Secretary of Energy, the Assistant Secretary for Energy Efficiency and Renewable Energy, and the Buildings Technologies Office’s Director.

To facilitate the functioning of the Committee, working groups (*i.e.*, subcommittees) may be formed with the approval of the Department of Energy. The objectives of the working groups are to make recommendations to the Committee with respect to particular matters related to the responsibilities of the parent committee. Such working groups may not work independently of the Committee and must report their recommendations and advice to the Committee for full deliberation and discussion. Working group members are appointed with DOE approval.

DOE is hereby soliciting nominations for members of the Appliance Standards and Rulemaking Federal Advisory Committee. The Committee is expected to be continuing in nature. Members will be selected with a view toward achieving a balanced committee of experts in fields relevant to energy

efficiency, appliance and commercial equipment standards to include DOE, as well as representatives of industry (including manufacturers and trade associations representing manufacturers, component manufacturers and related suppliers, and retailers), utilities, states, energy efficiency/environmental advocacy groups, and consumers. Committee members will serve for a term of three years or less and may be reappointed for successive terms, with no more than two successive terms. Appointments may be made in a manner that allows the terms of the members serving at any time to expire at spaced intervals, so as to ensure continuity in the functioning of the Committee. Some Committee members may be appointed as special Government employees, experts in fields relevant to energy efficiency and appliance and commercial equipment standards; or as representatives of industry (including manufacturers and trade associations representing manufacturers, component manufacturers and related suppliers, and retailers), utilities, states, energy efficiency/environmental advocacy groups, and consumers. Special Government employees will be subject to certain ethical restrictions and such members will be required to submit certain information in connection with the appointment process.

Members of the Committee will serve without compensation; however, each member may be reimbursed in accordance with Federal Travel Regulations for authorized travel and per diem expenses incurred while attending Committee meetings.

Process and Deadline for Submitting Nominations: Qualified individuals can self-nominate or be nominated by any individual or organization. Nominators should submit:

1. The nominee's current resume or curriculum vitae and contact information, including mailing address, email address, and telephone number; and

2. A letter of interest, including a summary of how the nominee's experience and expertise would support the Committee's objectives;

All nomination information should be provided in a single, complete package by the deadline specified in this notice. Nominations packages should be submitted by either mail or electronically, but not by both methods.

Should more information be needed, DOE staff will contact the nominee, obtain information from the nominee's past affiliations or obtain information from publicly available sources, such as the internet. A selection team will

review the nomination packages. This team will be comprised of representatives from several DOE Offices. The selection team will seek balanced viewpoints and consider many criteria, including: (a) Scientific or technical expertise, knowledge, and experience; (b) stakeholder representation; (c) availability and willingness to serve; and (d) skills working in committees, working groups and advisory panels. The selection team will make recommendations regarding membership to the Secretary of Energy for review and selection of Committee members.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations to the Committee take into account the needs of the diverse groups served by DOE, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the needs of women and men of all racial and ethnic groups, and persons with disabilities. Please note, however, that individuals already serving on another Federal advisory committee are ineligible for nomination.

Signed in Washington, DC, on July 12, 2018.

Kathleen B. Hogan,

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

[FR Doc. 2018-15582 Filed 7-19-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[OE Docket No. EA-456]

Application To Export Electric Energy; Manifold Energy Inc.

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: Manifold Energy Inc. (the Applicant) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 20, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-0350. Because of delays in handling conventional mail, it is

recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov*, or by facsimile to 202-586-8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On June 25, 2018, DOE received an application from the Applicant for authorization to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities.

In its application, the Applicant states that it "does not own or control electric generation facilities or transmission facilities and that it has no "obligation to serve native load within a franchised service area." The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and other suppliers within the United States pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning the Applicant's application to export electric energy to Canada should be clearly marked with OE Docket No. EA-456. An additional copy is to be provided to Marc-Antoine Dénomée, 495 Avenue de l'étang, Mascouche, Québec J7K 4E4, Canada.

A final decision will be made on this application after the environmental

impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at <http://energy.gov/node/11845>, or by emailing Angela Troy at Angela.Troy@hq.doe.gov.

Issued in Washington, DC, on July 13, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity.

[FR Doc. 2018-15583 Filed 7-19-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[OE Docket No. EA-455]

Application To Export Electric Energy; NS Power Energy Marketing Incorporated

AGENCY: Office of Electricity, DOE.

ACTION: Notice of application.

SUMMARY: NS Power Energy Marketing Incorporated (NSP Marketing or Applicant) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 20, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to Electricity.Exports@hq.doe.gov, or by facsimile to 202-586-8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On June 28, 2018, DOE received an application from NSP Marketing for authorization to transmit electric energy

from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. NSP Marketing will be seeking market-based rate authority from the Federal Energy Regulatory Commission (FERC).

In its application, NSP Marketing states that it "does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area." The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and other suppliers within the United States pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning NSP Marketing's application to export electric energy to Canada should be clearly marked with OE Docket No. EA-455. An additional copy is to be provided to both Matt Clarke, Nova Scotia Power, 1223 Lower Water St., Halifax, NS B3J 3S8 Canada, and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, MD 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at <http://energy.gov/>

[node/11845](http://energy.gov/node/11845), or by emailing Angela Troy at Angela.Troy@hq.doe.gov.

Issued in Washington, DC, on July 13, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity.

[FR Doc. 2018-15580 Filed 7-19-18; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18-1639-000]

Constellation Mystic Power, LLC; Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on July 13, 2018 in the above-captioned docket,¹ with the exceptions noted below, the staff of the Office of Administrative Litigation are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2017), these non-decisional staff will not serve as advisors to the Commission or take part in the Commission's review of any future filings in the above-referenced docket, including offers of settlement or settlement agreements. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2017), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Daniel Poffenberger
Joseph Hoffman

Dated: July 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-15557 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18-459-002.

Applicants: Ohio Valley Electric Corporation, PJM Interconnection, L.L.C.

¹ *Constellation Mystic Power, LLC*, 164 FERC ¶ 61,022 (2018).

Description: Compliance filing: Compliance Filing RE: OATT, OA and RAA OVEC Integration Effective Date to be effective 12/1/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5087.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-460-002.

Applicants: Ohio Valley Electric Corporation, PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing RE: CTOA OVEC Integration Effective Date to be effective 12/1/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5092.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2004-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3461 Mid-Kansas and City of Anthony, KS Interconnection Agr to be effective 6/29/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5007.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2005-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 4411; Queue No. AA1-059 to be effective 7/23/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5036.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2006-000.

Applicants: Interstate Power and Light Company, MidAmerican Energy Company.

Description: § 205(d) Rate Filing: IPL-MEC Remote LBA Agreement to be effective 9/10/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5066.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2008-000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Tri-State Construct Agmt ? Monolith Tap IC Rev 2 to be effective 9/11/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5096.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2009-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment AE to Enhance Regulation Deployment of DVRs to be effective 12/18/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5102.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2010-000.

Applicants: Old Dominion Electric Cooperative.

Description: Tariff Cancellation: ODEC Notice of Cancellation of Rate Schedule and Request for Waiver to be effective 12/31/9998.

Filed Date: 7/12/18.

Accession Number: 20180712-5119.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2011-000.

Applicants: Terra-Gen Dixie Valley, LLC.

Description: Tariff Cancellation: Notice of Cancellation to be effective 7/13/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5128.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2013-000.

Applicants: Terra-Gen Dixie Valley, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 7/13/2018.

Filed Date: 7/12/18.

Accession Number: 20180712-5171.

Comments Due: 5 p.m. ET 8/2/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-15493 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18-520-000; Docket No. CP18-521-000]

Spire Storage West, LLC, Clear Creek Storage Company, L.L.C.; Notice of Applications

Take notice that on July 10, 2018, Spire Storage West, LLC (Spire), filed an

application under section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing Spire's acquisition of the underground natural gas storage facility currently owned and operated by the Clear Creek Storage Company, L.L.C. (Clear Creek) and to operate that facility (Clear Creek Facility) to provide storage services in interstate commerce pursuant to Spire's FERC Gas Tariff. Spire further requests the Commission's reaffirmation of its authorization for Spire to charge market-based rates following its acquisition of the Clear Creek Facility.

Concurrently with the Spire application above, Clear Creek filed an application under section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations requesting authorization to abandon the Clear Creek Facility by combination with Spire, an affiliated entity.

Following approval of the proposals in the above applications and completion of the consolidation, Spire will render service through the combined Spire and Clear Creek facilities under Spire's open-access FERC Gas Tariff. These services will include service to any customer served by Clear Creek at the time of the combination.

Questions regarding the Spire filing in Docket No. CP18-520-000 may be directed to James F. Bowe, Jr., King & Spalding LLP, 1700 Pennsylvania Avenue NW, Suite 200, Washington, DC 20006; phone (202) 626-9601; FAX (202) 626-3737; jbowe@kslaw.com. Questions regarding the Clear Creek filing in Docket No. CP18-521-000 may be directed to James F. Bowe, Jr., or William E. Rice, King & Spalding LLP, 1700 Pennsylvania Avenue NW, Suite 200, Washington, DC 20006; phone (202) 626-9601; FAX (202) 626-3737; jbowe@kslaw.com; or Castor Armesto, General Counsel, 700 Market Street, St. Louis, Missouri 63101; phone (314) 342-3326, castor.armesto@sapireenergy.com.

These filings are available for review at the Commission's Washington, DC offices, or may be viewed on the Commission's website at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, or call toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

There are two ways to become involved in the Commission's review of

this Project. First, any person wishing to obtain legal status by becoming a party to the proceeding for this project should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211 (2016), by the comment date below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission, and will receive copies of all documents filed by the applicant and by all other parties. A party must submit filings made with the Commission by mail, hand delivery, or internet, in accordance with Rule 2001 of the Commission's Rules of Practice and Procedure, id. 385.2001. A copy must be served on every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-filing" link. The Commission strongly encourages electronic filings.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16-4-001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.¹ Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to "show good cause why the time limitation should be waived," and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.²

¹ *Tennessee Gas Pipeline Company, L.L.C.*, 162 FERC ¶61,167 at ¶50 (2018).

² 18 CFR 385.214(d)(1).

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying the requested authorizations will be issued.

Comment Date: 5:00 p.m. Eastern Time, August 9, 2018.

Dated: July 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-15556 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1827-006; ER10-1533-016.

Applicants: Cleco Power LLC, Macquarie Energy LLC.

Description: Supplement to December 22, 2017 Updated Market Power Analysis for the Central Region of Cleco Power LLC, *et al.*

Filed Date: 7/13/18.

Accession Number: 20180713-5042.

Comments Due: 5 p.m. ET 8/3/18.

Docket Numbers: ER18-1632-001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Amended Filing—Major Maintenance Cost Component to Mitigated Offers to be effective 1/15/2019.

Filed Date: 7/12/18.

Accession Number: 20180712-5174.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-1898-001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 1534R8 Kansas Municipal Energy Agency NITSA NOA—Amended to be effective 6/1/2018.

Filed Date: 7/13/18.

Accession Number: 20180713-5129.

Comments Due: 5 p.m. ET 8/3/18.

Docket Numbers: ER18-2012-000.

Applicants: PJM Interconnection, L.L.C.

Description: Request of PJM Interconnection, L.L.C. for Limited Waiver.

Filed Date: 7/12/18.

Accession Number: 20180712-5131.

Comments Due: 5 p.m. ET 7/23/18.

Docket Numbers: ER18-2014-000.

Applicants: Ohio Valley Electric Corporation.

Description: Request of Ohio Valley Electric Corporation for Limited Waivers and Expedited Treatment.

Filed Date: 7/12/18.

Accession Number: 20180712-5176.

Comments Due: 5 p.m. ET 8/2/18.

Docket Numbers: ER18-2015-000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Amended & Restated Operating Agreement re: NYISO and New York Transco to be effective 5/23/2016.

Filed Date: 7/13/18.

Accession Number: 20180713-5078.

Comments Due: 5 p.m. ET 8/3/18.

Docket Numbers: ER18-2016-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 5147; Queue No. AD1-144 to be effective 6/15/2018.

Filed Date: 7/13/18.

Accession Number: 20180713-5104.

Comments Due: 5 p.m. ET 8/3/18.

Docket Numbers: ER18-2017-000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Notice of Cancellation of the Operation and Maintenance Agreement (Rates Schedule No. 501) of Northern States Power Company, a Minnesota corporation.

Filed Date: 7/13/18.

Accession Number: 20180713-5126.

Comments Due: 5 p.m. ET 8/3/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 13, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-15483 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC18–122–000.

Applicants: GridLiance High Plains LLC.

Description: Application for Authorization to Acquire Transmission Facilities Pursuant to Section 203 of the FPA and Request for Expedited Action and Certain Waivers of GridLiance High Plains LLC.

Filed Date: 7/13/18.

Accession Number: 20180713–5202.

Comments Due: 5 p.m. ET 8/3/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–164–019.

Applicants: Bishop Hill Energy III LLC.

Description: Notification of Change in Facts under Market-Based Rate Authority of Bishop Hill Energy III LLC.

Filed Date: 7/16/18.

Accession Number: 20180716–5063.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER17–1414–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report to be effective N/A.

Filed Date: 7/16/18.

Accession Number: 20180716–5052.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–836–001.

Applicants: Energia Sierra Juarez 2 U.S., LLC.

Description: Compliance filing: Energia Sierra Juarez 2 U.S., LLC Compliance Filing to be effective 7/16/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5105.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–1344–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2018–07–16 Congestion Revenue Rights Auction Efficiency Track 1A Compliance to be effective 7/1/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5112.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–1915–001.

Applicants: Bowfin KeyCon Energy, LLC.

Description: Tariff Amendment: Bowfin Energy FERC Electric Tariff Supplement to be effective 8/13/2018.

Filed Date: 7/13/18.

Accession Number: 20180713–5181.

Comments Due: 5 p.m. ET 8/3/18.

Docket Numbers: ER18–1917–001.

Applicants: Bowfin KeyCon Power, LLC.

Description: Tariff Amendment: Bowfin Power FERC Electric Tariff Supplement to be effective 8/13/2018.

Filed Date: 7/13/18.

Accession Number: 20180713–5183.

Comments Due: 5 p.m. ET 8/3/18.

Docket Numbers: ER18–2018–000.

Applicants: PacifiCorp.

Description: Notice of termination of Electric Rate Schedule (No. 378) of PacifiCorp.

Filed Date: 7/13/18.

Accession Number: 20180713–5191.

Comments Due: 5 p.m. ET 8/3/18.

Docket Numbers: ER18–2019–000.

Applicants: AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., AEP West Virginia Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP Transco submits revisions to OATT, Schedule 1A to be effective 1/1/2017.

Filed Date: 7/16/18.

Accession Number: 20180716–5036.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–2020–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT submits IA SA No. 4578 and ECSA Nos. 4971, 4972, 5012 to be effective 9/14/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5057.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–2021–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits OIA SA No. 2852 & CA SA No. 4715 to be effective 9/14/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5066.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–2022–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: NYISO & National Grid—amended/restated LGIA no. 2356 with Arkwright to be effective 6/28/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5085.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–2023–000.

Applicants: Whiting Clean Energy, Inc.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/15/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5096.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–2024–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018–07–16 SA 3084 St. Joseph Phase II–NIPSCO GIA 1st Rev (J351) to be effective 6/27/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5120.

Comments Due: 5 p.m. ET 8/6/18.

Docket Numbers: ER18–2025–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-Central Electric Power Cooperative, Inc PPSA (RS–508) to be effective 9/1/2018.

Filed Date: 7/16/18.

Accession Number: 20180716–5124.

Comments Due: 5 p.m. ET 8/6/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 16, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018–15563 Filed 7–19–18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER18–2013–000]

Terra-Gen Dixie Valley, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Terra-Gen Dixie Valley, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 2, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 13, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018–15484 Filed 7–19–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Staff Attendance at the Southwest Power Pool, Inc. Regional State Committee, Members Committee, Board of Directors and Holistic Integrated Tariff Team Meetings**

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. Regional State Committee (RSC), Members Committee, Board of Directors and Holistic Integrated Tariff Team (HITT) as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

The meetings will be held at the Embassy Suites Downtown/Old Market, 555 South 10th Street, Omaha, NE 68102. The phone number is (402) 346–9000. All meetings are Central Time.

SPP RSC

July 30, 2018 (1:00 p.m.–5:00 p.m.)
SPP Members/Board of Directors

July 31, 2018 (8:00 a.m.–3:00 p.m.)
SPP HITT

July 31, 2018 (3:00 p.m.–6:00 p.m.)
August 1, 2018 (9:00 a.m.–3:00 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. ER12–1179, *Southwest Power Pool, Inc.*
Docket No. ER14–2850, *Southwest Power Pool, Inc.*
Docket No. ER14–2851, *Southwest Power Pool, Inc.*
Docket No. ER15–2028, *Southwest Power Pool, Inc.*
Docket No. ER15–2115, *Southwest Power Pool, Inc.*
Docket No. ER15–2237, *Kanstar Transmission, LLC*
Docket No. ER15–2594, *South Central MCN LLC*
Docket No. EL16–91, *Southwest Power Pool, Inc.*
Docket No. EL16–108, *Tilton Energy v. Midcontinent Independent System Operator, Inc.*
Docket No. ER16–204, *Southwest Power Pool, Inc.*
Docket No. ER16–2522, *Southwest Power Pool, Inc.*

Docket No. ER16–2523, *Southwest Power Pool, Inc.*
Docket No. EL17–21, *Kansas Electric Co. v. Southwest Power Pool, Inc.*
Docket No. EL17–89, *American Electric Power Service Corporation v. Midcontinent Independent System Operator, Inc., et al.*
Docket No. ER17–426, *Southwest Power Pool, Inc.*
Docket No. ER17–428, *Southwest Power Pool, Inc.*
Docket No. ER17–469, *Southwest Power Pool, Inc.*
Docket No. ER17–953, *South Central MCN LLC*
Docket No. ER17–1741, *Southwest Power Pool, Inc.*
Docket No. ER17–1610, *Southwest Power Pool, Inc.*
Docket No. EL18–9, *Xcel Energy Services, Inc. v. Southwest Power Pool, Inc.*
Docket No. EL18–12, *ATX Southwest, LLC*
Docket No. EL18–13, *Transource Kansas, LLC*
Docket No. EL18–14, *Midwest Power Transmission Arkansas, LLC*
Docket No. EL18–15, *Kanstar Transmission, LLC*
Docket No. EL18–16, *South Central MCN, LLC*
Docket No. EL18–19, *Southwest Power Pool, Inc.*
Docket No. EL18–20, *Indicated SPP Transmission Owners v. Southwest Power Pool, Inc.*
Docket No. EL18–26, *EDF Renewable Energy, Inc. v. Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., and PJM Interconnection, L.L.C.*
Docket No. EL18–35, *Southwest Power Pool, Inc.*
Docket No. EL18–58, *Oklahoma Municipal Power Authority v. Oklahoma Gas and Electric Co.*
Docket No. ER18–99, *Southwest Power Pool, Inc.*
Docket No. ER18–171, *Southwest Power Pool, Inc.*
Docket No. ER18–194, *Southwest Power Pool, Inc.*
Docket No. ER18–195, *Southwest Power Pool, Inc.*
Docket No. ER18–564, *South Central MCN LLC*
Docket No. ER18–572, *South Central MCN LLC*
Docket No. ER18–939, *Southwest Power Pool, Inc.*
Docket No. ER18–1078, *Southwest Power Pool, Inc.*
Docket No. ER18–1267, *South Central MCN LLC*
Docket No. ER18–1268, *Southwest Power Pool, Inc.*
Docket No. ER18–1323, *Southwest Power Pool, Inc.*

Docket No. ER18–1403, *Southwest Power Pool, Inc.*
 Docket No. ER18–1426, *Southwest Power Pool, Inc.*
 Docket No. ER18–1542, *Southwest Power Pool, Inc.*
 Docket No. ER18–1562, *Southwest Power Pool, Inc.*
 Docket No. ER18–1568, *Southwest Power Pool, Inc.*
 Docket No. ER18–1572, *Southwest Power Pool, Inc.*
 Docket No. ER18–1590, *Southwest Power Pool, Inc.*
 Docket No. ER18–1632, *Southwest Power Pool, Inc.*
 Docket No. ER18–1643, *Southwest Power Pool, Inc.*
 Docket No. ER18–1662, *Southwest Power Pool, Inc.*
 Docket No. ER18–1680, *Southwest Power Pool, Inc.*
 Docket No. ER18–1701, *Southwest Power Pool, Inc.*
 Docket No. ER18–1702, *Southwest Power Pool, Inc.*
 Docket No. ER18–1742, *Southwest Power Pool, Inc.*
 Docket No. ER18–1747, *Southwest Power Pool, Inc.*
 Docket No. ER18–1753, *Southwest Power Pool, Inc.*
 Docket No. ER18–1756, *Southwest Power Pool, Inc.*
 Docket No. ER18–1757, *Southwest Power Pool, Inc.*
 Docket No. ER18–1768, *Southwest Power Pool, Inc.*
 Docket No. ER18–1776, *Southwest Power Pool, Inc.*
 Docket No. ER18–1780, *Southwest Power Pool, Inc.*
 Docket No. ER18–1781, *Southwest Power Pool, Inc.*
 Docket No. ER18–1789, *Southwest Power Pool, Inc.*
 Docket No. ER18–1811, *Southwest Power Pool, Inc.*
 Docket No. ER18–1816, *Midwest Power Transmission Arkansas, LLC*
 Docket No. ER18–1838, *Southwest Power Pool, Inc.*
 Docket No. ER18–1854, *Southwest Power Pool, Inc.*
 Docket No. ER18–1864, *Southwest Power Pool, Inc.*
 Docket No. ER18–1867, *Southwest Power Pool, Inc.*
 Docket No. ER18–1872, *Southwest Power Pool, Inc.*
 Docket No. ER18–1881, *Southwest Power Pool, Inc.* Docket No. ER18–1898, *Southwest Power Pool, Inc.*
 Docket No. ER18–1904, *Southwest Power Pool, Inc.*
 Docket No. ER18–1919, *Southwest Power Pool, Inc.*
 Docket No. ER18–1921, *Southwest Power Pool, Inc.*

Docket No. ER18–1923, *Southwest Power Pool, Inc.*
 Docket No. ER18–1963, *Midwest Energy, Inc.*

Docket No. TX18–1, *AEP Energy Partners, Inc.*

This meeting is open to the public. For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or patrick.clarey@ferc.gov.

Dated: July 13, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15479 Filed 7–19–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13318–003]

Swan Lake North Hydro LLC; Notice of Modification of Procedural Schedule

Take notice that the schedule for processing the following hydroelectric application has been modified.

a. *Type of Application:* Original License (Major Project).
 b. *Project No.:* 13318–003.
 c. *Date Filed:* October 28, 2015.
 d. *Applicant:* Swan Lake North Hydro LLC.

e. *Name of Project:* Swan Lake North Pumped Storage Hydroelectric Project.

f. *Location:* The project would be located about 11 miles northeast of Klamath Falls, in Klamath County, Oregon. The project would occupy about 730 acres of federal lands administered by the Bureau of Land Management and the Bureau of Reclamation, state lands, and private lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Erik Steimle, Rye Development LLC, 745 Atlantic Avenue, 8th Floor, Boston, MA 02111. Telephone: (503) 998–0230; Email: erik@ryedevelopment.com.

i. *FERC Contact:* Dianne Rodman at (202) 502–6077 or dianne.rodman@ferc.gov.

j. *Procedural Schedule:* The Commission's December 20, 2017 Notice of Application Ready for Environmental Analysis established August 2018 as the estimated date for issuing the Draft Environmental Impact Statement (EIS). The revised estimate for issuing the Draft EIS is now September 2018. As such, the application will be processed according

to the following revised schedule. Revisions to the schedule may be made as appropriate. If a date falls on a weekend or holiday, the due date will be the following business day.

Milestone	Target date
Commission Issues Draft EIS ...	September 2018.
Comments on Draft EIS	November 2018.
Commission Issues Final EIS ...	January 2019.

Dated: July 13, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15485 Filed 7–19–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP17–248–000.
Applicants: Dakota Natural Gas, LLC.
Description: Application for a Limited Jurisdiction Hinshaw Blanket Certificate and Approval of Rates, *et al.* and Request for Expedited Treatment of Dakota Natural Gas, LLC.

Filed Date: 6/28/18.

Accession Number: 20180628–5177.

Comments Due: 5 p.m. ET 7/20/18.

Docket Numbers: RP17–248–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.501: Refund Report.

Filed Date: 7/10/18.

Accession Number: 20180710–5116.

Comments Due: 5 p.m. ET 7/23/18.

Docket Numbers: RP18–556–002.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Compliance filing Rate Case Settlement—2018 Implementation to be effective 9/1/2018.

Filed Date: 7/11/18.

Accession Number: 20180711–5018.

Comments Due: 5 p.m. ET 7/23/18.

Docket Numbers: RP18–967–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing; Gulf Markets—MC Global NRA and Non-Conforming Agrmt to be effective 8/1/2018.

Filed Date: 7/11/18.

Accession Number: 20180711–5040.
Comments Due: 5 p.m. ET 7/23/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15492 Filed 7–19–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: RP18–65–000.

Applicants: Montana-Dakota Utilities Co.

Description: Tariff filing per 284.123(b), (e) + (g): Revision to Statement of Effective Rates to be effective 6/15/2018.

Filed Date: 7/11/18.

Accession Number: 201807115156.

Comments Due: 5 p.m. ET 8/1/18.

284.123(g) Protests Due: 5 p.m. ET 9/10/18.

Docket Numbers: RP18–968–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 071218 Negotiated Rates—Tenaska Marketing Ventures R–2835–19 to be effective 9/1/2018.

Filed Date: 7/12/18.

Accession Number: 20180712–5055.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: RP18–969–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 071218 Negotiated Rates—NJR Energy Services Company R–2890–17 to be effective 9/1/2018.

Filed Date: 7/12/18.

Accession Number: 20180712–5057.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: RP18–970–000.

Applicants: NextEra Energy Marketing, LLC, EQT Energy, LLC.
Description: Joint Petition for Temporary Waivers of Capacity Release Regulations and Related Tariff Provisions, et al. of NextEra Energy Marketing, LLC, et al.

Filed Date: 7/12/18.

Accession Number: 20180712–5136.

Comments Due: 5 p.m. ET 7/19/18.

Docket Numbers: RP18–971–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20180712 Rate Schedules TF and TFX and Misc Tariff Revisions to be effective 8/12/2018.

Filed Date: 7/12/18.

Accession Number: 20180712–5145.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: RP18–972–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Unauthorized Overrun Quantity Filing to be effective 8/1/2018.

Filed Date: 7/12/18.

Accession Number: 20180712–5146.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: RP18–973–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer July 2, 2018) to be effective 7/13/2018.

Filed Date: 7/12/18.

Accession Number: 20180712–5173.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: RP18–974–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Market Area Pooling Area Revisions and Other Tariff Changes to be effective 10/1/2018.

Filed Date: 7/12/18.

Accession Number: 20180712–5175.

Comments Due: 5 p.m. ET 7/24/18.

Docket Numbers: RP18–419–001.

Applicants: Dominion Energy Cove Point LNG, LP.

Description: Compliance filing DECP—Liquefaction Project Implementation (RP18–419) Compliance to be effective 4/9/2018.

Filed Date: 7/13/18.

Accession Number: 20180713–5144.

Comments Due: 5 p.m. ET 7/25/18.

Docket Numbers: RP18–975–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: NCF Cleanup Filing—Termination of NRG Canal K #510534 to be effective 8/13/2018.

Filed Date: 7/13/18.

Accession Number: 20180713–5037.

Comments Due: 5 p.m. ET 7/25/18.

Docket Numbers: RP18–976–000.

Applicants: Millennium Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates Update Filing to be effective 8/13/2018.

Filed Date: 7/13/18.

Accession Number: 20180713–5041.

Comments Due: 5 p.m. ET 7/25/18.

Docket Numbers: RP18–977–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Broad Run Expansion Project—Recourse Rate & Incremental Fuel and EPCR to be effective 8/15/2018.

Filed Date: 7/13/18.

Accession Number: 20180713–5065.

Comments Due: 5 p.m. ET 7/25/18.

Docket Numbers: RP18–978–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2—Broad Run Expansion Project to be effective 8/15/2018.

Filed Date: 7/13/18.

Accession Number: 20180713–5079.

Comments Due: 5 p.m. ET 7/25/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15555 Filed 7–19–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP18-518-000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on July 6, 2018, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Houston, Texas 77002-2700, filed in Docket No. CP18-518-000 a prior notice request pursuant to sections 157.205, and 157.216 of the Commission's regulations under the Natural Gas Act for authorization to abandon 12 injection/withdrawal wells and associated pipelines and appurtenances at five of Columbia's Ohio storage fields located in Ashland, Medina, and Richland counties, Ohio. Columbia proposes to abandon these facilities under authorities granted by its blanket certificate issued in Docket No. CP83-76-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or TTY, contact (202) 502-8659.

Any questions concerning this application may be directed to Linda Farquhar, Manager, Project Determinations & Regulatory Administration, Columbia Gas Transmission, LLC, 700 Louisiana Street, Houston, Texas 77002-2700 at (832) 320-5685 or at linda_farquhar@transcanada.com.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (www.ferc.gov) under the "e-Filing" link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: July 16, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-15559 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Effectiveness of Exempt Wholesale Generator Status**

	Docket Nos.
Stella Wind Farm, LLC	EG18-72-000
Calpine Mid-Merit II, LLC	EG18-73-000
GenOn Holdco 10, LLC	EG18-74-000
CED Upton County Solar, LLC ...	EG18-75-000
CED Wistaria Solar, LLC	EG18-76-000
Walnut Ridge Wind, LLC	EG18-77-000
Pine River Wind Energy LLC	EG18-78-000
Sholes Wind Energy, LLC	EG18-79-000

Take notice that during the month of June 2018, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2017).

Dated: July 16, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-15558 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. AD18-5-000]

Billing Procedures for Annual Charges for the Costs of Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Reporting Costs for Other Federal Agencies' Administrative Annual Charges for Fiscal Year 2017

1. The Federal Energy Regulatory Commission (Commission) is required to determine the reasonableness of costs incurred by other Federal agencies (OFAs)¹ in connection with their participation in the Commission's proceedings under the Federal Power Act (FPA) Part I² when those agencies seek to include such costs in the administrative charges licensees must pay to reimburse the United States for the cost of administering Part I.³ The Commission's *Order on Remand and*

¹ The OFAs include: the U.S. Department of the Interior (Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, Office of the Solicitor, Office of Environmental Policy & Compliance, Office of Hearings and Appeals, and Office of Policy Analysis); the U.S. Department of Agriculture (U.S. Forest Service); the U.S. Department of Commerce (National Marine Fisheries Service); and the U.S. Army Corps of Engineers.

² 16 U.S.C. 791a-823d (2012).³ See *id.* 803(e)(1) and 42 U.S.C. 7178.

*Acting on Appeals of Annual Charge Bills*⁴ determined which costs are eligible to be included in the administrative annual charges. This order also established a process whereby the Commission would annually request each OFA to submit cost data, using a form⁵ specifically designed for this purpose. In addition, the order established requirements for detailed cost accounting reports and other documented analyses to explain the cost assumptions contained in the OFAs' submissions.

2. The Commission has completed its review of the forms and supporting documentation submitted by the U.S. Department of the Interior (Interior), the U.S. Department of Agriculture (Agriculture), and the U.S. Department of Commerce (Commerce) for fiscal year (FY) 2017. This notice reports the costs the Commission included in its administrative annual charges for FY 2018.

Scope of Eligible Costs

3. The basis for eligible costs that should be included in the OFAs' administrative annual charges is prescribed by the Office of Management and Budget's (OMB) Circular A-25—*User Charges* and the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards (SFFAS) Number 4—*Managerial Cost Accounting Concepts and Standards for the Federal Government*. Circular A-25 establishes Federal policy regarding fees assessed for government services and provides

specific information on the scope and type of activities subject to user charges. SFFAS Number 4 provides a conceptual framework for federal agencies to determine the full costs of government goods and services.

4. Circular A-25 provides for user charges to be assessed against recipients of special benefits derived from federal activities beyond those received by the general public.⁶ With regard to licensees, the special benefit derived from federal activities is the license to operate a hydropower project. The guidance provides for the assessment of sufficient user charges to recover the full costs of services associated with these special benefits.⁷ SFFAS Number 4 defines full costs as the costs of resources consumed by a specific governmental unit that contribute directly or indirectly to a provided service.⁸ Thus, pursuant to OMB requirements and authoritative accounting guidance, the Commission must base its OFA administrative annual charge on all direct and indirect costs incurred by agencies in administering Part I of the FPA. The special form the Commission designed for this purpose, the "Other Federal Agency Cost Submission Form," captures the full range of costs recoverable under the FPA and the referenced accounting guidance.⁹

Commission Review of OFA Cost Submittals

5. The Commission received cost forms and other supporting documentation from the Departments of

the Interior, Agriculture, and Commerce. The Commission completed a review of each OFA's cost submission forms and supporting reports. In its examination of the OFAs' cost data, the Commission considered each agency's ability to demonstrate a system or process which effectively captured, isolated, and reported FPA Part I costs as required by the "Other Federal Agency Cost Submission Form."

6. The Commission held a Technical Conference on March 29, 2018 to report its initial findings to licensees and OFAs. Representatives for several licensees and most of the OFAs attended the conference. Following the technical conference, a transcript was posted, and licensees had the opportunity to submit comments to the Commission regarding its initial review.

7. Idaho Falls Group (Idaho Falls) filed written comments,¹⁰ stating its general support of the Commission's analysis but raising questions regarding certain various individual cost submissions. These issues are addressed in the Appendix to this notice.

8. After additional review, full consideration of the comments presented, and in accordance with the previously cited guidance, the Commission accepted as reasonable any costs reported via the cost submission forms that were clearly documented in the OFAs' accompanying reports and/or analyses. These documented costs will be included in the administrative annual charges for FY 2018.

Summary of Reported & Accepted Costs for Fiscal Year 2017

	Municipal		Non-Municipal		TOTAL	
	Reported	Accepted	Reported	Accepted	Reported	Accepted
Department of Interior						
Bureau of Indian Affairs	-	-	-	-	-	-
Bureau of Land Management	84,330	84,678	348	-	84,678	84,678
Bureau of Reclamation	458	458	25,220	25,220	25,678	25,678
National Park Service	440,853	440,853	380,886	380,886	821,739	821,739
U.S. Fish and Wildlife Service	227,324	227,225	1,547,320	1,546,571	1,774,643	1,773,796
Office of the Solicitor	13,454	13,454	142,075	142,075	155,529	155,529
Office of Environmental Policy & Compliance	11,955	11,955	133,848	133,848	145,803	145,803
Office of Hearings and Appeals	651	653	3,178	3,176	3,829	3,829
Department of Agriculture						
U.S. Forest Service	491,619	477,715	1,660,369	1,637,387	2,151,989	2,115,102
Department of Commerce						
National Marine Fisheries Service	873,345	869,754	605,774	606,521	1,479,118	1,476,275
TOTAL	2,143,990	2,126,745	4,499,018	4,475,684	6,643,007	6,602,429

Figure 1

⁴ 107 FERC ¶ 61,277, *order on reh'g*, 109 FERC ¶ 61,040 (2004).

⁵ Other Federal Agency Cost Submission Form, available at <https://www.ferc.gov/docs-filing/forms.asp#ofa>.

⁶ OMB Circular A-25 6.

⁷ OMB Circular A-25 6.a.2.

⁸ SFFAS Number 4 ¶ 7.

⁹ To avoid the possibility of confusion that has occurred in prior years as to whether costs were being entered twice as "Other Direct Costs" and

"Overhead," the form excluded "Other Direct Costs."

¹⁰ See Letter from Sharon L. White, Van Ness Feldman, to the Honorable Kimberly D. Bose, FERC, Docket No. AD18-5-000 (filed April 26, 2018).

9. Figure 1 summarizes the total reported costs incurred by Interior, Agriculture, and Commerce with respect to their participation in administering Part I of the FPA. Additionally, Figure 1 summarizes the reported costs that the Commission determined were clearly documented and accepted for inclusion in its FY 2018 administrative annual charges.

Summary Findings of Commission's Costs Review

10. As presented in Figure 1, the Commission determined that \$6,602,429 of the \$6,643,007 in total reported costs were reasonable and clearly documented in the OFAs' accompanying reports and/or analyses. Based on this finding, 1% of the total reported cost was determined to be unreasonable. The Commission noted the most significant issue with the documentation provided by the OFAs was the lack of supporting documentation to substantiate costs reported on the "Other Federal Agency Cost Submission Form."

11. The cost reports that the Commission determined were clearly documented and supported could be traced to detailed cost-accounting reports, which reconciled to data provided from agency financial systems or other pertinent source documentation. A further breakdown of these costs is included in the Appendix to this notice, along with an explanation of how the Commission determined their reasonableness.

Points of Contact

12. If you have any questions regarding this notice, please contact Norman Richardson at (202) 502-6219 or Raven Rodriguez at (202) 502-6276.

Dated: July 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-15562 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2386-004, 2387-003, 2388-004]

City of Holyoke Gas and Electric Department; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric applications have been

filed with the Commission and are available for public inspection.

a. *Type of Application*: Subsequent Licenses.

b. *Project Nos.*: 2386-004, 2387-003, and 2388-004.

c. *Date filed*: August 31, 2016.

d. *Applicant*: City of Holyoke Gas and Electric Department.

e. *Names of Projects*: Holyoke Number 1 Hydroelectric Project, P-2386-004; Holyoke Number 2 Hydroelectric Project, P-2387-003; and Holyoke Number 3 Hydroelectric Project, P-2388-004.

f. *Locations*: Holyoke Number 1 (P-2386-004) and Holyoke Number 2 (P-2387-003) are located between the first and second level canals, and Holyoke Number 3 (P-2388-004) is located between the second and third level canals on the Holyoke Canal System, adjacent to the Connecticut River, in the city of Holyoke in Hampden County, Massachusetts. The projects do not occupy federal land.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Paul Ducheneay, Superintendent, City of Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536-9340 or ducheneay@hged.com.

i. *FERC Contact*: Kyle Olcott at (202) 502-8963; or email at kyle.olcott@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include the relevant docket number(s): P-2386-004, P-2387-003, and/or P-2388-004.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of

that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. These applications have been accepted and are now ready for environmental analysis.

l. *The existing Holyoke Number 1 Project consists of*: (1) An intake at the wall of the first level canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004) with two 14.7-foot-tall by 24.6-foot-wide trash rack screens with 3.5-inch clear spacing; (2) two parallel 10-foot-diameter, 36.5-foot-long penstocks; (3) a 50-foot-long by 38-foot-wide brick powerhouse with two 240-kilowatt and two 288-kilowatt turbine generator units; (4) two parallel 20-foot-wide, 328.5-foot-long brick arched tailrace conduits discharging into the second level canal; and, (5) appurtenant facilities. There is no transmission line associated with the project as it is located adjacent to the substation of interconnection. The project is estimated to generate 2,710,000 kilowatt-hours annually.

The existing Holyoke Number 2 Project consists of: (1) An intake at the wall of the first level canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004) with three trash rack screens (one 16.2-foot-tall by 26.2-foot-wide and two 14.8-foot-tall by 21.8-foot-long) with 3-inch clear spacing; (2) two 9-foot diameter, 240-foot-long penstocks; (3) a 17-foot-high by 10-foot-diameter surge tank; (4) a 60-foot-long by 40-foot-wide by 50-foot high powerhouse with one 800-kilowatt vertical turbine generator unit; (5) two parallel 9-foot-wide, 10-foot-high, 120-foot-long brick arched tailrace conduits discharging into the second level canal; (6) an 800-foot-long, 4.8-kilovolt transmission line; and (7) appurtenant facilities. The project is estimated to generate 4,710,000 kilowatt-hours annually.

The existing Holyoke Number 3 Project consists of: (1) A 52.3-foot-long by 14-foot-high intake trash rack covering an opening in the second level canal fed by the Holyoke Canal System (licensed under FERC Project No. 2004); (2) two 11-foot-high by 11-foot-wide headgates; (3) two 85-foot-long, 93-square-foot in cross section low pressure brick penstocks; (4) a 42-foot-long by 34-foot-wide by 28-foot-high reinforced concrete powerhouse with one 450-kilowatt turbine generator unit; (5) a 29.7-foot-wide, 10-foot-deep, 118-foot-

long open tailrace discharging into the third level canal; and, (6) 4.8-kilovolt generator leads that connect directly to the 4.8-kilovolt area distribution system; and (7) appurtenant facilities. The project is estimated to generate 2,119,000 kilowatt-hours annually.

m. Copies of the applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. Copies are also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the applications directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at <http://www.ferc.gov/docs-filing/subscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural schedule:* The applications will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Commission issues draft EA, December 2018

Comments on draft EA, February 2019
Commission issues final EA, June 2019

Dated: July 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-15560 Filed 7-19-18; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9980-78-OW]

Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Restoration Plan/Environmental Assessment #4: Nutrient Reduction (Nonpoint Source) and Recreational Opportunities and Finding of No Significant Impact

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared the Final Restoration Plan and Environmental Assessment #4: Nutrient Reduction (Nonpoint Source) and Recreational Opportunities (Final RP/EA #4). The Final RP/EA #4 describes and, in conjunction with the associated Finding of No Significant Impact (FONSI), selects twenty-three preferred project alternatives considered by the Louisiana TIG to improve water quality by reducing nutrients from nonpoint sources and to compensate for recreational use services lost as a result of the *Deepwater Horizon* oil spill. The Louisiana TIG evaluated alternatives under criteria set forth in the OPA natural resource damage assessment (NRDA) regulations, and evaluated the environmental consequences of the restoration alternatives in accordance with NEPA. The selected projects are consistent with the restoration alternatives selected in the *Deepwater Horizon* oil spill Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS). The Federal Trustees of the Louisiana TIG have determined that implementation of the Final RP/EA #4 is not a major federal action significantly affecting the quality of the human environment within the context of NEPA. They have concluded a FONSI is appropriate, and, therefore, an Environmental Impact

Statement will not be prepared. The purpose of this notice is to inform the public of the approval and availability of the Final RP/EA #4 and FONSI.

ADDRESSES: *Obtaining Documents:* You may download the Final RP/EA #4 and FONSI at any of the following sites:

- <http://www.gulfspillrestoration.noaa.gov>

noaa.gov

- <http://www.la-dwh.com>

Alternatively, you may request a CD of the Final RP/EA #4 and FONSI (see **FOR FURTHER INFORMATION CONTACT**). You may also view the document at any of the public facilities listed at <http://www.gulfspillrestoration.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

- Louisiana—Joann Hicks, 225-342-5477.

- EPA—Doug Jacobson, 214-665-6692.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252-MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest off shore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days.

The Trustees conducted the natural resource damage assessment for the *Deepwater Horizon* oil spill under the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*). Under OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The *Deepwater Horizon* oil spill Trustees are:

- U.S. Environmental Protection Agency (EPA);

- U.S. Department of the Interior (DOI), as represented by the National

Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;

- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;

- U.S. Department of Agriculture (USDA);

- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife and Fisheries (LDWF), and Department of Natural Resources (LDNR);

- State of Mississippi Department of Environmental Quality;

- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;

- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and

- State of Texas Parks and Wildlife Department, General Land Office, and Commission on Environmental Quality.

On April 4, 2016, the Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are now chosen and managed by the Louisiana TIG. The Louisiana TIG is composed of the following Trustees: CPRA, LOSCO, LDEQ, LDWF, LDNR, EPA, DOI, NOAA, USDA.

Background

A Notice of Availability of the *Deepwater Horizon* Oil Spill Louisiana Trustee Implementation Group Draft Restoration Plan and Environmental Assessment #4: Nutrient Reduction (Nonpoint Source) and Recreational Opportunities (Draft RP/EA #4) was published in the **Federal Register** on April 20, 2018. The Louisiana TIG hosted a public meeting on April 24, 2018, in New Orleans, and the public comment period for the Draft RP/EA #4 closed on May 21, 2018. The Draft RP/EA #4 proposed twenty-three restoration projects, evaluated in accordance with OPA and NEPA. The Louisiana TIG considered the public comments received on the Draft RP/EA #4 which informed the Louisiana TIG's analyses and selection of the restoration projects in the Final RP/EA #4. A summary of the public comments received and the Trustees' responses to those comments are included in Chapter 7 of the Final RP/EA #4.

Overview of the Final RP/EA #4

The Final RP/EA #4 is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR 990, and NEPA (42 U.S.C. 4321 *et seq.*). In the Final RP/EA #4, the Louisiana TIG selects the following preferred project alternatives:

Nutrient Reduction (Nonpoint Source):

- Nutrient Reduction on Dairy Farms in St. Helena and Tangipahoa Parishes
- Nutrient Reduction on Dairy Farms in Washington Parish

- Nutrient Reduction on Cropland and Grazing Lands in Bayou Folse
- Winter Water Holding on Cropland in Vermilion and Cameron Parishes Plus Agricultural Best Management Practices

Recreational Use:

- Pass-a-Loutre Wildlife Management Area Crevasse Access

- Pass-a-Loutre Wildlife Management Area Campgrounds

- Grand Isle State Park Improvements
- Chitimacha Boat Launch

- Sam Houston Jones State Park Improvements

- Montegut S1/S2 Access/Pointe-aux-Chenes Fishing Piers

- WHARF Phase 1

- Bayou Segnette State Park Improvements

- Atchafalaya Delta Wildlife Management Area Access

- Atchafalaya Delta Wildlife Management Area Campgrounds

- Rockefeller Piers/Rockefeller Signage

- St. Bernard State Park Improvements

- Cypremort Point State Park Improvements

- The Wetlands Center

- Recreational Use Improvements at Barataria Preserve in Jefferson Parish, Jean Lafitte National Historical Park and Preserve, Barataria Unit

- Des Allemands Boat Launch

- Middle Pearl

- Improvements to Grand Avoille Boat Launch

- Belle Chasse

The Louisiana TIG has examined the injuries assessed by the *Deepwater Horizon* Trustees and evaluated restoration alternatives to address the injuries. In the Final RP/EA #4, the Louisiana TIG presents to the public its plan for providing partial compensation for lost recreational use services and reducing nutrients from nonpoint sources in the Louisiana Restoration Area. The selected projects are intended to continue the process of using restoration funding to reduce nutrients

(nonpoint source) and restore recreational use services lost as a result of the *Deepwater Horizon* oil spill. The total estimated cost of the selected projects is \$47.5 million. Additional restoration planning for the Louisiana Restoration Area will continue.

Administrative Record

The documents comprising the Administrative Record for the Final RP/EA #4 and FONSI can be viewed electronically at <http://www.doi.gov/deepwaterhorizon/administrativerecord>.

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA regulations found at 15 CFR part 990, and NEPA (42 U.S.C. 4321 *et seq.*).

Dated: July 2, 2018.

Benita Best-Wong,

Acting Principal Deputy Assistant Administrator, Office of Water.

[FR Doc. 2018-15347 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9980-87-OP]

National Environmental Justice Advisory Council; Notification of Public Meeting, Public Teleconference and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92-463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see "REGISTRATION" under **SUPPLEMENTARY INFORMATION**. Due to a limited space, seating at the NEJAC meeting will be on a first-come, first served basis. Pre-registration is highly suggested.

DATES: The NEJAC will convene a public face-to-face meeting beginning on Tuesday, August 14, 2018, starting at 6:00 p.m., Eastern Time. The NEJAC meeting will continue August 15-16,

2018, from 9:00 a.m. until 5:00 p.m., Eastern Time. The meeting discussion will focus on several topics including, but not limited to, environmental justice concerns of communities in Boston, MA and surrounding areas; discussion and deliberation of the final report from the NEJAC Environmental Justice and Water Infrastructure Finance and Capacity Work Group; and the proactive efforts of EPA Region 1 to advance environmental justice.

One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Tuesday, August 14, 2018, starting at 6:00 p.m., Eastern Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by 11:59 p.m., Eastern Time on Monday, August 6, 2018.

ADDRESSES: The NEJAC meeting will be held at the Boston Park Plaza, 50 Park Plaza, Boston, MA 02116-3912.

FOR FURTHER INFORMATION CONTACT:

Questions or correspondence concerning the public meeting should be directed to Karen L. Martin, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW, (MC2201A), Washington, DC 20460; by telephone at 202-564-0203; via email at martin.karenl@epa.gov; or by fax at 202-564-1624. Additional information about the NEJAC is available at <https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council>.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee “will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC’s efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.”

Registration

Registration for the August 14-16, 2018, public face-to-face meeting will be processed at <https://nejac-public-meeting-august-2018.eventbrite.com>. Pre-registration is highly suggested. Registration for the August 15-16, 2018, public meeting teleconference option will be processed at <https://nejac-public-teleconference-option-august-2018.eventbrite.com>. Pre-registration is required. Registration closes at 11:59 p.m., Eastern Time on Monday, August 6, 2018. The deadline to sign up to speak during the public comment

period, or to submit written public comments, is 11:59 p.m., Eastern Time on Monday, August 6, 2018. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments before the Monday, August 6, 2018, deadline.

A. Public Comment

Individuals or groups making remarks during the public comment period will be limited to seven (7) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by registration deadline, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at martin.karenl@epa.gov.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564-0203 or via email at martin.karenl@epa.gov. To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: July 5, 2018.

Matthew Tejada,

Designated Federal Officer, National Environmental Justice Advisory Council.
[FR Doc. 2018-15621 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2014-0350; FRL-9980-98-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Fish Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR)—National Fish Program (formerly referred to as the National Listing of Fish Advisories); EPA ICR Number 1959.06, OMB Control Number 2040-0226—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 July 31, 2018. Public comments were previously requested via the **Federal Register** on February 22, 2018 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 August 20, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OW-2014-0350, to (1) EPA online using www.regulations.gov (our preferred method), by email to OW-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 oir_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: Samantha Fontenelle, Office of Science and Technology, Standards and Health Protection Division, Environmental Protection Agency, 1200 Pennsylvania

Ave. NW, Washington, DC 20460; telephone number: (202) 566-2083; fax number: (202) 566-0409; email address: fontenelle.samantha@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: In 1993, EPA began compiling information on fish advisories provided by the states in its biannual 305(b) Water Quality Inventory Reports. In 1994, EPA's Office of Water began conducting a voluntary annual Fish Program Survey to obtain the most up-to-date information on fish advisories. This information is collected under the authority of section 104 of the Clean Water Act, which provides for the collection of information to be used to protect human health and the environment. The advisory information collected identifies the waterbody under advisory, the fish or shellfish species and size ranges included in the advisory, the chemical contaminants and residue levels causing the advisory to be issued, the waterbody type (river, lake, estuary, coastal waters), and the target populations to whom the advisory is directed. The results of the survey are shared with states, territories, tribes, other federal agencies, and the public through an online database. The responses to the survey are voluntary and the information requested is part of the state/tribal public record associated with the advisories. No confidential business information is requested.

Form numbers: None.

Respondents/affected entities:

Administrators of Public Health and Environmental Quality Programs in state and tribal governments (NAICS 92312/SIC 9431 and NAICS 92411/SIC 9511).

Respondent's obligation to respond: Voluntary, (Clean Water Act, Section 104).

Estimated number of respondents: 100 states, territories and tribes.

Frequency of response: Annual.

Total estimated burden: 2,468 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$110,517.20 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 584 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The increase is due to revised hourly burden estimates based on input from three states and the addition of two new activities to increase communication, engagement, information sharing and support between the EPA and the states, territories and tribes.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018-15516 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FR-9040-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7156 or <https://www2.epa.gov/nepa/>.

Weekly receipt of Environmental Impact Statements, Filed 07/09/2018

Through 07/13/2018, Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

EIS No. 20180156, Final, USFS, OR, Lobert Restoration Project, Review Period Ends: 08/20/2018, Contact: William Conroy 541-783-4039.

EIS No. 20180158, Final, HHS, OH, Final Environmental Impact Statement for Site Acquisition and Campus Consolidation for NIOSH, Review Period Ends: 08/20/2018, Contact: Harry Marsh 770-488-8170.

EIS No. 20180160, Final, BLM, UT, Alton Coal Tract Lease by Application, Review Period Ends: 08/20/2018, Contact: Keith Rigtrup 435-865-3063.

EIS No. 20180161, Final Supplement, USFS, MT, Rock Creek Mine Project, Review Period Ends: 08/23/2018, Contact: Katelyn Miller 406-293-6211.

EIS No. 20180162, Final, USACE, CO, Northern Integrated Supply Project, Review Period Ends: 09/04/2018, Contact: John E. Urbanic 303-979-4120.

EIS No. 20180163, Draft, USFWS, CA, Green Diamond Forest Habitat Conservation Plan, Comment Period Ends: 09/04/2018, Contact: Dan Cox 916-414-6539.

EIS No. 20180164, Final, USFS, CA, Exchequer Restoration Project, Review Period Ends: 08/20/2018, Contact: Elaine Locke 559-855-5355.

Amended Notice

Revision to the **Federal Register** Notice published 06/01/2018, extend comment period from 07/16/2018 to 07/31/2018, EIS No. 20180113, Draft, DHS, ID, Bog Creek Road Project, Contact: Paul Enriquez, 949-643-6365.

Dated: July 17, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018-15514 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9980-79-OW]

Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Restoration Plan/Environmental Assessment #2: Provide and Enhance Recreational Opportunities and Finding of No Significant Impact

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared the Final Restoration Plan and Environmental Assessment #2: Provide and Enhance Recreational Opportunities (Final RP/EA #2). The Final RP/EA #2 describes and, in conjunction with the associated Finding of No Significant Impact (FONSI), selects four preferred project alternatives considered by the Louisiana TIG to compensate for recreational use services lost as a result of the *Deepwater Horizon* oil spill. The Louisiana TIG evaluated alternatives under criteria set forth in the OPA natural resource damage assessment (NRDA) regulations, and evaluated the environmental consequences of the restoration alternatives in accordance with NEPA. The selected projects are consistent with the restoration alternatives selected in the *Deepwater Horizon* oil spill Final Programmatic

Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS). The Federal Trustees of the Louisiana TIG have determined that implementation of the Final RP/EA #2 is not a major federal action significantly affecting the quality of the human environment within the context of NEPA. They have concluded a FONSI is appropriate, and, therefore, an Environmental Impact Statement will not be prepared. The purpose of this notice is to inform the public of the approval and availability of the Final RP/EA #2 and FONSI.

ADDRESSES: *Obtaining Documents:* You may download the Final RP/EA #2 and FONSI at any of the following sites:

- <http://www.gulfspillrestoration.noaa.gov>
- <http://www.la-dwh.com>

Alternatively, you may request a CD of the Final RP/EA #2 and FONSI (see **FOR FURTHER INFORMATION CONTACT**). You may also view the document at any of the public facilities listed at <http://www.gulfspillrestoration.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

- Louisiana—Joann Hicks, 225-342-5477
- EPA—Tim Landers, 202-566-2231

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest off shore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days.

The Trustees conducted the natural resource damage assessment for the *Deepwater Horizon* oil spill under the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*). Under OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of

injury until the time restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The *Deepwater Horizon* oil spill Trustees are:

- U.S. Environmental Protection Agency (EPA);
- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife and Fisheries (LDWF), and Department of Natural Resources (LDNR);
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas Parks and Wildlife Department, General Land Office, and Commission on Environmental Quality.

On April 4, 2016, the Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are now chosen and managed by the Louisiana TIG. The Louisiana TIG is composed of the following Trustees: CPRA, LOSCO, LDEQ, LDWF, LDNR, EPA, DOI, NOAA, USDA.

Background

A Notice of Availability of the *Deepwater Horizon* Oil Spill Louisiana Trustee Implementation Group Draft Restoration Plan and Environmental Assessment #2: Provide and Enhance Recreational Opportunities (Draft RP/EA #2) was published in the **Federal Register** on December 20, 2017. The Louisiana TIG hosted a public meeting on January 24, 2018, in New Orleans, and the public comment period for the Draft RP/EA #2 closed on February 2, 2018. The Draft RP/EA #2 proposed four restoration projects, evaluated in accordance with OPA and NEPA. In response to public comments received on the Draft RP/EA #2, the Louisiana

TIG prepared a Draft Supplemental Restoration Plan and Environmental Assessment for the Elmer's Island Access Project Modification (Draft Supplemental RP/EA) to evaluate proposed changes to the Elmer's Island Access project. A Notice of Availability of the Draft Supplemental RP/EA was published in the **Federal Register** on May 21, 2018. The Louisiana TIG hosted a public meeting on May 22, 2018, in New Orleans, and the public comment period for the Draft Supplemental RP/EA closed on June 20, 2018. The Louisiana TIG considered the public comments received on both the Draft RP/EA #2, and Draft Supplemental RP/EA, which informed the Louisiana TIG's analyses and selection of the restoration projects in the Final RP/EA #2. A summary of the public comments received and the Trustees' responses to those comments are included in Section 7 of the Final RP/EA #2.

Overview of the Final RP/EA #2

The Final RP/EA #2 is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR 990, and NEPA (42 U.S.C. 4321 *et seq.*). In the Final RP/EA #2, the Louisiana TIG selects the following preferred project alternatives:

- Elmer's Island Access, as modified
- Island Road Piers
- Statewide Artificial Reefs
- Lake Charles Science Center and Educational Complex

The Louisiana TIG has examined the injuries assessed by the *Deepwater Horizon* Trustees and evaluated restoration alternatives to address the injuries. In the Final RP/EA #2, the Louisiana TIG presents to the public its plan for providing partial compensation for lost recreational use services in the Louisiana Restoration Area. The selected projects are intended to continue the process of restoring recreational use services lost as a result of the *Deepwater Horizon* oil spill. The total estimated cost of the selected projects is \$22 million. Additional restoration planning for the Louisiana Restoration Area will continue.

Administrative Record

The documents comprising the Administrative Record for the Final RP/EA #2 and FONSI can be viewed electronically at <http://www.doi.gov/deepwaterhorizon/administrativerecord>.

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA

regulations found at 15 CFR part 990, and NEPA (42 U.S.C. 4321 *et seq.*).

Dated: July 3, 2018.

Benita Best-Wong,

Acting Principal Deputy Assistant Administrator, Office of Water.

[FR Doc. 2018-15348 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9980-59—Region 8]

Proposed Administrative Settlement Agreement and Order on Consent, Black Swan Restoration Reach Good Samaritan Superfund Site, Boulder County, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the requirements of section 122 of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (“CERCLA”), notice is hereby given of the proposed administrative settlement under sections 104, 106, 107, and 122 of CERCLA, between the U.S. Environmental Protection Agency (“EPA”) and the Fourmile Watershed Coalition and Four Mile Fire Protection District (“Settling Party”). Pursuant to the terms of the proposed settlement, the Settling Party will conduct a Removal Action to abate an actual or threat of release of hazardous substances, pollutants or contaminants at the Black Swan Restoration Reach Good Samaritan Superfund Site located in Boulder County, Colorado. In exchange, the EPA will resolve any potential liability the Settling Party may have under CERCLA. The State of Colorado was consulted on this settlement regarding applicable state laws and regulations.

DATES: Comments must be submitted on or before August 20, 2018. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

ADDRESSES: The Agency’s response to any comments, the proposed agreement and additional background information relating to the agreement is available for

public inspection at the EPA Superfund Record Center, 1595 Wynkoop Denver, Colorado.

Comments and requests for a copy of the proposed agreement should be addressed to Maureen O’Reilly, Enforcement Specialist, Environmental Protection Agency—Region 8, Mail Code 8ENF-RC, 1595 Wynkoop Street, Denver, Colorado 80202-2466, and should reference the Black Swan Restoration Reach Good Samaritan Superfund Site, Central City, Gilpin County, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mark Chalfant, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency—Region 8, Mail Code 8ENF-L, 1595 Wynkoop Street, Denver, Colorado 80202-2466, (303) 312-6177.

Dated: June 29, 2018.

Deb Thomas,

Deputy Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 2018-15602 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2018-0220; FRL-9980-99-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Mobile Air Conditioner Retrofitting Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Mobile Air Conditioner Retrofitting Program (EPA ICR No. 1774.07, OMB Control No. 2060-0350) 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 July 31, 2018. Public comments were previously requested via the **Federal Register** on April 27, 2018 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 August 20, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2018-0220, online using www.regulations.gov (our preferred method), by email to a-and-r-docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, 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:

Christina Thompson, Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, MC 6205T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-0983; fax number: (202) 343-2362; email address: thompson.christina@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, EPA 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: EPA’s Significant New Alternatives Policy (SNAP) program implements Section 612 of the 1990 Clean Air Act (CAA) Amendments which authorized the Agency to establish regulatory requirements to ensure that ozone-depleting substances (ODS) are replaced by alternatives that reduce overall risks to human health and the environment, and to promote an expedited transition to safe substitutes. To promote this transition, the CAA specified that EPA establish an information clearinghouse of available alternatives, and coordinate with other federal agencies and the public on research, procurement practices, and information and technology transfers.

Regulations promulgated under SNAP require that Motor Vehicle Air

Conditioners (MVACs) retrofitted to use a SNAP substitute refrigerant include basic information on a label to be affixed to the air conditioner. The label includes the name of the substitute refrigerant, when and by whom the retrofit was performed, environmental and safety information about the substitute refrigerant, and other information. This information is needed so that subsequent technicians working on the MVAC system will be able to service the equipment properly, decreasing the likelihood of significant refrigerant cross-contamination and potential failure of air conditioning systems and recovery/recycling equipment.

Form numbers: None.

Respondents/affected entities: New and used car dealers, gas service stations, top and body repair shops, general automotive repair shops, automotive repair shops not elsewhere classified, including air conditioning and radiator specialty shops.

Respondent's obligation to respond: Mandatory under 40 CFR 82.180.

Estimated number of respondents: 13 (total).

Frequency of response: Once per retrofit of a motor vehicle air conditioner.

Total estimated burden: 1 hour (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$15 (per year), includes \$1 (per year) annualized capital or operation and maintenance costs.

Changes in estimates: There is a decrease of 8 hours in the total estimated respondent burden compared with the ICR currently approved by OMB (per year). This decrease is based on the decline of MVACs in service today using chlorofluorocarbons (CFCs), specifically CFC-12. After 1994, new cars in the U.S. were no longer manufactured with CFC-12 MVACs. The number of MVACs originally designed to use CFC-12 as well as the number of those retrofitted has been decreasing every year and EPA estimates a continued reduction in the number of CFC-12 MVAC retrofits will occur during the next three years. EPA estimates that in 2017 there were 18,000 MVACs originally designed to use CFC-12 operating in the U.S., and estimates that in 2018, 2019 and 2020 the number of cars originally designed to use CFC-12 will decrease to 8,200, 3,500 and 1,500, respectively. Of these, EPA estimates that approximately 0.1% will be retrofitted annually to use alternative refrigerants. Therefore, EPA estimates that in 2018, 2019 and 2020 the number of MVACs to be retrofitted are 8, 4 and

1, respectively; resulting in a total of 13 MVAC retrofits over the three years of this ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018-15522 Filed 7-19-18; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Application for a Foreign Organization to Acquire a U.S. Bank or Bank Holding Company (FR Y-3F; OMB No. 7100-0119).

DATES: The revisions are applicable as of July 31, 2018.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended,

revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report

Report title: Application for a Foreign Organization to Acquire a Bank Holding Company.

Agency form number: FR Y-3F.

OMB control number: 7100-0119.

Frequency: On occasion.

Respondents: Any company organized under the laws of a foreign country seeking to acquire a U.S. bank or bank holding company.

Estimated number of respondents: Initial application, 1; subsequent application, 5.

Estimated average hours per response: Initial application, 91 hours; subsequent application, 71 hours.

Estimated annual burden hours: 446 hours.

General description of collection: Under the Bank Holding Company Act (BHCA), submission of this application is required for any company organized under the laws of a foreign country seeking to acquire a U.S. bank or bank holding company. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would effect the convenience and needs of the community to be served. The Federal Reserve also uses the information to fulfill, in part, its supervisory responsibilities with respect to foreign banking organizations in the United States.

In addition to the application materials, an applicant also is required to publish a notice in a newspaper of general circulation in the community where the head office of the bank to be acquired is located. The notice must state the name and address of the applicant and its proposed subsidiary, and it must invite the public to submit written comments to the appropriate Federal Reserve Bank.

Legal authorization and confidentiality: This information collection is mandatory and authorized by sections 3(a), 3(c), and 5(b) of the BHCA (12 U.S.C.1842(a), (c) and 1844(b)). The information provided in the application is not confidential unless the applicant specifically requests confidentiality and the Board approves the request. Applicants may rely on any Freedom of Information Act (FOIA) exemption, but such requests for confidentiality must contain detailed justifications corresponding to the

claimed FOIA exemption. Requests for confidentiality will be evaluated on a case-by-case basis.

Effective date: July 31, 2018.

Current actions: On March 23, 2018, the Board published a notice in the **Federal Register** (83 FR 12762) requesting public comment for 60 days on the extension, with revision, of the FR Y–3F. The Board proposes to revise the FR Y–3F form and instructions in order to improve the clarity of the required information; obtain additional information necessary to evaluate the statutory factors; reflect the impact of new laws, regulations, capital requirements and accounting rules; and increase transparency regarding the information that is required to consider a proposal. The revisions are intended to reduce the need for subsequent information requests, which delay the Board's consideration of a filing and create additional burden for filers. The comment period for this notice expired on May 22, 2018. The Board did not receive any comments. Accordingly, the revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 17, 2018.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–15521 Filed 7–19–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 6, 2018.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Richard Franke, Bayview, Texas, and Dennis Franke, Brownsville, Texas,*

individually, to acquire voting shares of Laguna Madre Bancshares, Inc., and thereby indirectly acquire shares of First National Bank of South Padre Island, Texas. In addition, The McDaniel Nevada Irrevocable Trust, Fort Worth, Texas, Barbara McDaniel, Fort Worth, Texas, Trustee for The McDaniel Nevada Irrevocable Trust, the Estate of Melvin H. Chapman, South Padre Island, Texas, Stewart Chapman, Wichita Falls, Texas, Executor for the Estate of Melvin H. Chapman, Trevor Franke, Frisco, Texas, Denise Franke Yeary, Dallas, Texas, Richard Franke, Jr., John P. Franke, and Kevin C. Franke, all of Bayview, Texas; to retain shares and to join a group acting in concert to retain shares of Laguna Madre Bancshares, Inc.

Board of Governors of the Federal Reserve System, July 16, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–15472 Filed 7–19–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than August 15, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Bern Bancshares, Inc., Bern, Kansas;* to acquire 6.5 percent of the voting shares of UBT Bancshares, Inc., Marysville, Kansas, and thereby indirectly acquire United Bank & Trust, Marysville, Kansas.

Board of Governors of the Federal Reserve System, July 16, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–15471 Filed 7–19–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the International Applications and Prior Notifications under Subparts A and C of Regulation K (FR K–1; OMB No. 7100–0107). The revisions are applicable as of July 31, 2018.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC, 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved

collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report

Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K.

Agency form number: FR K-1.

OMB control number: 7100-0107.

Frequency: On occasion.

Respondents: Member banks, Edge and agreement corporations, bank holding companies (BHCs), and foreign organizations.

Estimated number of respondents: Attachments A and B, 5; Attachments C through G, 15; Attachments H and I, 12; Attachment J, 2; Attachment K, 1.

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours.

Estimated annual burden hours: 1,013 hours.

General description of collection: Subpart A of the Board's Regulation K governs the foreign investments and activities of member banks, Edge and agreement corporations, BHCs, and certain investments by foreign organizations. Subpart C of Regulation K governs investments in export trading companies. The FR K-1 information collection contains eleven attachments for the application and notification requirements embodied in Subparts A and C of Regulation K. The Board requires these applications for regulatory and supervisory purposes and to allow the Board to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956. The applications are event-generated and provide the Federal Reserve with information necessary to evaluate each of the proposed transactions.

Legal authorization and confidentiality: This information collection is mandatory and collected pursuant to sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 601-604(a), 611-631), and sections 4(c)(13),

4(c)(14), and 5(c) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13), 1843(c)(14), 1844(c)). The information submitted in the FR K-1 is considered to be public unless an institution requests confidential treatment for portions of the particular application or notification. Applicants may rely on any Freedom of Information Act (FOIA) exemption, but such requests for confidentiality must contain detailed justifications corresponding to the claimed FOIA exemption. Any requests for confidentiality will be evaluated on a case-by-case basis.

Effective date: July 31, 2018.

Current actions: On March 23, 2018, the Board published a notice in the **Federal Register** (83 FR 12761) requesting public comment for 60 days on the extension, with revision, of the FR K-1. The Board proposed to revise the FR K-1 form and instructions primarily to make minor changes for improved style, grammar, and clarity, and to align the general information, certification, and confidentiality sections with other similar forms.¹ In addition, a statement has been added indicating that the Board prefers that applicants/notificants electronically submit the application/notification and that a pre-filing option is available. No changes have been made to the information required in the various attachments to the FR K-1 form. The comment period for this notice expired on May 22, 2018. The Board did not receive any comments. Accordingly, the revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 17, 2018.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018-15518 Filed 7-19-18; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is

¹ Bank Holding Company Application and Notification Forms (FR Y-3, FR Y-3N, and FR Y-4; OMB No. 7100-0121), the International Applications and Prior Notifications Under Subpart B of Regulation K (FR K-2; OMB No. 7100-0284), and the Application for a Foreign Organization to Acquire a U.S. Bank or Bank Holding Company (FR Y-3F; OMB No. 7100-0119).

adopting a proposal to extend for three years, with revision, the International Applications and Prior Notifications Under Subpart B of Regulation K (FR K-2; OMB No. 7100-0284).

DATES: The revisions are applicable as of July 31, 2018.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shaguftha Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report

Report title: International Applications and Prior Notifications Under Subpart B of Regulation K.

Agency form number: FR K-2.

OMB control number: 7100-0284.

Frequency: On occasion.

Respondents: Foreign banks.

Estimated number of respondents: 14.

Estimated average hours per response: 36 hours.

Estimated annual burden hours: 504 hours.

General description of collection: Foreign banks are required to obtain the

prior approval of the Federal Reserve to establish a branch, agency, or representative office in the United States; to acquire ownership or control of a commercial lending company in the United States; or to change the status of any existing office in the United States. The FR K-2 information collection contains five attachments for the application and notification requirements embodied in subpart B of Regulation K. The Federal Reserve uses the information to fulfill its statutory obligations under the International Banking Act.

The applicant also is required to publish a notice in a newspaper of general circulation in the community where the office is proposed to be located. The notice must state the name and address of the applicant/notificant and the proposed office, and it must invite the public to submit written comments to the appropriate Reserve Bank.

Legal authorization and confidentiality: This information collection is mandatory and collected pursuant to sections 7, 10, and 13 of the International Banking Act (12 U.S.C. 3105, 3107, and 3108). The information collected on the FR K-2 is normally subject to public disclosure under the Freedom of Information Act (FOIA). The applying or notifying organization may request that portions of the information contained in the FR K-2 be afforded confidential treatment. To do so, applicants must demonstrate how the information for which confidentiality is requested would fall within the scope of one or more of the exemptions contained in the FOIA. Any such request would be evaluated on a case-by-case basis.

Effective date: July 31, 2018.

Current actions: On March 23, 2018, the Board published a notice in the **Federal Register** (83 FR 12760) requesting public comment for 60 days on the extension, with revision, of the FR K-2. The Board proposed to revise the FR K-2 form and instructions in order to: Improve the clarity of the requests; reflect the impact of new laws, regulations, capital requirements, and accounting rules; make minor changes for improved style, grammar and clarity; and harmonize the general information, certification, and confidentiality sections with other similar forms. The revisions are intended to make initial filings more reflective of the proposed transaction and thereby reduce the need for subsequent information requests, which delay the Federal Reserve's consideration of a filing and create additional burden for filers. The comment period for this notice expired

on May 22, 2018. The Board did not receive any comments. Accordingly, the revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 17, 2018.

Michele Taylor Fennell,
Assistant Secretary of the Board.

[FR Doc. 2018-15519 Filed 7-19-18; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Bank Holding Company Application and Notification Forms (OMB No. 7100-0121): The Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-3), the Notification for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-3N), and the Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y-4).

DATES: The revisions are applicable as of July 31, 2018.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to

collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report

Report title: Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; Notification for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.

Agency form number: FR Y-3, FR Y-3N, and FR Y-4.

OMB control number: 7100-0121.

Frequency: Event-generated.

Respondents: Corporations seeking to become bank holding companies (BHCs) and existing BHCs.

Estimated average hours per response: FR Y-3, Section 3(a)(1): 50 hours; FR Y-3, Section 3(a)(3) and 3(a)(5): 60.5 hours; FR Y-3N, Sections 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours; FR Y-4, complete notification: 12 hours; FR Y-4, expedited notification: 5 hours; and FR Y-4, post-consummation: 0.5 hours.

Estimated number of respondents: FR Y-3, Section 3(a)(1): 81; FR Y-3, Section 3(a)(3) and 3(a)(5): 136; FR Y-3N, Sections 3(a)(1), 3(a)(3), and 3(a)(5): 26; FR Y-4, complete notification: 30; FR Y-4, expedited notification: 11; and FR Y-4, post-consummation: 1.

Estimated annual burden hours: 12,824 hours.

General description of report: The Federal Reserve requires the submission of these filings for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956 (the BHC Act). These filings collect information on proposals by BHCs involving

formations, acquisitions, mergers, and nonbanking activities. The Federal Reserve uses this information to evaluate each individual transaction with respect to financial and managerial factors, permissibility, competitive effects, net public benefits, financial stability, and the impact on the convenience and needs of affected communities.

The applicant or notificant also is required to publish a notice in a newspaper of general circulation in the community where the head office of the bank to be acquired is located. The notice must state the name and address of the applicant and its proposed subsidiary, and it must invite the public to submit written comments to the appropriate Federal Reserve Bank.

Legal authorization and confidentiality: The FR Y-3 application and FR Y-3N notification are mandatory and submitted pursuant to section 3(a) of the BHC Act, which requires Board approval for formations, acquisitions, and mergers of bank holding companies (12 U.S.C. 1842(a)), and section 5(b) of the BHC Act, which authorizes the Board to issue regulations and orders to carry out these functions (12 U.S.C. 1844(b)). The FR Y-4 notification is mandatory and submitted pursuant to section 4(j) of the BHC Act, which requires BHCs to give advance written notice to the Board of any nonbanking activities (12 U.S.C. 1843(j)), and section 5(b) of the BHC Act (12 U.S.C. 1844(b)), described above.

The information submitted in the FR Y-3, Y-3N, and Y-4 is considered to be public unless an institution requests confidential treatment for portions of the particular application or notification. Applicants may rely on any Freedom of Information Act exemption, and such requests for confidentiality must contain detailed justifications corresponding to the claimed exemption. Requests for confidentiality will be evaluated on a case-by-case basis.

Effective date: July 31, 2018.

Current actions: On March 23, 2018, the Board published a notice in the **Federal Register** (83 FR 12758) requesting public comment for 60 days on the extension, with revision, of the FR Y-3, FR Y-3N, and FR Y-4. The Board proposes to revise the FR Y-3, FR Y-3N, and FR Y-4 forms and instructions in order to improve the clarity of the requests; reflect the impact of new laws, regulations, capital requirements and accounting rules; delete items that are not typically useful for the analysis of the proposal; and add transparency for filers regarding the information that is required to consider

a proposal. The revisions are intended to make initial filings better reflect and include the information that Board staff requires to evaluate a transaction and thereby reduce the need for subsequent information requests, which may delay the Board's consideration of a filing and create additional burden for filers. The comment period for this notice expired on May 22, 2018. The Board did not receive any comments. Accordingly, the revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, July 17, 2018.

Michele Taylor Fennell,
Assistant Secretary of the Board.

[FR Doc. 2018-15520 Filed 7-19-18; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0188; Docket No. 2018-0003; Sequence No. 1]

Submission for OMB Review; Combating Trafficking in Persons

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget a request and an extension of existing OMB Clearances concerning combating trafficking in persons.

DATES: Submit comments on or before August 20, 2018.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- **Regulations.gov:** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000-0188. Select the link "Comment Now" that corresponds with "Information Collection 9000-0188, Combating Trafficking in Persons."

Follow the instructions provided on the screen. Please include your name, company name (if any), and "Information Collection 9000-0188, Combating Trafficking in Persons," on your attached document.

- **Mail:** General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000-0188, Combating Trafficking in Persons.

Instructions: Please submit comments only and cite Information Collection 9000-0188, Combating Trafficking in Persons, in all correspondence related to this collection. Comments received generally will be posted without change to regulations.gov, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check regulations.gov, approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Acquisition Policy Division, via telephone 202-219-0202, or via email cecilia.davis@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

This is a requirement for a revision and renewal of OMB control number 9000-0188, Combating Trafficking in Persons.

Executive Order (E.O.) 13627, entitled Strengthening Protections Against Trafficking in Persons in Federal Contracts, dated September 25, 2012 (77 FR 60029, October 2, 2012) and Title XVII of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) strengthen the long standing zero-tolerance policy of the United States regarding Government employees and contractor personnel engaging in any form of trafficking in persons.

Contractors are required to inform the contracting officer and the agency Inspector General of any credible information it receives from any source that alleges a contractor employee, subcontractor, or subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of the clause 52.222-50. This requirement flows down to all subcontractors.

Additional protections are required where the estimated value of the supplies (other than commercially available off-the-shelf (COTS) items) to be acquired outside the United States or

the services to be performed, outside the United States has an estimated value that exceeds \$500,000. These protections include the following: (a) The contractor is required to implement and maintain a compliance plan during the performance of the contract that includes an awareness program, a process for employees to report activity inconsistent with the zero-tolerance policy, a recruitment and wage plan, a housing plan, and procedures to prevent subcontractors from engaging in trafficking in persons; and (b) The contractor is required to submit a certification to the contracting officer prior to receiving an award, and annually thereafter, asserting that it has the required compliance plan in place and that there have been no abuses, or that appropriate actions have been taken if abuses have been found. The compliance plan must be provided to the contracting officer upon request, and relevant portions of it must be posted at the workplace and on the contractor's website. Additionally, contractors are required to flow these requirements down to any subcontracts where the estimated value of the supplies acquired or the services required to be performed outside the United States exceeds \$500,000.

B. Annual Reporting Burden

Title, Associated Form, and OMB Number: Ending Trafficking in Persons, FAR 22.1705 and FAR 52.222–50 and 52.222–56; OMB Control Number 9000–0188.

Adjustment: This information collection is revised to include appropriate burden hours for reporting that was initially published in FAR Case 2013–001 (78 FR 59317 and 80 FR 4967) for FAR clause 52.222–50, Combating Trafficking in Persons, and provision 52.222–56, Certification Regarding Trafficking in Persons Compliance Plan. The full burden associated with this FAR Case was inadvertently omitted in the Paperwork Reduction Act notice published on August 20, 2014 (78 FR 59317). The following represents current burdens associated with the FAR clause and provision that were published in the proposed and final rules.

Affected Public: Businesses and other for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision of a currently approved collection.

Reporting Frequency: On occasion.

Respondents: 5,909.

Responses per Respondent: 3.

Annual Responses: 17,727.

Hours per Response: 12.

Total Burden Hours: 212,724.

C. Public Comment

A notice was published in the **Federal Register** at 83 FR 12950, on March 26, 2018. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0188, Combating Trafficking in Persons, in all correspondence.

Dated: July 17, 2018.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–15523 Filed 7–19–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2017–0059]

Notice of Availability of Final Environmental Impact Statement; Site Acquisition and Campus Consolidation for the Centers for Disease Control and Prevention/National Institute for Occupational Safety and Health (CDC/NIOSH), Cincinnati, Ohio

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS), in cooperation with the U.S. General Services Administration (GSA), announces the availability of the Final Environmental Impact Statement (EIS) for the proposed acquisition of a site in Cincinnati, Ohio, and the development of this site into a new, consolidated CDC/National Institute for Occupational Safety and Health (NIOSH) campus (Proposed Action). The site being considered for acquisition and development is bounded by Martin Luther King Drive East to the south, Harvey Avenue to the west, Ridgeway Avenue to the north, and Reading Road to the east.

The Final EIS and this notice are published pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA) as implemented by

the Council on Environmental Quality (CEQ) Regulations.

DATES: CDC will issue a final decision on the proposed action after August 20, 2018.

ADDRESSES: Copies of the Final EIS can be obtained at:

- *Federal eRulemaking Portal:* <http://www.regulations.gov> (reference Docket No. CDC–2017–0059).

- *By Written Request (Electronic Copies Only) to:* cdc-cincinnati-eis@cdc.gov or Harry Marsh, Architect, Office of Safety, Security and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–K80, Atlanta, Georgia 30329–4027.

All U.S. Mail communications must include the agency name and Docket Number.

FOR FURTHER INFORMATION CONTACT:

Harry Marsh, Architect, Office of Safety, Security and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–K80, Atlanta, Georgia 30329–4027, phone: (770) 488–8170, or email: cdc-cincinnati-eis@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background: CDC is dedicated to protecting health and promoting quality of life through the prevention and control of disease, injury, and disability. NIOSH, one of CDC's Centers, Institutes, and Offices, was established by the Occupational Safety and Health Act of 1970. NIOSH plans, directs, and coordinates a national program to develop and establish recommended occupational safety and health standards; conduct research and training; provide technical assistance; and perform related activities to assure safe and healthful working conditions for every working person in the United States.

Currently, three NIOSH research facilities—the Robert A. Taft Campus, Taft North Campus, and the Alice Hamilton Laboratory Campus—are located in Cincinnati, Ohio. These facilities no longer meet the research needs required to support occupational safety and health in the modern workplace. The facilities' deficiencies adversely affect NIOSH's ability to conduct occupational safety and health research in Cincinnati. It is not possible to renovate the facilities located on the three campuses to meet current standards and requirements. Additionally, the current distribution of NIOSH activities across separate campuses in Cincinnati results in inefficiencies in scientific collaboration and the duplication of operational support activities. Therefore, CDC is

proposing to relocate and consolidate its Cincinnati-based functions and personnel (approximately 550 employees) currently housed at the three existing campuses to a new, consolidated campus in Cincinnati.

Potential locations for the proposed new campus were identified through a comprehensive site selection process conducted by GSA on behalf of CDC. In June 2016, GSA issued a Request for Expressions of Interest (REOI) seeking potential sites capable of accommodating the proposed new campus. In response to the REOI, GSA received seven expressions of interest. Following an assessment of each site, GSA found that only one site qualified for further consideration (The Site). The Site encompasses all land between Martin Luther King Drive East to the south, Harvey Avenue to the west, Ridgeway Avenue to the north, and Reading Road to the east in Cincinnati, Ohio.

Under NEPA, as implemented by CEQ Regulations (40 CFR parts 1500–1508), Federal agencies are required to evaluate the environmental effects of their proposed actions and a range of reasonable alternatives to the proposed action before making a decision. On February 9, 2018, in accordance with NEPA, CDC published a Notice of Availability announcing that a Draft EIS for the proposed acquisition and campus consolidation had been prepared (83 FR 5774). The Draft EIS evaluated the potential impacts of two alternatives: The Proposed Action Alternative (acquisition of the Site and construction of a new, consolidated CDC/NIOSH campus) and the No Action Alternative (continued use of the existing campuses for the foreseeable future). Impacts on the following resources were considered: Land use, zoning, and plans; community facilities; socioeconomic and environmental justice; utilities and infrastructure; visual quality; cultural resources; transportation; geology, topography, and soils; air quality; noise; and hazardous substances.

Publication of the Draft EIS notice initiated a 45-day review period, which ended on March 26, 2018. During this period, CDC received comments from government agencies, a Native American tribe, and the public. These comments pertained to the proposed action in general; the accessibility of the proposed campus site for bicyclists; historic buildings; traffic and air quality impacts; sustainability; and the potential displacement of neighborhood residents.

All comments were considered when preparing the Final EIS and responses to

the comments are provided in the Final EIS. No comment required substantive revisions to the analyses presented in the Draft EIS or to the alternatives considered. The Final EIS identifies the Proposed Action Alternative as CDC's Preferred Alternative.

CDC will make a decision on whether to proceed with the proposed action after August 20, 2018. At that time, CDC will issue a Record of Decision documenting and explaining its decision based on the Final EIS.

Questions on the Final EIS and the proposed action may be directed to: Harry Marsh, Architect, Office of Safety, Security and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-K80, Atlanta, Georgia 30329-4027, phone: (770) 488-8170, or email: cdc-cincinnati-eis@cdc.gov.

Dated: July 16, 2018.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2018-15410 Filed 7-19-18; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-18-0307]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request Gonococcal Isolate Surveillance Project to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on February 5, 2018 to obtain comments from the public and affected agencies. The CDC received 2 non-substantive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to omb@cdc.gov. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Gonococcal Isolate Surveillance Project (0920-0307) (Exp. Date 02/28/2019)—Revision—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Gonococcal Isolate Surveillance Project (GISP) was created in 1986 to monitor trends in antimicrobial susceptibilities of *Neisseria gonorrhoeae* strains in the United States. GISP continues to be a collaboration between different branches of the CDC Division of STD Prevention within the National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), selected regional laboratories and selected state/local public health departments and their associated STD specialty care clinics in the U.S. National organizations, local jurisdictions and individuals use data collected in GISP to understand and prevent antibiotic resistance in *N. gonorrhoeae*. Data from GISP are used to establish a scientific basis for the selection of gonococcal therapies and to allow pro-active changes to treatment guidelines before widespread resistance and failures of treatment occur. To increase capacity to detect and monitor resistant gonorrhea and to improve the specificity of GISP, this revision is being

submitted to include collection of additional isolates and data elements.

In the current approval period, GISP isolates are only collected from males and include <4% of reported male gonorrhea cases in the United States. This relatively limited scope likely limits the speed with which new resistance patterns are found and with which public health officials can respond. Published data suggest that resistance in *N. gonorrhoeae* might develop initially in non-genital anatomic sites, such as the pharynx. It has also been hypothesized that susceptibility patterns may be different among women. Upon receiving OMB approval of the revision request, CDC plans to begin including isolates from the pharynx and other anatomic sites, as well as from women. These changes are expected to support public health efforts to detect and respond to resistance more quickly.

GISP surveillance can also be strengthened by ensuring that GISP surveillance is only being conducted on *N. gonorrhoeae* and not on other similar bacteria. *Neisseria meningitidis* can cause clinical syndromes that are indistinguishable from gonorrhea. Using nucleic acid amplification tests (a more specific diagnostic test) in conjunction with bacterial culture from all anatomic sites can ensure that non-gonococcal bacteria are excluded from GISP data. This is expected to strengthen the accuracy and usefulness of GISP data.

Historically, healthcare providers at approximately 30 participating sentinel sites (i.e., STD clinic or multiple STD clinics affiliated with a single public health department) obtain urethral *N. gonorrhoeae* isolates from the first 25 men with urethral gonorrhea each month with occasional month-to-month variability. With this revision, we are now asking for a subset of sentinel sites (10 out of 30 sites) to conduct enhanced surveillance activities, collecting additional isolates (including from the pharynx, rectum, and cervix of exposed persons) with a limited number of additional data elements. We anticipate

that approximately 50 additional isolates per month will be collected by each of these 10 sites (total of approximately 70 isolates per month per enhanced surveillance site). All isolates will be shipped each month to a regional laboratory for antimicrobial susceptibility testing. When isolates that appear to be bacteria other than *N. gonorrhoeae* are identified at one of the ten sentinel sites conducting enhanced surveillance, the isolate will be shipped to the regional laboratory and then to CDC. Based on informal discussions with current GISP sentinel sites, we anticipate that approximately 10 such isolates will be identified at each site per year. Sentinel sites that are not part of this small subset will continue to function as they already are.

Under this revision, the data collection and reporting processes have been streamlined to minimize burden. All demographic/clinical data from the sentinel sites, and antimicrobial susceptibility testing results from the regional laboratories, will be submitted electronically (1) directly from the sentinel site to the GISP data manager at CDC through a secure data portal, (2) through a secure GISP-web based application, or (3) through the CDC Secure Access Management Services partner portal. To minimize burden, comma-separated values (csv) files that provide standardized structure of the electronic data are provided to sentinel sites and laboratories. Additionally, to further minimize burden, the regional laboratories will be able to extract electronic data from electronic laboratory information systems instead of hand entering data and will no longer be required to report control strain testing results.

This project will not collect name, social security number, or date of birth. A Patient ID, a unique patient identifier assigned by the site that allows for linking of multiple isolates from a single person at a single clinic visit and across multiple clinic visits, is requested and will be provided to CDC for purposes of enhanced surveillance. Sensitive

information such as sex of sex partners, HIV status, sex work exposure, and injection drug use are collected. Patient data are obtained through review of medical records by the clinic staff and included in collection reporting of demographic/clinical information. All personally identifiable information (PII) is retained by the STD clinics that treated the patient and is not recorded with data sent to CDC or regional laboratories. At sites where enhanced surveillance will not occur isolates are collected from patients as part of their routine care when a gonorrhea infection is suspected. The electronic GISP database is stored on the CDC mainframe computer and only approved Division of STD Prevention (DSTD) staff have access rights to the data. As part of the revision, we will continue to systematically identify the risks and potential effects of collecting, maintaining, and disseminating PII and to examine and evaluate alternative processes for handling that information to mitigate potential privacy risks and risks to confidentiality.

The CDC has designated *N. gonorrhoeae* as one of three “urgent” antibiotic resistance threats in the United States. The CDC is requesting a three-year OMB approval for this revision, which directly responds to the National Strategy for Combating Antibiotic Resistant Bacteria by improving and strengthening surveillance of antimicrobial resistance through GISP. This GISP data can help monitor and evaluate the effectiveness of public health interventions conducted to support the National Strategy for Combating Antibiotic-Resistant Bacteria. Sentinel sites and regional laboratories voluntarily apply to participate in the GISP cooperative agreement program. Once funded, participation in the GISP information collection and isolate processing plan is required. The total estimated annualized burden hours are 11,376. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Sentinel site conducting core surveillance	Demographic/Clinical Data	20	240	11/60
Sentinel site conducting enhanced surveillance.	Demographic/Clinical Data	10	840	12/60
Regional laboratory	Antimicrobial Susceptibility Testing Results ..	4	3,300	40/60
Regional laboratory	Control Strain Susceptibility Testing	4	48	5/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–15525 Filed 7–19–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–18AMQ; Docket No. CDC–2018–0061]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Assessing impact of the NIOSH research*. The goal of the generic information collection request is to improve the ability of NIOSH to assess and demonstrate the extent to which its various research efforts are likely to or have led to improvements in workplace safety and health.

DATES: CDC must receive written comments on or before September 18, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0061 by any of the following methods:

- **Federal eRulemaking Portal:** *Regulations.gov*. Follow the instructions for submitting comments.

- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal

(*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. 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.
5. Assess information collection costs.

Proposed Project

Assessing impact of the NIOSH research—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health

(NIOSH) is responsible for conducting research and making recommendations to prevent worker injury and illness, as authorized in Section 20(a)(1) of the Occupational Safety and Health Act (29 U.S.C. 669). NIOSH is strongly committed to program evaluation as a way to maximize its contributions to improved occupational safety and health. NIOSH is requesting a new generic information collection request for a three-year period that will support the timely information collection needed for upcoming program evaluation activities, such as external reviews of NIOSH research programs (which fulfill a Government Performance and Results Act (GPRA) requirement, studies to understand the economic value of NIOSH research, process evaluations of NIOSH programs, and evaluations of large research projects. NIOSH needs to collect information about research dissemination and achieved outcomes from key audiences (grantees, potential NIOSH research users and relevant safety and health experts) for accountability and program improvement purposes. NIOSH is specifically interested in assessing intermediate outcomes—the use of NIOSH research products and findings by external stakeholders and partners to improve safety and health—as evidence of research impact. Being able to collect information on intermediate outcomes from grantees, as well as past, present and potential future users of NIOSH research would allow us to provide more robust evidence of use or adoption of NIOSH research products or findings.

The evaluation findings and recommendations from the various program evaluation activities described above will be used as an input for future direction of the programs and incorporated into analyses and reports to either investigate the value of NIOSH's research, or improve program operations to maximize impact. Data will be collected through semi-structured key informant interviews with grantees, potential or known users of NIOSH research and subject matter experts in safety and health. NIOSH estimates that 30 respondents will be involved in phone interviews, which would last between 30–60 minutes. However, participants might be burdened an additional hour reading the invitation email and providing relevant documents such as evidence of research impact. Therefore, the estimated burden for each participant is two hours. The total estimated burden is 60 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Natural science managers	Semi-Structured Interview Guide (Subject Matter Experts).	10	1	2	20
Postsecondary Teachers	Semi-Structured Interview Guide (Grantees).	12	1	2	24
Industrial production managers	Semi-Structured Interview Guide (Research users).	8	1	2	16
Total .....	.....	.....	.....	.....	60

Jeffrey M. Zirger,
Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018-15527 Filed 7-19-18; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-18-18ANU; Docket No. CDC-2018-0058]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Communities Organized to Prevent Arboviruses: Assessment of Knowledge, Attitudes, and Vector Control Practices and Seroprevalence and Incidence of Arboviral Infection in Ponce, Puerto Rico (COPA Study). The purpose of this study is to establish longitudinal follow-up of a community cohort and evaluate the impact of vector control interventions in 14 communities in southern Puerto Rico.

DATES: CDC must receive written comments on or before September 18, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2018-0058 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;

2. 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;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. 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.

5. Assess information collection costs.

Proposed Project

Communities Organized To Prevent Arboviruses: Assessment of Knowledge, Attitudes, and Vector Control Practices and Seroprevalence and Incidence of Arboviral Infection in Ponce, Puerto Rico (COPA Study)—NEW—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Recent years have seen the emergence of two epidemic arthropod-borne viruses (arboviruses) that are transmitted by *Aedes aegypti* mosquitoes. Chikungunya virus was introduced into the Caribbean in late 2013, and caused large epidemics of fever with severe joint pain throughout the Caribbean and Americas in 2014. Zika virus was first detected in the Americas in Brazil in 2014, spread throughout the Americas, has since been associated with devastating birth defects, Guillain-Barre syndrome, and is the first arbovirus that can also be

transmitted through sexual contact. In addition, the four viruses that cause dengue were introduced to the Americas over the past several hundred years and have since become endemic, and yellow fever virus has recently caused large outbreaks in Brazil and there is risk of importation to other counties in the Americas.

In all of these cases, the public health response to the spread of these arboviruses throughout the tropics, where their mosquito vectors thrive, has been hampered by a lack of sustainable and effective interventions to prevent infection with any of these arboviruses at the community level. Additionally, the rapid speed with which new arboviruses spread does not often provide the time needed to plan and implement community-level interventions to decrease disease transmission. Although several candidate vaccines for chikungunya and Zika are currently in clinical development, none are yet available. A dengue vaccine has been licensed in several countries, but initial analyses have suggested that decades will be needed before it results in reduction in transmission of dengue virus. In recent years, community based strategies for vector control have been studied and implemented in different countries as an alternative to vertical strategies (e.g. insecticide spraying delivered by government agencies). A new intervention has recently been demonstrated to reduce the rates of infection with common tropical arboviruses transmitted by *Ae. aegypti* mosquitos (i.e., dengue, chikungunya, and Zika viruses). The Camino Verde approach utilizes community mobilization to motivate clean-up campaigns to reduce rates of dengue virus infections in Nicaragua and Mexico. However, the intervention occurred in small communities, and has not been evaluated in an urban setting. There is therefore, a need to determine the effectiveness of such types of interventions in relatively large, urban communities.

Research suggests that vector control programs that have substantial community participation can have significant and lasting impacts on vector

density, and are more cost-effective than vertically structured programs. In addition, these types of programs have been reported to readily integrate with other health or development programs, promote an enduring sense of pride in the home and community, and make use of politically viable vector control strategies.

The purpose of this study is to establish longitudinal follow-up of a community cohort and evaluate the impact of vector control interventions in 14 communities in southern Puerto Rico. The study investigators have prior experience working in these communities; however, there is minimal available information regarding the prevalence or incidence of infection with tropical arboviruses, density of *Ae. aegypti* mosquitos, or community members' knowledge, attitudes, and practices regarding behaviors intended to avoid mosquitos. Such information will be needed to inform decision-making regarding the location, design, and content of interventions to be implemented and evaluated to reduce the burden of these pathogens.

The questionnaire section will vary depending on age and day of birth of each participant. A questionnaire with general household questions will be administered to one household representative in each home with one or more participants. This representative should be 21 years or older or an emancipated minor. If all eligible household members are unemancipated minors, a household member over the age of 50 may act as household representative and complete this section of the survey only. A questionnaire on socio-demographic information will be administered to all participants. The assessment of knowledge, attitudes, and practices questionnaire will be administered to all participants seven years and older with questions adapted for ages: 7–11 (younger child), 12–13 (older child), 14–50 (adult). A vector control tools questionnaire will be administered to all participants 21 years or older born on an odd numbered day of the month. The questionnaire will be administered after written consent and verbal assent (when appropriate) from those present in the household at the

time of the visit. The knowledge, attitudes, and practices questionnaire will be focused on vector control, healthcare-seeking behavior, and disease occurrence. We will collect demographic information (e.g., age, sex, duration of time residing in Puerto Rico), travel history, and information on recent illnesses from all participants via household (and individual) questionnaires. Parents or guardians will serve as proxy respondents for children aged <7 years. The questionnaires will be administered after written consent and verbal assent (when appropriate) from those present in the household at the time of the visit. GPS coordinates will also be collected for each household visited to later assess for potential clustering of arboviral infections within communities. We will ask participants if they have been ill with arbovirus-like illness (i.e., fever, rash, joint pain, and conjunctivitis) in the past year. If so, we will collect details on the symptoms experienced during their illness. The questionnaires will be administered to all randomly selected residents of the 14 communities in Ponce. At the time of the questionnaire administration, ~15 mL of blood will be collected to conduct serological testing of arboviruses for a sero-survey. The sero-survey and socio-demographic questionnaire will be repeated every 12 months after the initial assessment, up to a period of five years. OMB clearance will be extended after three years. This project will allow the evaluation of a community based approach for vector control strategies in Ponce, Puerto Rico. The information obtained will inform decision making regarding the location, design, and content of future interventions to be implemented and evaluated to reduce the burden of arboviral disease in Puerto Rico. Incidence and prevalence of arboviral disease will be estimated to guide control programs development and fill the current knowledge gaps.

There is no burden on respondents other than the time needed to participate. Estimated annual burden is 2,416 hours. Authorizing legislation comes from Section 301 of the Public Health Service Act.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Ponce residents	Household representative questionnaire	2,506	1	10/60	418
	Socio-demographic questionnaire	2,996	1	15/60	749
	Knowledge, attitudes, and practices individual questionnaire.	2,996	1	15/60	749

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
	Vector control tools questionnaire	600	1	25/60	250
	Specimen collection	2,996	1	5/60	250
Total .....	.....	.....	.....	.....	2,416

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–15529 Filed 7–19–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–18TH]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Assessment of a Preventive Service Program in the Context of a Zika Virus Outbreak in Puerto Rico” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on March 30, 2018 to obtain comments from the public and affected agencies. CDC received one non-substantive comment to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

- (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

- including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected;
- (d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and
- (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to omb@cdc.gov. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessment of a Preventive Service Program in the Context of a Zika Virus Outbreak in Puerto Rico—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Puerto Rico has reported the highest number of Zika virus infections in the United States, including infections in pregnant women. Zika virus infection during pregnancy has been identified as a cause of microcephaly and other severe brain abnormalities, and has been linked to other problems such as miscarriage, stillbirth, defects of the eye, hearing deficits, limb abnormalities, and impaired growth. One strategy to prevent these devastating outcomes is to

prevent unintended pregnancy among women at risk of Zika virus infection. To this end, an initiative was launched in April 2016 to train physicians at clinics across Puerto Rico to provide patient-centered services to women who chose to delay or avoid pregnancy during the Zika virus outbreak.

As part of the public health response to the Zika virus outbreak, CDC seeks to assess approaches to mitigating the effects of Zika virus infection and determine which approaches have utility. Previous assessment of the prevention program indicated high satisfaction of patients with program services. The specific objectives of this data collection are to assess (1) prevention strategy adherence among patients at approximately 18 months after receipt of program services; and (2) prevention strategy adherence, patient satisfaction, and unmet need for services among participants at approximately 30 months after receipt of program services. The practical utility of the information to be collected as part of this project is to assess services delivered to women in Puerto Rico, monitor outcomes of interest, and determine potential for replication/adaptation in other jurisdictions similarly affected by the Zika virus or during other emergency responses. For the information collection, CDC plans to conduct online surveys with 1,920 patients approximately 18 months after receiving program services and 1,760 patients approximately 30 months after receiving program services. The number of patients surveyed is based on an initial sample of 3,200 patients invited to participate, anticipating a 60% response rate at 18 months and a 55% response rate at 30 months.

Participation in all data collection activities will be completely voluntary. OMB approval is requested for two years. Total Annualized Burden Hours are estimated to be 259, and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Patients aged 18 years or older	Online surveys (18-month follow-up)	960	1	7/60
Patients aged 18 years or older who completed 18 mo survey.	Online surveys (30-month follow-up)	660	1	10/60
Patients aged 18 years or older who did not complete 18 mo survey.	Online surveys (30-month follow-up)	220	1	10/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–15524 Filed 7–19–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–1091]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Using Qualitative Methods to Understand Issues in HIV Prevention, Care and Treatment in the United States” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on March 13, 2018 to obtain comments from the public and affected agencies. CDC received four comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to omb@cdc.gov. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Using Qualitative Methods to Understand Issues in HIV Prevention, Care and Treatment in the United States (OMB No. 0920–1091; expires December 31, 2018)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC’s National Center on HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Division of HIV/AIDS Prevention (DHAP) seeks a three year extension for an existing Generic information collection request (Generic ICR) entitled, “Using Qualitative Methods to Understand Issues in HIV Prevention, Care and Treatment in the United States” (OMB Number: 0920–1091). Specific studies conducted under this extended Generic ICR will be consistent with the national HIV prevention goals, the CDC Division of HIV/AIDS Prevention (DHAP) Strategic Plan, and DHAP’s High-impact HIV Prevention approach.

The purposes for each data collection study supported under this extended Generic ICR will be to understand specific barriers and facilitators to local HIV prevention, care and treatment in the United States and territories. For example, each study will seek to identify ways to improve programmatic activities along the continuum of HIV prevention, treatment and care for different populations residing in different geographic settings with greatest burden of HIV.

The target populations for studies included in this extended Generic ICR include, but are not limited to: Persons living with HIV who are in treatment; persons living with HIV who are out of treatment and who may or may not be seeking treatment at healthcare facilities; persons at high risk for HIV acquisition (HIV negative) and HIV transmission (HIV positive); persons from groups at high risk for HIV including gay, bisexual and other MSM, transgender persons, and injection and non-injection drug users; persons from racial and ethnic minorities; and healthcare providers or other professionals who provide HIV prevention, care and treatment services. Other populations may include individuals who provide non-HIV services or otherwise interact with persons living with HIV or persons at risk for HIV acquisition.

Studies will only provide local contextual information about the barriers and facilitators to HIV prevention, care, and treatment experienced by specific communities at risk for acquiring HIV infection, by HIV-positive persons across the HIV care continuum, and by organizations or individuals providing HIV prevention, care, treatment, and related support services.

Data collection methods used in any of the specific studies primarily will consist of rapid qualitative assessment methodologies, such as semi-structured and in-depth qualitative interviews, focus groups; direct observations; document reviews; and short structured surveys. Data will be analyzed using

well-established qualitative analysis methods, such as coding interviews for themes about barriers and successes to HIV prevention, care, and treatment. Structured response surveys will be analyzed using descriptive statistics and other appropriate statistical methods.

CDC will use the results from each specific data collection study to help to identify ways to improve local programmatic activities for specific communities along the continuum of HIV prevention, treatment and care for populations and areas with the greatest HIV burden. CDC will communicate study outcomes to local stakeholders and organizations in positions to consider and implement site-specific improvements in HIV prevention, care, and treatment for each of the study sites examined. For stakeholders,

organizations, or agencies outside the local affected communities, all communications will include clear discussion of the limitations of the region-specific, qualitative methods and the non-generalizability of the study outcomes.

For a given year, each separate data collection will range from 30 (minimum) to 200 (maximum) respondents based on the nature and scope of the research purposes. For example, if there are three data collections, the maximum combined number of expected respondents is 600. In a given year, CDC anticipates that the need to screen 1600 persons to identify 800 eligible persons, of which 600 persons will agree to participate.

CDC anticipates that screener forms will take five minutes to complete each, contact information forms will take one

minute to complete each, and consent forms will take five minutes to complete each. CDC anticipates 50% of the targeted populations screened will be eligible for the study. Of eligible persons, 75% will agree to participate.

Brief structured surveys will take 15 minutes to complete. In-depth interviews or focus groups with respondents are expected to take 60 minutes (one hour) to complete. In-depth interviews or focus groups with healthcare providers are expected to take 45 minutes to complete.

The total annual response burden based on an average of 600 study respondents per year (assuming three large data collections involving 200 participants each) is estimated at 918 hours. There is no cost to respondents other than their time.

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public—Adults	Study Screener	1600	1	5/60
General Public—Adults	Contact Information Form	600	1	1/60
General Public—Adults	Consent Form	600	1	5/60
General Public—Adults	Demographic Survey	500	1	15/60
General Public—Adults	Interview Guide	500	1	1
General Public—Adults	Provider Demographic Survey	100	1	15/60
General Public—Adults	Provider Interview Guide	100	1	45/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018-15526 Filed 7-19-18; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-2018-18APJ; Docket No. CDC-2018-0062]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on

a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled “Surveillance of Nonfatal Injuries Among On-Duty Law Enforcement Officers.” The purpose of this project is to collect follow-back telephone interview data from injured and exposed law enforcement officers treated in emergency departments (EDs) and produce a descriptive summary of these injuries and exposures.

DATES: CDC must receive written comments on or before September 18, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2018-0062 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without

change, all relevant comments to *Regulations.gov*.

Please note: Submit all Federal comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the

collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. 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.
5. Assess information collection costs.

Proposed Project

Surveillance of Nonfatal Injuries Among On-Duty Law Enforcement Officers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Law enforcement officers have high rates of non-fatal injuries compared to the general worker population. As law enforcement officers undertake many critical public safety activities and are tasked with protecting the safety and health of the public, it follows that

understanding and preventing injuries among law enforcement officers will have a benefit reaching beyond the workers to the general public.

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596), the mission of NIOSH is to conduct research and investigations on occupational safety and health. Related to this mission, the purpose of this project is to conduct research that will provide a detailed description of non-fatal occupational injuries and exposures incurred by law enforcement officers. This information will offer detailed insight into events that lead to the largest number of nonfatal injuries and exposures among law enforcement officers. The project will use two related data sources. The first source is data abstracted from medical records of law enforcement officers treated in a nationally stratified sample of emergency departments. These data are routinely collected through the occupational supplement to the National Electronic Injury Surveillance System (NEISS-Work). The second data source, for which NIOSH is seeking OMB approval for three years, is responses to telephone interview surveys of the injured and exposed law enforcement officers identified within NEISS-Work.

The proposed telephone interview surveys will supplement NEISS-Work data with an extensive description of law enforcement officers injuries and exposures, including worker characteristics, injury types, injury circumstances, and injury outcomes. Previous reports describing occupational injuries to law enforcement officers provide limited details on specific regions or sub-segments of the population. As compared to these earlier studies, the

scope of the telephone interview data will be broader as it includes sampled cases nationwide. Results from the telephone interviews will be weighted and reported as national estimates.

The sample size for the telephone interview survey is estimated to be approximately 900 law enforcement officers annually for the proposed three year duration of the study. This is based on the number of law enforcement officers identified in previous years of NEISS-Work data and a 30% response rate that is comparable to the rate of previously conducted National Electronic Injury Surveillance System telephone interview studies. Each telephone interview will take approximately 30 minutes to complete, resulting in an annualized burden estimate of 150 hours. Using the routine NEISS-Work data, an analysis of all identified EMS workers will be performed to determine if there are differences between the telephone interview responder and non-responder groups.

The Division of Safety Research (DSR) within NIOSH is conducting this project. DSR has a strong interest in improving surveillance of law enforcement officer injuries and exposures to provide the information necessary for effectively targeting and implementing prevention efforts and, consequently, reducing occupational injuries to law enforcement officers. The Consumer Product Safety Commission (CPSC) will also contribute to this project, as they are responsible for coordinating the collection of all NEISS-Work data and for overseeing the collection of all telephone interview data. The total estimated burden is 450 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Law enforcement officers	Follow-back survey	900	1	30/60	450
Total .....	.....	.....	.....	.....	450

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–15530 Filed 7–19–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–18AJJ; Docket No. CDC–2018–0056]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Knowledge, Attitudes, and Practices of US Large Animal Veterinarians Concerning Common Veterinary Infection Control Measures When Working with Animal Obstetric Cases. The goals of this survey are to better describe veterinarians' current knowledge of zoonotic infectious diseases that cause abortion in large animals, determine common veterinary infection control practices when working up obstetric cases, and identify common barriers to personal protective equipment use.

DATES: CDC must receive written comments on or before September 18, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0056 by any of the following methods:

- *Federal eRulemaking Portal:* [Regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

- *Mail:* Jeffrey Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [Regulations.gov](http://www.regulations.gov).

Please note: Submit all comments through the Federal eRulemaking portal ([regulations.gov](http://www.regulations.gov)) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. 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.
5. Assess information collection costs.

Proposed Project

Knowledge, Attitudes, and Practices of U.S. Large Animal Veterinarians Concerning Common Veterinary Infection Control Measures When Working with Animal Obstetric Cases—New ICR—National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Veterinarians are particularly at risk of contracting zoonotic infectious diseases due to their close proximity to animals, especially during times of injury or illness. Some veterinarians may be unaware of recommended personal protection measures or opt not to participate in measures that would decrease their risk of contracting a zoonotic disease (Wright *et al.* 2008). In 1977, a survey conducted of 1182 veterinarians showed that approximately 43% of the respondents had contracted an infectious zoonotic disease (Schnurrenberger & Martin 1977). Today, this elevated zoonotic disease risk persists; the seroprevalence of Q fever in U.S. veterinarians is 22% (Whitney, Massung, *et al.* 2009) and the seroprevalence of leptospirosis is 2.5% (Whitney, Ailes, *et al.* 2009). Within the veterinary profession, large animal practitioners might have an increased risk of occupational exposure to infectious zoonotic diseases for many reasons, including decreased biosecurity measures available in the field and the limited space available on a mobile practice for PPE.

The goals of this study are to establish veterinarians' knowledge of zoonotic infectious disease, identify veterinarians' attitudes towards zoonotic infectious disease and personal risk, and determine practices to decrease personal risk of infection. By identifying knowledge gaps in personal protective equipment (PPE) use, transmission risk factors, and disease identification/diagnosis, we aim to determine the best methods for education of veterinarians on relevant abortion-associated zoonotic infectious diseases.

The purpose of this study is to better describe veterinarians' current knowledge of zoonotic diseases that cause abortion in large animals, determine common veterinary infection control practices when working up obstetric cases, and identify common barriers to PPE use. In order to develop effective messaging strategies, a deeper understanding of the attitudes and barriers to PPE use is needed. The information collected will be used to improve and enhance zoonotic disease education and PPE guidance targeted to veterinarians. The estimated annual burden hours are 125. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Veterinarian	500	1	15/60	125
Total	125

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018-15528 Filed 7-19-18; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS-10675]

Agency Information Collection Activities: Proposed Collection; 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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by September 18, 2018.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and

recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

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:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10675 Evaluation of the CMS Quality Improvement Organizations: Medication Safety and Adverse Drug Event Prevention

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 requires federal agencies to publish a 60-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.

Information Collection

1. *Type of Information Collection Request:* New Collection of Information Request; *Title of Information Collection:* Evaluation of the CMS Quality Improvement Organizations: Medication Safety and Adverse Drug Event Prevention; *Use:* The purpose of this Information Collection Request (ICR) is to collect data to inform the program evaluation of the Centers for Medicare & Medicaid Services (CMS) Quality Improvement Organizations (QIO) current contract known as the 11th Scope of Work (SOW). The current ICR focuses on evaluating one component of the quality improvement activities of the Quality Innovation Network Quality Improvement Organizations (QIN-QIOs) and is part of a larger evaluation of the overall impact of the QIO program. This ICR aims to assess the QIN-QIO Task which focuses on Medication Safety and Adverse Drug Event Prevention. For this evaluation, we are using a mixed-methods design to compare quality improvement activities of pharmacists, physicians, and nursing home administrators or directors of nursing at nursing homes participating in the QIN-QIO program (participating) with those not participating in the QIN-QIO program (non-participating).

As mandated by Sections 1152-1154 of the Social Security Act, CMS directs the QIO program, which is one of the largest federal programs dedicated to improving health quality for Medicare beneficiaries. QIOs are groups of health quality experts, clinicians, and

consumers who work to assist Medicare providers with quality improvement throughout the spectrum of care and to review quality concerns for the protection of beneficiaries and the Medicare Trust Fund. This program is a key component of the U.S. Department of Health and Human Services' (HHS) National Quality Strategy and the CMS Quality Strategy. The work is aligned with the current HHS and CMS administration priorities to empower patients and doctors to make decisions about their health care; usher in a new era of state flexibility and local leadership; support innovative approaches to improve quality, accessibility, and affordability; and improve the CMS customer experience. In the current SOW, 14 QIN-QIOs coordinate the work in 53 U.S. states and territories.

CMS evaluates the quality and effectiveness of the QIO program as authorized in Part B of Title XI of the Social Security Act. CMS created the Independent Evaluation Center (IEC) to provide CMS and its stakeholders with an independent and objective program evaluation of the 11th SOW.

For the program to improve medication safety and prevent adverse drug events (ADEs), QIN-QIOs provide technical assistance to providers, practitioners, organizations offering Medicare Advantage plans under Medicare Part C, and prescription drug sponsors offering drug plans under Part D. ADEs are defined as "injury resulting from medical intervention related to a drug," and cause the majority of preventable deaths in hospitals. ADEs escalate healthcare costs and utilization, increasing admission and readmission rates, emergency department (ED) visits, and physician visits. ADEs are particularly problematic for older adults who have multiple chronic conditions and interact with many care settings.

Opioid misuse and overdose is a significant cause of ADEs and was declared a public health emergency by the White House in 2017. In 2016, over 14 million Medicare Part D beneficiaries received opioid prescriptions, and many of these beneficiaries received extreme amounts of the drugs. The Medicare population has one of the highest and fastest-growing rates of diagnosed opioid use disorder.

As part of the HHS Opioid Initiative launched in March 2015, CMS developed a multipronged approach to combat misuse and promote programs that support treatment and recovery support services for clinicians, beneficiaries, and families. CMS also worked with HHS and other health agencies to develop a *National Action*

Plan for Adverse Drug Prevention (2014). In addition to opioids, the Action Plan focused on ADEs caused by other high-risk medication (HRM) groups: Anticoagulants and diabetic medications. Given the burden of ADEs caused by these three classes of drugs, focusing prevention efforts in these areas could have a significant impact on reducing harm and improving population health among Medicare beneficiaries.

The QIO program provides technical assistance to reduce ADEs in beneficiaries resulting from polypharmacy, specifically those who use three or more medications including a prescription in a HRM drug groups. In the 11th SOW, specific interventions include training providers through Learning Action Networks; developing collaborations among local providers across care settings; providing materials and information resources; and helping providers collect data to monitor prescribing practices.

To evaluate the effectiveness of this program, we will use a mixed method evaluation combining secondary data analysis of Medicare claims with a community provider survey. We plan to conduct an online survey of 1,200 community-based pharmacists, physicians, and nursing home administrators or directors of nursing in nursing homes. These participants were selected based on their role in prescribing HRM and treating ADEs.

The proposed survey assesses the extent to which the *National Action Plan for Adverse Drug Prevention* strategies have been used, the level of engagement with the QIO, and other influences that can help explain progress towards the goals of the QIN-QIO SOW. The questions used for these constructs related to program and non-program influences have been adopted from previously used and/or validated instruments, including the IEC Nursing Home Survey that was approved under OMB control number 0938-1330.

The survey will also provide estimates of the attribution of the QIN-QIO program for improving ADE prevention, and reported impact of the QIN-QIO program from the perspective of healthcare providers. The perceived influence on quality improvement efforts will be quantified and, along with econometric modeling methods, will be used to assess program attribution. Estimating attribution is a contract requirement for the IEC and helps provide evidence of impact of the QIN-QIO program. Since current analytical methods do not adequately address the overlap of quality improvement initiatives targeting

medication safety and ADE prevention, the IEC developed an innovative approach, combining survey input with modeling, to estimate the relative importance of the QIN-QIO program. The concept is supported at the highest level of administration for Quality Improvement at CMS and has been presented at national conferences and to CMS/CCSQ leadership. The survey data is an essential component of this analytic method.

The information collected through the survey will complement the existing data by helping identify factors associated with ADE outcomes of interest from existing data sets such as Medicare claims. For example, claims data can provide information on whether the number of prescriptions for opioids has decreased, but not what has helped to facilitate the decrease. *Form Number:* CMS-10675 (OMB control number: 0938-NEW); *Frequency:* Annually; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 1,200; *Total Annual Responses:* 1,200; *Total Annual Hours:* 300. (For policy questions regarding this collection contact Nancy Sonnenfeld at 410-786-1294.)

Dated: July 16, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018-15466 Filed 7-19-18; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ORR-6, ORR Requirements for Refugee Cash Assistance; and Refugee Medical Assistance (45 CFR part 400).

OMB No.: 0970-0036.

Description: As required by section 412(e) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from Form ORR-6 to determine the effectiveness of the State cash and medical assistance, and social services programs. State-by-State Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) utilization rates derived from Form ORR-6 are calculated for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. ORR regulations

require that State Refugee Resettlement and Wilson-Fish agencies, and local and Tribal governments complete Form

ORR-6 in order to participate in the above-mentioned programs.

Respondents: State governments, Replacement Designees, and Wilson/Fish Alternative Projects.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR-6 Performance Report	57	2	8	912

Estimated Total Annual Burden Hours: 912.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,
Reports Clearance Officer.

[FR Doc. 2018-15537 Filed 7-19-18; 8:45 am]

BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-D-0052]

Documenting Electronic Data Files and Statistical Analysis Programs; Draft Guidance for Industry; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the notice of availability that published in the **Federal Register** on May 21, 2018.

In that document, FDA requested comments on the draft revised guidance for industry (GFI) #197 entitled “Documenting Electronic Data Files and Statistical Analysis Programs.” The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the document published May 21, 2018 (83 FR 23468). Submit either electronic or written comments on the draft revised guidance by October 18, 2018, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2009-D-0052 for “Documenting Electronic Data Files and Statistical Analysis Programs.” 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.

FOR FURTHER INFORMATION CONTACT: Virginia Recta, Center for Veterinary Medicine (HFV-160), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-402-0840, virginia.recta@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2018, FDA published a notice announcing the availability of draft revised GFI #197 entitled "Documenting Electronic Data Files and Statistical Analysis Programs" with a 60-day comment period. We requested comments about informing sponsors of recommendations for documenting electronic data files and statistical analyses submitted to CVM to support new animal drug applications. These recommendations are intended to reduce the number of revisions that may be required for CVM to effectively review data submissions and to simplify submission preparation by providing a recommended documentation framework.

The Agency has received a request for a 90-day extension of the comment period. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a comprehensive response.

FDA has considered the request and is extending the comment period for the notice of availability for 90 days, until October 18, 2018. The Agency believes that a 90-day extension allows adequate time for interested persons to submit comments.

Dated: July 16, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-15568 Filed 7-19-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-N-0500]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's requirements on content and format of labeling for human prescription drug and biological products.

DATES: Submit either electronic or written comments on the collection of information by September 18, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 18, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of September 18, 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-2008-N-0500 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products." 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: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether

the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products

OMB Control Number 0910–0572—Extension

FDA’s regulations governing the content and format of labeling for human prescription drug and biological products were revised in the **Federal Register** of January 24, 2006 (71 FR 3922) (the 2006 labeling rule) to require that the labeling of new and recently approved products contain highlights of prescribing information, a table of contents for prescribing information, reordering of certain sections, minor content changes, and minimum graphical requirements. These revisions were intended to make it easier for health care practitioners to access, read, and use information in prescription drug labeling; to enhance the safe and effective use of prescription drug products; and to reduce the number of adverse reactions resulting from medication errors because of misunderstood or incorrectly applied drug information.

Currently, § 201.56 (21 CFR 201.56) requires that prescription drug labeling contain certain information in the format specified in either § 201.57 (21 CFR 201.57) or § 201.80 (21 CFR 201.80), depending on when the drug was approved for marketing. Section 201.56(a) sets forth general labeling requirements applicable to all prescription drugs. Section 201.56(b) specifies the categories of new and more recently approved prescription drugs subject to the revised content and format requirements in §§ 201.56(d) and 201.57. Section 201.56(c) sets forth the schedule for implementing these revised content and format requirements. Section 201.56(e) specifies the sections and subsections, required and optional, for the labeling of older prescription drugs not subject to the revised format and content requirements.

Section 201.57(a) requires that prescription drug labeling for new and more recently approved prescription drug products include a “Highlights of Prescribing Information” section. The “Highlights” section provides a concise extract of the most important information required under § 201.57(c) (the Full Prescribing Information (FPI)), as well as certain additional information important to prescribers. Section 201.57(b) requires a table of contents to prescribing information entitled “Full Prescribing Information: Contents,” consisting of a list of each heading and subheading along with its identifying number to facilitate health care practitioners’ use of labeling information. Section 201.57(c) specifies the contents of the FPI. Section 201.57(d) mandates the minimum specifications for the format of prescription drug labeling and establishes minimum requirements for key graphic elements such as bold type, bullet points, type size, and spacing.

Older drugs not subject to the revised labeling content and format requirements in § 201.57 are subject to labeling requirements at § 201.80. Section 201.80(f)(2) requires that, within 1 year, any FDA-approved patient labeling be referenced in the “Precautions” section of the labeling of older products and either accompany or be reprinted immediately following the labeling.

Annual Burden for Prescription Drug Labeling Design, Testing, and Submitting to FDA for New Drug Applications (NDAs) and Biologics License Applications (BLAs) (§§ 201.56 and 201.57)

New drug product applicants must: (1) Design and create prescription drug labeling containing “Highlights,” “Contents,” and FPI; (2) test the designed labeling (*e.g.*, to ensure that the designed labeling fits into carton-enclosed products); and (3) submit it to FDA for approval. Based on the projected data used in the January 24, 2006, final rule, FDA estimates that it will take applicants approximately 2,327 hours to design, test, and submit prescription drug labeling to FDA as part of a NDA or a BLA under the revised regulations. Currently, approximately 406 applicants submit approximately 541 new applications (NDAs and BLAs) to FDA annually, totaling 1,258,907 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR part and activity	Number of respondents	Number of responses per respondent ²	Total annual responses	Average burden per response	Total hours
Labeling Requirements in §§ 201.56 and 201.57	406	1.332	541	2,327	1,258,907

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Estimates may not sum due to rounding.

Our estimated burden for the information collection reflects an overall increase of 602,503 hours and a corresponding increase of 345 records. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: July 16, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–15512 Filed 7–19–18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1098]

Metered Dose Inhaler and Dry Powder Inhaler Drug Products—Quality Considerations; Draft Guidance for Industry; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is reopening the comment period for the “Metered Dose Inhaler and Dry Powder Inhaler Drug Products—Quality Considerations; Draft Guidance for Industry,” published in the **Federal Register** of April 19, 2018. FDA is reopening the comment period to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period on the notice published April 19, 2018 (83 FR 17420). Submit either electronic or written comments by September 18, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 18, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of September 18, 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–2018–D–1098 for “Metered Dose Inhaler and Dry Powder Inhaler Drug Products—Quality Considerations; Draft Guidance for Industry.” 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.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for

Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or 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 the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Richard Lostritto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4132, Silver Spring, MD 20993, 301-796-1697, Richard.Lostritto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 19, 2018 (83 FR 17420), FDA announced the availability of a draft guidance for industry entitled “Metered Dose Inhaler and Dry Powder Inhaler Drug Products—Quality Considerations; Draft Guidance for Industry.” Interested persons were originally given until June 18, 2018, to comment on the draft guidance. The Agency believes that reopening the comment period for an additional 60 days from the date of publication of this notice will allow adequate time for interested persons to submit comments without significantly delaying Agency decision making on these important issues.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm>, or <https://www.regulations.gov>.

Dated: July 16, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-15508 Filed 7-19-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Chris Kornak, 240-627-3705, chris.kornak@nih.gov. Licensing information and copies of the U.S. patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office (TTIPO), 5601 Fishers Lane, Suite 6D, MSC 9804, Rockville, MD 20892, tel: 301-496-2644, fax: 240-627-3117. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Inhibition of CD300f Function on Dendritic Cells Promotes Tumor Destruction

Description of Technology: Cancer immunotherapy aims to enhance the ability of a patient’s own immune response to destroy tumors. The magnitude of the immune response is determined by the balance between immune activating signals and negative inhibitory signals. Checkpoint receptors are negative regulators that normally deliver inhibitory signals which limit immune activation. Blockade of immune checkpoints represents an effective strategy to enhance the immune response against cancer cells.

NIAID researchers have discovered that blocking CD300f function in dendritic cells markedly enhances their ability to phagocytose and process apoptotic tumor cells, leading to substantial inhibition of tumor growth. In this light, CD300f may be viewed as a dendritic cell checkpoint receptor analogous to T cell checkpoint receptors like PD-1 and CTLA-4. As a result, inhibiting CD300f function on dendritic

cells could be a promising anti-cancer therapy, especially in the settings where blocking of T cell checkpoint receptors has been ineffective.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Cancer immunotherapy
- Competitive Advantages:*
- A novel approach
- Development Stage:*
- Pre-Clinical
 - Proof-of-concept studies in mouse models

Inventors: John E. Coligan, Konrad Krzewski, Linjie Tian, Ha-Na Lee, all of NIAID, NIH.

Publications: Tian, L. et al., Enhanced efferocytosis by dendritic cells underlies memory T-cell expansion and susceptibility to autoimmune disease in CD300f-deficient mice. *Cell Death and Differ* (2016) 23, 1086-1096.

Intellectual Property: HHS Reference No. E-257-2016/0—U.S. Patent Application No. 62/408,596 filed on 10/14/2016;—PCT/US2017/056192 filed on 10/11/2017.

Licensing Contact: Chris Kornak, 240-627-3705, Chris.Kornak@nih.gov.

Collaborative Research Opportunity: The Technology Transfer and Intellectual Property Office (TTIPO) is not seeking parties interested in collaborative research to further develop the technology.

Dated: July 9, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018-15489 Filed 7-19-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Generic Clearance To Conduct Voluntary Customer/Partner Surveys (NLM)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the

National Library of Medicine (NLM) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll-free number 301-827-6361 or Email your request to sharlipd@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed

collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Generic Clearance to Conduct Voluntary Customer/Partner Surveys (NLM), 0925-0476, Expiration Date 09/30/2018, EXTENSION, National Library of Medicine (NLM), National Institutes of Health (NIH).

Need and Use of Information Collection: In 1994, the NLM was designated a "Federal Reinvention Laboratory" with a major objective of improving its methods of delivering information to the public. At a

minimum, necessary elements in improving the delivery of information include: (1) Development of easy-to-use access and delivery mechanisms that promote the public's understanding of health information, drawing on research in lay terminology, graphical and multimedia presentations; (2) assisting those providing health information to the public to make effective use of electronic services through internet connections, training, and other means, with an emphasis on those serving minority groups, low income populations, and seniors; (3) promoting integrations of NLM services with other electronic services covering regional, state, or local health information; and (4) conducting and supporting research, development, and evaluation of the public's health information needs, information seeking behavior and learning styles, information systems that meet the public's needs, and the impact of access to information.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 750.

ESTIMATED ANNUALIZED BURDEN HOURS

Table A.12-1 Estimates of annual burden hours

Type of collection	Type of respondents	Number of respondents	Annual frequency per response	Average time per response (minutes/hour)	Total burden hours
Customer Satisfaction Surveys	General Public	1,000	1	20/60	333
Focus Groups	Health Professionals	500	1	15/60	125
Usability and Pilot Testing	Librarians	500	1	20/60	167
Interviews or Small Discussion Groups	Health Educators	500	1	15/60	125
Total		2,500	2,500		750

Dated: July 3, 2018.

David Sharlip,

Project Clearance Liaison, National Library of Medicine, National Institutes of Health.

[FR Doc. 2018-15490 Filed 7-19-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of RFA-AA-18-011—Interaction of HIV Infection and Alcohol Abuse on Central Nervous System Morbidity.

Date: August 27, 2018.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and

Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451-2067, srinivar@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 16, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018-15488 Filed 7-19-18; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (SAMHSA NAC)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of the meeting on August 2, 2018, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (SAMHSA NAC).

DATES: August 2, 2018, 9:00 a.m. to 4:00 p.m. EDT, Open.

ADDRESSES: Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Room 5N54.

FOR FURTHER INFORMATION CONTACT: Carlos Castillo, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, Room 18E77A, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276-2787, Email: carlos.castillo@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: The SAMHSA NAC was established to advise the Secretary, Department of Health and Human Services (HHS), and the Assistant Secretary for Mental Health and Substance Use, SAMHSA, to improve the provision of treatments and related services to individuals with respect to substance use and to improve prevention services, promote mental health, and protect legal rights of individuals with mental illness and individuals who are substance users.

The meeting will include remarks from the Assistant Secretary for Mental Health and Substance Use; updates from the Department of Health and Human Services' Operating Divisions; updates from the ex-officio members, and a council discussion.

The meeting is open to the public and will be held at the Substance Abuse and Mental Health Services Administration, Room 5N54, 5600 Fishers Lane, Rockville, MD 20857. Attendance by the public will be limited to space available.

Interested persons may present data, information, or views orally or in writing, on issues pending before the Council. Written submissions must be forwarded to the contact person by July 26, 2018. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations must notify the contact person by July 26, 2018. Up to five minutes will be allotted for each presentation.

The meeting may be accessed via telephone. To attend on site; obtain the call-in number, access code, and/or web access link; submit written or brief oral comments; or request special accommodations for persons with disabilities, please register on-line at: <http://nac.samhsa.gov/Registration/meetingsRegistration.aspx>, or communicate with SAMHSA's Committee Management Officer, CAPT Carlos Castillo.

Meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council's website at <http://www.samhsa.gov/about-us/advisory-councils/> or by contacting Carlos Castillo. Substantive program information may be obtained after the meeting by accessing the SAMHSA Council's website, <http://nac.samhsa.gov/>, or by contacting Carlos Castillo.

Council Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2018-15246 Filed 7-19-18; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF AGRICULTURE

Forest Service

Bog Creek Road Project Draft Environmental Impact Statement; Reopening of Comment Period

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security and United States Department of Agriculture, Forest Service.

ACTION: Notice of reopening of comment period.

SUMMARY: This document provides additional time for interested parties to submit comments on the Bog Creek Road Project Draft Environmental

Impact Statement (Draft EIS) concerning the repair and maintenance of Bog Creek Road and closure of certain roads within the Blue-Grass Bear Management Unit in the Selkirk Mountains in Boundary County, Idaho. U.S. Customs and Border Protection (CBP) and the United States Department of Agriculture, Forest Service (USDA, Forest Service) Idaho Panhandle National Forests (IPNF) (collectively, the Agencies) published a Notice of Availability of the Draft EIS in the **Federal Register** on June 1, 2018, with comments due on or before July 16, 2018. In the interest of receiving well thought out and developed comments from stakeholders, the Agencies are reopening the comment period until July 31, 2018.

DATES: The comment period for the Draft EIS published at 83 FR 25472 on June 1, 2018, is reopened. Comments must be received on or before July 31, 2018.

ADDRESSES:

For Obtaining Copies of the Draft EIS: Electronic copies of the Draft EIS are available at <https://www.fs.usda.gov/project/?project=41296> and <https://www.cbp.gov/document/environmental-assessments/bog-creek-road-project-environmental-impact-statement>.

CD-ROM and print copies are available by sending a request to Paul Enriquez at Paul.Enriquez@cbp.dhs.gov or 949-643-6365 or at the following USDA, Forest Service locations:

- The IPNF Supervisors Office, 3815 Schreiber Way, Coeur d'Alene, Idaho;
- Sandpoint Ranger District, 1602 Ontario Street, Sandpoint, Idaho;
- Bonners Ferry Ranger District, 6286 Main Street, Bonners Ferry, Idaho; and
- Priest Lake Ranger District, 32203 Highway 57, Priest River, Idaho

For Submitting Comments: You may submit written comments on the Draft EIS by mail or email. See

SUPPLEMENTARY INFORMATION for information on the public comment process. Please submit your written comments using one of the following methods:

- *Mail:* Bog Creek Road EIS, P.O. Box 643, Flagstaff, Arizona 86002-0643;
- *Email:* SPWBogCreekEIS@cbp.dhs.gov;

• Hand delivered to any of the USDA, Forest Service locations where CD-ROM and print copies of the Draft EIS are available; or

- *FAX:* 208-765-7426.

FOR FURTHER INFORMATION CONTACT: Paul Enriquez, CBP, Border Patrol and Air and Marine Program Management Office, by telephone at 949-643-6365, or email at Paul.Enriquez@cbp.dhs.gov. Persons who require assistance

accessing information, please contact the U.S. Department of Agriculture's (USDA) Target Center at 202-720-2600 (voice and TDD) or contact USDA through the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

Interested persons are invited to submit written comments on all aspects of the Draft EIS. Comments that will provide the most assistance to the Agencies will reference a specific section of the Draft EIS, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. Substantive comments received during the comment period will be addressed in the Final Environmental Impact Statement (Final EIS). The Final EIS will be made available to the public through a Notice of Availability (NOA) in the **Federal Register**.

This project is subject to 36 CFR part 218, subparts A and B of the USDA, Forest Service's Project-level Pre-decisional Administrative Review Process. Pursuant to 36 CFR part 218, only those who provide timely and specific written comments regarding the proposed project during a comment period are eligible to file an objection with the USDA, Forest Service. Comments received regarding this Draft EIS are considered part of the administrative record for the National Environmental Policy Act (NEPA) review. Within this context, a commenter's personally identifiable information, such as name and contact information, may be released to a third party upon request under the Freedom of Information Act. Comments submitted anonymously, without a name and contact information, will be accepted and considered; however, anonymous comments will not provide the commenter with standing to participate in the USDA, Forest Service objection process.

This process is being conducted pursuant to the NEPA (42 U.S.C. 4321 *et seq.*), the President's Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500-1508), DHS Directive 023-01 and Instruction 023-01-001-01, and CBP and USDA, Forest Service NEPA guidelines.

Background

U.S. Customs and Border Protection (CBP) and the United States Department of Agriculture, Forest Service (USDA, Forest Service) Idaho Panhandle National Forests (IPNF) (collectively,

the Agencies) published a notice in the **Federal Register** (83 FR 25472) on June 1, 2018, announcing the availability of the Bog Creek Road Project Draft Environmental Impact Statement (Draft EIS). That document solicited public comments and requested that comments be received no later than July 16, 2018.

Reopening of Comment Period

Several stakeholders have requested that the Agencies extend the comment period so that they can take additional time to review the proposed action and alternatives and submit worthwhile comments. The Agencies believe that it is very important to receive well thought out and developed comments in the formulation of the Bog Creek Road Project Final Environmental Impact Statement. Therefore, the Agencies have decided to allow additional time for the public to submit comments on the Draft EIS. Accordingly, the comment period is reopened until July 31, 2018, and comments must be received on or before that date.

Dated: July 18, 2018.

Christopher Oh,

Director, Energy & Environmental Management Division U.S. Customs and Border Protection.

Gregory C. Smith,

Acting Associate Deputy Chief, National Forest System, U.S. Forest Service.

[FR Doc. 2018-15684 Filed 7-19-18; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection [1651-0009]

Agency Information Collection Activities: Customs Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted (no later than

September 18, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0009 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email:* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail:* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Customs Declaration.

OMB Number: 1651–0009.

Form Number: CBP Form 6059B.

Abstract: CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 CFR 122.27, 148.12, 148.13, 148.110, 148.111; 31 U.S.C. 5316 and section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498).

Section 148.13 of the CBP regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12 requires verbal declarations from travelers entering the United States. Generally, verbal declarations are required from travelers arriving by land. CBP continues to find ways to improve the entry process through the use of mobile technology to ensure it is safe and efficient. To that end, CBP is testing the operational effectiveness of a process which allows travelers to use a mobile app to submit information to CBP prior to arrival. This process, called Mobile Passport Control (MPC) which is a mobile app that allows travelers to self-segment upon arrival into the United States—a process also known as intelligent queuing. Another electronic process that CBP is testing in lieu of the paper 6059B is the Automated Passport Control (APC). This is a CBP program that facilitates the entry process for travelers by providing self-service kiosks in CBP's Primary Inspection area that travelers can use to make their declaration.

A sample of CBP Form 6059B can be found at: <http://www.cbp.gov/travel/us-citizens/sample-declaration-form>.

Current Actions: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

CBP Form 6059B:

Estimated Number of Respondents: 34,006,000.

Estimated Number of Total Annual Responses: 34,006,000.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 2,278,402.

Verbal Declarations:

Estimated Number of Respondents: 233,000,000.

Estimated Number of Total Annual Responses: 233,000,000.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 669,000.

APC Terminals:

Estimated Number of Respondents: 70,000,000.

Estimated Number of Total Annual Responses: 70,000,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 2,310,000.

MPC App:

Estimated Number of Respondents: 500,000.

Estimated Number of Total Annual Responses: 500,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 16,500.

Dated: July 17, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–15561 Filed 7–19–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Insufflation Tubing

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain insufflation tubing. Based upon the facts presented, CBP has concluded that the country of origin of the insufflation tubing in question is China, for purposes of U.S. Government procurement.

DATES: The final determination was issued on July 13, 2018. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR

177.22(d), may seek judicial review of this final determination within August 20, 2018.

FOR FURTHER INFORMATION CONTACT:

Yuliya A. Gulis, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0042.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 13, 2018, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain insufflation tubing imported by Global Resources International, Inc. from the Dominican Republic, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H298148, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that the country of origin of the insufflation tubing is China for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 13, 2018.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H298148

July 13, 2018

OT:RR:CTF:VS H298148 YAG

CATEGORY: Origin

Ms. Christi Roos, LCB

M–PACT Solutions

P.O. Box 30209

4294 Swinnea Road

Memphis, TN 38118

RE: U.S. Government Procurement; Country of Origin of Insufflation Tubing; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511 *et seq.*); Subpart B, Part 177, CBP Regulations

Dear Ms. Roos:

This is in response to your correspondence dated March 26, 2018, requesting a final determination, on behalf of Global Resources International, Inc. (“Global Resources”), concerning the country of origin of certain

insufflation tubing, pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 177.21 *et seq.*).

We note that Global Resources is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Global Resources is the importer of insufflation tubing. Insufflation tubing is used to interconnect and deliver carbon dioxide gas (“CO₂”) from the insufflator machine (CO₂ “gas pump” or insufflator) to the patient during laparoscopic surgery. Insufflation tubing is typically 3 meters (around 10 feet) in length, composed of a long clear plastic tubing and a short blue plastic tubing, with a filter attached about 30 centimeters (12 inches) from one end. The purpose of the filter is to prevent fluid backflow into the insufflator and to help prevent contaminants from entering the patient’s abdominal cavity. One end of the tubing is comprised of a male Luer lock fitting, which always connects to an instrument that is inserted into the patient’s abdomen. The other end connects to the insufflator, which may contain any number of types of fittings.

The country of origin of the clear tubing, blue tubing, filter assembly, and fittings is China. The insufflation tubing is assembled, sterilized, packed, and labeled in the Dominican Republic.

ISSUE:

What is the country of origin of the insufflation tubing for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*).

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s

purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. The regulations define a “designated country end product” as:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

A “WTO GPA country end product” is defined as an article that:

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

See 48 C.F.R. § 25.003.

The Dominican Republic is a WTO GPA country. China is not. You assert that the insufflation tubing at issue is a product of the Dominican Republic for U.S. Government procurement purposes because all of the components of insufflation tubing, sourced from China, meet the requisite tariff shift rules under the Dominican Republic-Central America-United States Free Trade Agreement (“DR-CAFTA”). Please note that this is an incorrect analysis to apply to determine the country of origin for U.S. Government procurement purposes. Rather, as set forth below, the relevant test is “substantial transformation.”

In the Court of International Trade’s decision in *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the court interpreted the meaning of substantial transformation as used in the Trade Agreements Act of 1979 for purposes of government procurement. *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight, under the TAA. Other than a white LED and a hydrogen getter, all of the components of the Generation II flashlight were of Chinese origin. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the “name, character and use” test in determining whether a substantial transformation had occurred, and reviewed various court decisions involving substantial transformation determinations. The court noted, citing *Uniroyal, Inc. v. United States*, 3 CIT 220, 226, 542 F. Supp. 1026, 1031, *aff’d*, 702 F.2d 1022 (Fed. Cir. 1983), that when “the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change.” *Energizer* at 1318. In addition, the court noted that “when

the end-use was pre-determined at the time of importation, courts have generally not found a change in use.” *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States*, 16 CIT 308, 310, *aff’d* 989 F.2d 1201 (Fed. Cir. 1993). Furthermore, courts have considered the nature of the assembly, *i.e.*, whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

In reaching its decision in *Energizer*, the court examined whether the imported components retained their names after they were assembled into the finished Generation II flashlights. The court found “[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly.” The court also found that the components had a pre-determined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. Thus, the court found that *Energizer*’s imported components did not undergo a change in name, character, or use as a result of the post-importation assembly of the components into a finished Generation II flashlight. The court determined that China, the source of all but two components, was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

The assembly process of insufflation tubing is similar to that of the Generation II flashlight in *Energizer*. All of the components are sourced from China, and there is no evidence of a change in the shape or material composition of the components. *See also* Headquarters Ruling Letter (“HQ”) H035441, dated September 11, 2008; and HQ 734214, dated November 18, 1991. In other words, the individual components do not lose their separate identities as a result of the assembly process in the Dominican Republic and do not undergo a change in their pre-determined uses. Considering the totality of the information provided to CBP, and relying upon the court’s application of substantial transformation in *Energizer*, we find that the country of origin of the assembled insufflation tubing, produced as described herein, is China.

HOLDING:

Based on the facts provided, insufflation tubing will be considered a product of China for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Alice A. Kipel,
*Executive Director Regulations and Rulings
Office of Trade.*

[FR Doc. 2018–15536 Filed 7–19–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4371–DR; Docket ID FEMA–2018–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4371–DR), dated June 8, 2018, and related determinations.

DATES: The declaration was issued June 8, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe winter storm and snowstorm during the period of March 13–14, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75

percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Carroll, Rockingham, and Stafford Counties for Public Assistance.

Carroll, Rockingham, and Stafford Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All areas within the State of New Hampshire are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–15599 Filed 7–19–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4370–DR; Docket ID FEMA–2018–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4370–DR), dated June 8, 2018, and related determinations.

DATES: The declaration was issued June 8, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe storm and flooding during the period of March 2–8, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the State of New Hampshire has been designated as adversely affected by this major disaster:

Rockingham County for Public Assistance.

All areas within the State of New Hampshire are eligible for assistance under the Hazard Mitigation Grant Program. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018-15600 Filed 7-19-18; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2018-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of October 19, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit

the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Chatham County, North Carolina and Incorporated Areas Docket No.: FEMA-B-1440 and FEMA-B-1616	
Unincorporated Areas of Chatham County	Chatham County Planning Department, 80-A East Street, Pittsboro, NC 27312.
Durham County, North Carolina and Incorporated Areas Docket No.: FEMA-B-1445 and FEMA-B-1616	
City of Durham	City-County Inspections Department, 101 City Hall Plaza, Durham, NC 27701.
Town of Chapel Hill	Town Hall, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.
Unincorporated Areas of Durham County	City-County Inspections Department, 101 City Hall Plaza, Durham, NC 27701.

Community	Community map repository address
Orange County, North Carolina and Incorporated Areas Docket Nos.: FEMA-B-1440 and FEMA-B-1616	
Town of Chapel Hill	Town Hall, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.
Unincorporated Areas of Orange County	Orange County Planning Department, 131 West Margaret Lane, Hillsborough, NC 27278.

[FR Doc. 2018-15596 Filed 7-19-18; 8:45 am]
BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2018-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM

and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of November 2, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations

listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

David I. Maurstad,
Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Placer County, California and Incorporated Areas Docket No.: FEMA-B-1610	
City of Auburn	Planning and Public Works Department, 1225 Lincoln Way, Auburn, CA 95603.
City of Lincoln	Community Development Department, 600 Sixth Street, Lincoln, CA 95648.
City of Rocklin	Engineering Department, 3970 Rocklin Road, Rocklin, CA 95677.
City of Roseville	Engineering Department, 311 Vernon Street, Roseville, CA 95678.
Town of Loomis	Town Hall, 3665 Taylor Road, Loomis, CA 95650.
Unincorporated Areas of Placer County	Placer County Public Works, 3091 County Center Drive, Auburn, CA 95603.

Alachua County, Florida and Incorporated Areas Docket No.: FEMA-B-1709	
City of Alachua	City Hall, 15100 Northwest 142nd Terrace, Alachua, FL 32615.
City of Gainesville	Public Works Department, 405 Northwest 39th Avenue, Gainesville, FL 32609.
City of Waldo	City Hall, 14655 Kennard Street, Waldo, FL 32694.

Community	Community map repository address
Unincorporated Areas of Alachua County	Alachua County Public Works Department, Engineering and Operations, 5620 Northwest 120th Lane, Gainesville, FL 32653.
Bradford County, Florida and Incorporated Areas Docket No.: FEMA-B-1709	
City of Starke	City Clerk's Office, 209 North Thompson Street, Starke, FL 32091.
Unincorporated Areas of Bradford County	Bradford County Building and Zoning Department, 945-F North Temple Avenue, Starke, FL 32091.
Columbia County, Florida and Incorporated Areas Docket No.: FEMA-B-1709	
City of Lake City	City Hall, 205 North Marion Avenue, Lake City, FL 32055.
Unincorporated Areas of Columbia County	Columbia County Public Works Department, 607 Northwest Quinter Street, Lake City, FL 32055.
Duval County, Florida (All Jurisdictions) Docket No.: FEMA-B-1718	
City of Atlantic Beach	City Hall, 800 Seminole Road, Atlantic Beach, FL 32233.
City of Jacksonville	Edward Ball Building, Development Services, Room 2100, 214 North Hogan Street, Jacksonville, FL 32202.
City of Jacksonville Beach	City Hall, 11 North 3rd Street, Jacksonville Beach, FL 32250.
City of Neptune Beach	City Hall, 116 1st Street, Neptune Beach, FL 32266.
Union County, Florida and Incorporated Areas Docket No.: FEMA-B-1709	
City of Lake Butler	City Hall, 200 Southwest 1st Street, Lake Butler, FL 32054.
Town of Worthington Springs	Community Center, 11933 Southwest 36th Drive, Worthington Springs, FL 32697.
Unincorporated Areas of Union County	Union County Building Department, 15277 Southwest 84th Street, Lake Butler, FL 32054.

[FR Doc. 2018-15597 Filed 7-19-18; 8:45 am]
BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4368-DR; Docket ID FEMA-2018-0001]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA-4368-DR), dated June 8, 2018, and related determinations.

DATES: The declaration was issued June 8, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 2018, the President issued a major

disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from a severe winter storm and snowstorm during the period of March 6-7, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility

criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Bergen, Essex, Morris, Passaic, and Somerset Counties for Public Assistance.

Bergen and Morris Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All areas within the State of New Jersey are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–15598 Filed 7–19–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6113–N–01]

Announcement of Funding Awards

AGENCY: Office of Strategic Planning and Management, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Notices of Funding Availability (NOFAs) for the following programs: FY2017 Rural Capacity Building for Community Development and Affordable Housing Grants (RCB); FY2017 Fair Housing Initiatives Program (FHIP); and FY2017 The Research and Evaluation, Demonstrations and Data Analysis and Utilization Program.

FOR FURTHER INFORMATION CONTACT: Office of Strategic Planning and Management, Grants Management and Oversight Division at AskGMO@hud.gov or the contact person listed in each appendix.

SUPPLEMENTARY INFORMATION: The *FY17 Rural Capacity Building for Community Development and Affordable Housing Grants (RCB)* competition was announced in the NOFA published on *grants.gov* on September 28, 2017, FR–6100–N–08, and which closed on December 06, 2017. Applications were rated and selected for funding based on selection criteria contained in the NOFA. \$5,000,000 was awarded to 4 recipients with expertise in rural housing and community development. The RCB program will enhance the capacity and ability of rural housing development organizations, Community Development Corporations, Community Housing Development Organizations, local governments, and Indian tribes to carry out community development and affordable housing activities that benefit low- and moderate-income families and persons in rural areas.

The *FY2017 Fair Housing Initiatives Program* competition was announced in the three NOFAs published on *grants.gov* on August 02, 2017, FR–6100–N–21A, FR–6100–N–21B and FR–6100–N–21C and all of which closed on October 06, 2017. Applications were rated and selected for funding based on selection criteria contained in the NOFAs. \$37,763,767 was awarded to 157 recipients to fund fair housing organizations and other nonprofits that assist individuals who believe that they have been victims of housing discrimination. FHIPs provide funds to eligible organizations through competitive grants under three initiatives: To carry out enforcement activities, to prevent or eliminate discriminatory housing practices, and to inform individuals of their rights and responsibilities under the Fair Housing Act. The Initiatives are: The Fair Housing Organization Initiative, Private Enforcement Initiative, and the Education and Outreach Initiative.

The *FY2017 The Research and Evaluation, Demonstrations and Data Analysis and Utilization Program*

competition was announced in the NOFA published on *grants.gov* on August 16, 2017, FR–6100–N–29, and which closed on October 15, 2017. Applications were rated and selected for funding based on selection criteria contained in the NOFA. \$890,661 was awarded to 3 recipients to focus on (1) Child Trajectories in HUD-Assisted Housing where proposed projects should focus on secondary data analysis using administrative data, survey data, or linked data products (government or other sources) to assess long-term child outcomes among children who reside or resided in HUD-assisted housing; and (2) The Social and Economic Impacts of the Community Development Block Grant Program to develop a better understanding of the effects of specific Community Development Block Grant (CDBG) eligible activities. Through this project, HUD seeks to identify objective, quantifiable outcome measures that can be attributed to specific CDBG activities to inform policymakers at the federal, state, and local levels.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545(a)(4)(C)), the Department is publishing the awardees and the amounts of the awards in Appendices A–C to this document.

Dated: June 13, 2018.

Henry Hensley,

Director, Office of Strategic Planning and Management.

- FR–6100–FA–08
- FR–6100–FA–21A
- FR–6100–FA–21B
- FR–6100–FA–21C
- FR–6100–FA–29

Appendix A

FY17 Rural Capacity Building for Community Development and Affordable Housing Grants (RCB)

Contact: Diane Schmutzler, 202–402–4385.

Organization	Street address	City	State	Zip code	Award amount
Minnesota Housing Partnership (MHP) ...	2446 University Avenue West	Saint Paul	MN	55114–1740	\$2,000,000
Housing Assistance Council (HAC)	1025 Vermont Ave NW	Washington	DC	20005–3516	1,000,000
Rural Community Assistance Corp (RCAC).	3120 Freeboard Drive	Sacramento ...	CA	95691–5010	1,000,000
Rebuilding Together, Inc. (RTI)	999 North Capitol Street NE, Suite 701 ..	Washington	DC	20002–4684	1,000,000

Appendix B

FY2017 Fair Housing Initiatives Program

Contact: Myron Newry, 202–402–7095.

Recipient	Address	City	State	Zip	Amount
Alaska Legal Services Corporation	1016 W 6th Avenue, Suite 200	Anchorage	AK	99501	\$125,000.00
Alaska Legal Services Corporation	1016 W 6th Avenue, Suite 200	Anchorage	AK	99501	300,000.00
Central Alabama Fair Housing Center	2867 Zelda Road	Montgomery	AL	36106	124,998.00
Central Alabama Fair Housing Center	2867 Zelda Road	Montgomery	AL	36106	300,000.00
Fair Housing Center of Northern Alabama	1820 7th Avenue North, Suite 110	Birmingham	AL	35203	202,816.00
Mobile Fair Housing Center, Inc	P.O. Box 161202	Mobile	AL	36616	300,000.00
Legal Aid of Arkansas, Inc	714 South Main	Jonesboro	AR	72401	125,000.00
Southwest Fair Housing Council	2030 E Broadway Blvd., Suite 101	Tucson	AZ	85719	13,972.00
Southwest Fair Housing Council	2030 E Broadway Blvd., Suite 101	Tucson	AZ	85719	300,000.00
Bay Area Legal Aid	1735 Telegraph Avenue	Oakland	CA	94612	300,000.00
California Rural Legal Assistance, Inc	1430 Franklin Street, Suite 103	Oakland	CA	94612	125,000.00
California Rural Legal Assistance, Inc	1430 Franklin Street, Suite 103	Oakland	CA	94105	300,000.00
Fair Housing Advocates of Northern California	1314 Lincoln Avenue	San Rafael	CA	94901	124,999.00
Fair Housing Advocates of Northern California (formerly Fair Housing of Marin).	1314 Lincoln Avenue	San Rafael	CA	94901	300,000.00
Fair Housing Council of Central California	333 W Shaw Avenue Suite 14	Fresno	CA	93704	300,000.00
Fair Housing Council of Riverside County, Inc	3933 Mission Inn Avenue	Riverside	CA	92501	125,000.00
Fair Housing Council of Riverside County, Inc	3933 Mission Inn Avenue	Riverside	CA	92501	300,000.00
Greater Bakersfield Legal Assistance, Inc. (GBLA).	615 California Avenue	Bakersfield	CA	93304	300,000.00
Greater Napa Valley Fair Housing Center	1804 Soscol Avenue, Suite 203	Napa	CA	94559	125,000.00
Greater Napa Valley Fair Housing Center	1804 Soscol Avenue, Suite 203	Napa	CA	94559	300,000.00
Inland Mediation Board	1500 South Haven Avenue, Suite 100	Ontario	CA	91761	125,000.00
Inland Mediation Board	1500 South Haven Avenue, Suite 100	Ontario	CA	91761	300,000.00
Legal Aid Society of San Diego, Inc	110 S Euclid Avenue	San Diego	CA	92114	300,000.00
Mental Health Advocacy Services, Inc	3255 Wilshire Blvd., Suite 902	Los Angeles	CA	90010	125,000.00
Orange County Fair Housing Council, Inc	1516 Brookhollow Drive	Santa Ana	CA	92705	300,000.00
Orange County Fair Housing Council, Incorporated.	1516 Brookhollow Drive	Santa Ana	CA	92705	125,000.00
Project Sentinel Inc	1490 El Camino Real	Santa Clara	CA	95050	125,000.00
Project Sentinel Inc	1490 El Camino Real	Santa Clara	CA	95050	300,000.00
Southern California Housing Rights Center	3255 Wilshire Blvd., Suite 1150	Los Angeles	CA	90010	300,000.00
Denver Metro Fair Housing Center	3280 Downing Street	Denver	CO	80205	125,000.00
Denver Metro Fair Housing Center	3401 Quebec Street	Denver	CO	80207	300,000.00
Connecticut Fair Housing Center, Inc	221 Main Street	Hartford	CT	06106	300,000.00
Connecticut Fair Housing Center, Inc	221 Main Street	Hartford	CT	06106	125,000.00
Equal Rights Center	11 Dupont Circle NW	Washington	DC	20036	125,000.00
Equal Rights Center, Inc	11 Dupont Circle NW	Washington	DC	20036	300,000.00
Housing Counseling Services	2410 17th Street NW	Washington	DC	20009	125,000.00
National Community Reinvestment Coalition	740 15th St. NW	Washington	DC	20005	300,000.00
National Fair Housing Alliance	1101 Vermont Ave. NW, Suite 710	Washington	DC	20005	999,962.00
National Fair Housing Alliance	1101 Vermont Ave. NW, Suite 710	Washington	DC	20005	300,000.00
Community Legal Aid Society, Inc	100 W 10th Street Suite 801	Wilmington	DE	19801	300,000.00
Community Legal Services of Mid-Florida, Inc	128 Orange Avenue	Daytona Beach	FL	32114	125,000.00
Community Legal Services of Mid-Florida, Inc	128 Orange Avenue	Daytona Beach	FL	32114	300,000.00
Fair Housing Center of the Greater Palm Beaches, Inc.	1300 W Lantana Road, Suite 200	Lantana	FL	33462	300,000.00
Fair Housing Continuum, Inc	571 Haverty Ct., Suite W	Rockledge	FL	32955	300,000.00
Housing Opportunities Project for Excellence, Inc	11501 NW 2nd Avenue	Miami	FL	33168	125,000.00
Housing Opportunities Project for Excellence, Inc	11501 NW 2nd Avenue	Miami	FL	33168	300,000.00
John Marshall Law School	126 W Adams St	Jacksonville	FL	32202	299,980.00
Legal Aid Society of Palm Beach County, Inc	423 Fern Street Suite 200	West Palm Beach	FL	33401	300,000.00
Mid-Florida Housing Partnership	1834 Mason Avenue	Daytona Beach	FL	32117	125,000.00
JCVision and Associates, Inc	P.O. Box 1972	Hinesville	GA	31310	250,000.00
Metro Fair Housing Services, Inc	215 Lakewood Way SW, Suite 106	Atlanta	GA	30315	300,000.00
Legal Aid Society of Hawaii	924 Bethel Street	Honolulu	HI	96813	300,000.00
Idaho Legal Aid Services, Inc	1447 S Tyrell Lane	Boise	ID	83706	97,056.00
Intermountain Fair Housing Council, Inc	5460 W Franklin Rd., Suite M	Boise	ID	83705	300,000.00
Access Living of Metropolitan Chicago	115 West Chicago Avenue	Chicago	IL	60654	300,000.00
Chicago Lawyers' Committee for Civil Rights Under Law.	100 N LaSalle Street	Chicago	IL	60602	300,000.00
H.O.P.E. Inc d/b/a HOPE Fair Housing Center	202 W Willow Ave, Suite 203	Wheaton	IL	60187	125,000.00
H.O.P.E. Inc d/b/a HOPE Fair Housing Center	202 W Willow Ave, Suite 203	Wheaton	IL	60187	300,000.00
John Marshall Law School	315 S Plymouth Court	Chicago	IL	60604	125,000.00
John Marshall Law School	315 S Plymouth Court	Chicago	IL	60604	300,000.00
Oak Park Regional Housing Center	1041 South Boulevard	Oak Park	IL	60302	125,000.00
Open Communities	614 Lincoln Ave	Winnetka	IL	60093	295,510.00
Prairie State Legal Services, Inc	303 N Main Street, Suite 600	Rockford	IL	61101	300,000.00
South Suburban Housing Center	18220 Harwood Avenue, Suite 1	Homewood	IL	60430	125,000.00
South Suburban Housing Center	18220 Harwood Avenue, Suite 1	Homewood	IL	60430	300,000.00
Fair Housing Center of Central Indiana, Inc	445 N Pennsylvania St., Suite 811	Indianapolis	IN	46204	125,000.00
Fair Housing Center of Central Indiana, Inc	445 N Pennsylvania St., Suite 811	Indianapolis	IN	46204	300,000.00
Lexington Fair Housing Council, Inc	207 E Reynolds Rd. Suite 130	Lexington	KY	40517	300,000.00
Greater New Orleans Fair Housing Action Center, Inc.	404 South Jefferson Davis Parkway	New Orleans	LA	70119	125,000.00

Recipient	Address	City	State	Zip	Amount
Greater New Orleans Fair Housing Action Center, Inc.	404 South Jefferson Davis Parkway	New Orleans	LA	70119	300,000.00
Community Legal Aid, Inc.	405 Main Street	Worcester	MA	01608	300,000.00
Fair Housing Center of Greater Boston	100 Terrace Street	Boston	MA	02120	300,000.00
Massachusetts Fair Housing Center, Inc.	57 Suffolk Street	Holyoke	MA	01040	300,000.00
Southcoast Fair Housing, Inc.	257 Union Street	New Bedford	MA	02740	125,000.00
Southcoast Fair Housing, Inc.	721 County Street	New Bedford	MA	02740	300,000.00
Suffolk University	8 Ashburton Place	Boston	MA	02108	299,989.00
Baltimore Neighborhoods, Inc.	2530 N Charles Street	Baltimore	MD	21218	300,000.00
Pine Tree Legal Assistance, Inc.	88 Federal Street	Portland	ME	04112	300,000.00
Community Action Agency	1214 Greenwood Avenue	Jackson	MI	49203	125,000.00
Fair Housing Center of Metropolitan Detroit	220 Bagley	Detroit	MI	48226	300,000.00
Fair Housing Center of Southeastern Michigan	P.O. Box 7825	Ann Arbor	MI	48107	300,000.00
Fair Housing Center of Southwest Michigan	405 W Michigan Ave	Kalamazoo	MI	49007	300,000.00
Fair Housing Center of West Michigan	20 Hall Street SE	Grand Rapids	MI	49507	125,000.00
Fair Housing Center of West Michigan	20 Hall Street SE	Grand Rapids	MI	49507	300,000.00
Legal Services of Eastern Michigan	436 South Saginaw Street, Suite 101	Flint	MI	48502	106,682.00
Legal Services of Eastern Michigan	436 South Saginaw Street, Suite 101	Flint	MI	48502	300,000.00
Mid-Minnesota Legal Assistance	430 First Avenue North, Suite 300	Minneapolis	MN	55401	300,000.00
Metropolitan St. Louis Equal Housing & Opportunity Council.	1027 S Vandeventer Avenue, 6th Floor	St. Louis	MO	63110	300,000.00
Metropolitan St. Louis Equal Housing and Opportunity Council.	1027 S Vandeventer Ave., 6th Floor	St. Louis	MO	63110	125,000.00
Housing Education and Economic Development, Inc.		Jackson	MS		233,538.00
Mississippi Center for Justice	5 Old River Place	Jackson	MS	39202	125,000.00
Mississippi Center for Justice	5 Old River Place	Jackson	MS	39202	300,000.00
Montana Fair Housing, Inc.	501 East Front Street, Suite 504	Butte	MT	59701	300,000.00
Legal Aid of North Carolina, Inc.	224 S Dawson Street	Raleigh	NC	27601	300,000.00
Legal Aid of North Carolina, Inc.	224 S Dawson Street	Raleigh	NC	27601	125,000.00
Telamon Corporation	5560 Munford Road, Suite 201	Raleigh	NC	27612	125,000.00
High Plains Fair Housing Center	1405 1st Ave. North	Grand Forks	ND	58203	112,901.00
High Plains Fair Housing Center	1405 1st Ave. North	Grand Forks	ND	58201	205,000.00
Family Housing Advisory Services, Incorporated	2401 Lake Street	Omaha	NE	68111	300,000.00
New Hampshire Legal Assistance	117 North State Street	Concord	NH	03301	300,000.00
Citizen Action of New Jersey	744 Broad Street	Newark	NJ	07102	125,000.00
Fair Housing Council of Northern New Jersey	131 Main Street, Suite 140	Hackensack	NJ	07601	125,000.00
Fair Housing Council of Northern New Jersey	131 Main Street, Suite 140	Hackensack	NJ	07601	300,000.00
New Jersey Citizen Action Education Fund, Inc.	744 Broad Street	Newark	NJ	07102	250,000.00
Silver State Fair Housing Council	110 W Arroyo Street, Suite A	Reno	NV	89059	125,000.00
Silver State Fair Housing Council	110 W Arroyo Street, Suite A	Reno	NV	89509	300,000.00
Brooklyn Legal Services	105 Court Street	Brooklyn	NY	11201	300,000.00
Chautauqua Opportunities, Inc.	17 W Courtney Street	Dunkirk	NY	14048	125,000.00
CNY Fair Housing, Inc.	731 James Street, Suite 200	Syracuse	NY	13203	300,000.00
CNY Fair Housing, Inc.	731 James Street, Suite 200	Syracuse	NY	13203	125,000.00
Fair Housing Justice Center, Inc.	30-30 Northern Boulevard, Suite 302	Long Island City	NY	11101	300,000.00
Fair Housing Justice, Inc.	30-30 Northern Boulevard, Suite 302	Long Island City	NY	11101	125,000.00
Housing Opportunities Made Equal, Inc.	1542 Main Street	Buffalo	NY	14209	300,000.00
Legal Assistance of Western NY	1 West Main Street	Rochester	NY	14614	300,000.00
Long Island Housing Services, Inc.	640 Johnson Avenue, Suite 8	Bohemia	NY	11716	125,000.00
Long Island Housing Services, Inc.	640 Johnson Ave., Suite 8	Bohemia	NY	11716	300,000.00
Westchester Residential Opportunities, Inc.	470 Mamaroneck Avenue, Suite 410	White Plains	NY	10605	125,000.00
Westchester Residential Opportunities, Inc.	470 Mamaroneck Avenue, Suite 410	White Plains	NY	10605	300,000.00
Fair Housing Contact Service, Inc.	441 Wolf Ledges Parkway, Suite 200	Akron	OH	44311	125,000.00
Fair Housing Contact Service, Inc.	441 Wolf Ledges Parkway, Suite 200	Akron	OH	44311	300,000.00
Fair Housing Opportunities of NW Ohio, Inc.	432 N Superior Street	Toledo	OH	43604	300,000.00
Fair Housing Opportunities, Inc. dba Fair Housing Center.	432 N Superior Street	Toledo	OH	43604	125,000.00
Fair Housing Resource Center, Inc.	1100 Mentor Avenue	Painesville	OH	44077	300,000.00
Housing Opportunities Made Equal of Greater Cincinnati.	2400 Reading Road, Suite 118	Cincinnati	OH	45202	300,000.00
Housing Opportunities Made Equal of Greater Cincinnati, Inc.	2400 Reading Road, Suite 118	Cincinnati	OH	45202	125,000.00
Housing Research & Advocacy Center	2728 Euclid Avenue	Cleveland	OH	44115	125,000.00
Housing Research and Advocacy Center	2728 Euclid Avenue	Cleveland	OH	44115	300,000.00
Ohio State Legal Services Association	1108 City Park Avenue	Columbus	OH	43206	125,000.00
Legal Aid Services of Oklahoma, Inc.	2915 N Classen Blvd	Oklahoma City	OK	73106	300,000.00
Metropolitan Fair Housing of Oklahoma, Inc.	1500 NE 4th Street, Suite 204	Oklahoma City	OK	73117	300,000.00
Fair Housing Council of Oregon	1221 SW Yamhill St, Suite 305	Portland	OR	97205	125,000.00
Fair Housing Council of Oregon	1221 SW Yamhill St., Suite 305	Portland	OR	97204	300,000.00
Fair Housing Council of Suburban Philadelphia, Inc.	550 Pinetown Road, Suite 460	Fort Washington	PA	19034	300,000.00
Fair Housing Partnership of Greater Pittsburgh	2840 Liberty Avenue	Pittsburgh	PA	15222	300,000.00

Recipient	Address	City	State	Zip	Amount
Fair Housing Rights Center in Southeastern Pennsylvania.	444 N 3rd Street, Suite 110	Philadelphia	PA	19123	300,000.00
Southwestern Pennsylvania Legal Services, Inc ..	10 West Cherry Avenue	Washington	PA	15301	125,000.00
Southwestern Pennsylvania Legal Services, Inc ..	10 West Cherry Avenue	Washington	PA	15301	300,000.00
Greenville County Human Relations Commission	301 University Ridge, Suite 1600	Greenville	SC	29601	119,562.00
Tennessee Fair Housing Council, Inc	107 Music City Circle	Nashville	TN	37214	300,000.00
West Tennessee Legal Services, Inc	210 W Main Street	Jackson	TN	38301	300,000.00
West Tennessee Legal Services, Inc	210 W Main Street	Jackson	TN	38301	125,000.00
Austin Tenants Council, Inc	1640B E Second Street, Suite 150	Austin	TX	78702	300,000.00
Greater Houston Fair Housing Center, Inc	P.O. Box 292	Houston	TX	77001	300,000.00
Money Management International, Inc	14141 Southwest Freeway, Suite 1000	Sugar Land	TX	77478	125,000.00
North Texas Fair Housing Center	8625 King George Drive, Suite 130	Dallas	TX	75235	300,000.00
San Antonio Fair Housing Council, Inc	4414 Centerview Drive, Suite 229	San Antonio	TX	78228	300,000.00
Disability Law Center	205 N 400 W	Salt Lake City	UT	84103	282,830.00
Housing Opportunities Made Equal of Virginia, Inc.	626 E Broad Street, Suite 400	Richmond	VA	23219	125,000.00
Housing Opportunities Made Equal of Virginia, Inc.	626 E Broad Street, Suite 400	Richmond	VA	23219	300,000.00
Champlain Valley Office of Economic Opportunity, Inc.	255 South Champlain Street, Suite 9 ...	Burlington	VT	05401	125,000.00
Vermont Legal Aid, Inc	264 North Winooski Avenue	Burlington	VT	05401	300,000.00
Vermont Legal Aid, Inc	264 North Winooski Avenue	Burlington	VT	05401	68,972.00
Fair Housing Center of Washington	1517 Fawcett Ave. Suite 250	Tacoma	WA	98402	300,000.00
Northwest Fair Housing Alliance	35 W Main	Spokane	WA	99201	125,000.00
Northwest Fair Housing Alliance	35 W Main	Spokane	WA	99201	300,000.00
Metropolitan Milwaukee Fair Housing Council	759 North Milwaukee Street	Milwaukee	WI	53202	125,000.00
Metropolitan Milwaukee Fair Housing Council	759 North Milwaukee Street	Milwaukee	WI	53202	300,000.00

Appendix C

FY2017 The Research and Evaluation, Demonstrations and Data Analysis and Utilization Program

Contact: Kinnard Wright, 202-402-7495.

Name	Address	City	State	Zip	Award amount
Child trajectories: The University of North Carolina at Chapel Hill.	104 Airport Drive, Suite 2200, CB1350.	Chapel Hill	NC	27999-1350	\$311,871.00
Social and economic impact of CDBG: The Regents of the University of Idaho	875 Perimeter Drive	Moscow	ID	83844-3020	243,763.00
The Woodstock Institute	29 E Madison Street, Suite 1710	Chicago	IL	60602-4466	335,027.00

[FR Doc. 2018-15486 Filed 7-19-18; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[RR04073000/XXXXR4081X3/
RX.05940913.7000000]

Notice To Reopen the Glen Canyon Dam Adaptive Management Work Group Call for Nominations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice to reopen a call for nominations.

SUMMARY: A request for nominations was published by the Department of the Interior in the **Federal Register** on June 6, 2018, for specific positions on the Glen Canyon Dam Adaptive

Management Work Group (AMWG) Federal advisory committee. The nomination period ended on July 6, 2018. This notice reopens the nomination period for another 30 days.

DATES: The nomination period for the notice published on June 6, 2018, at 83 FR 26304, is reopened. Nominations for the vacant positions are due August 20, 2018.

ADDRESSES: Send nomination packages to Brent Rhees, Regional Director, U.S. Bureau of Reclamation, 125 S State Street, Room 8100, Salt Lake City, UT 84138, or via email to brhees@usbr.gov.

FOR FURTHER INFORMATION CONTACT: Katrina Grantz, Chief, Adaptive Management Work Group, Environmental Resources Division, at (801) 524-3635, fax: 801-524-5499, or by email at kgrantz@usbr.gov.

SUPPLEMENTARY INFORMATION:

Nomination Process: Nominations should include a resume that provides an adequate description of the nominee's qualifications, particularly information that will enable the Department of the Interior to evaluate the nominee's potential to meet the membership requirements of the AMWG and permit the Department of the Interior to contact a potential member. The *Membership Criteria* section in the notice published on June 6, 2018 (83 FR 26304) provides specific information to be included in nomination packages.

Dated: July 13, 2018.

Ryan K. Zinke,
Secretary.

[FR Doc. 2018-15595 Filed 7-19-18; 8:45 am]

BILLING CODE 4332-90-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**[LLORB00000.L10200000. BS0000.
LXSSH1060000.18X.HAG 18-0088]**Notice of Public Meetings for the
Southeast Oregon Resource Advisory
Council****AGENCY:** Bureau of Land Management,
Interior.**ACTION:** Notice of public meeting.**SUMMARY:** In accordance with the
Federal Land Policy and Management
Act of 1976 and the Federal Advisory
Committee Act of 1972, the U.S.
Department of the Interior, Bureau of
Land Management's (BLM), Southeast
Oregon Resource Advisory Council
(RAC) will meet as indicated below:**DATES:** The Southeast Oregon RAC will
take a field tour on Tuesday, August 7,
2018, from 8:00 a.m. to 5 p.m. and meet
on Wednesday, August 8, 2018, from
8:00 a.m. to 12:30 p.m. Pacific Standard
Time. The public comment period on
Wednesday, August 8, will be from
11:45 a.m. to 12:15 p.m.**ADDRESSES:** Participants in the Tuesday,
August 7, 2018, field tour will depart
from the Lakeview Interagency Office,
1301 S G Street, Lakeview, Oregon
97630, at 8:00 a.m. The Wednesday,
August 8, 2018, public meeting will be
held at the Lakeview Interagency Office.**FOR FURTHER INFORMATION CONTACT:**
Larisa Bogardus, Public Affairs Officer,
1301 S G Street, Lakeview, Oregon
97630; 541-947-6237; lbogardus@blm.gov. Persons who use a
telecommunications device for the deaf
(TDD) may call the Federal Relay
Service (FRS) at 1 (800) 877-8339 to
contact the above individual during
normal business hours. The FRS is
available 24 hours a day, 7 days a week,
to leave a message or question with the
above individual. You will receive a
reply during normal business hours.**SUPPLEMENTARY INFORMATION:** The 15-
member Southeast Oregon RAC was
chartered and appointed by the
Secretary of the Interior. Their diverse
perspectives are represented in
commodity, conservation, and general
interests. They provide advice to the
BLM, and as needed the Forest Service,
resource managers regarding
management plans and proposed
resource actions on public land in
southeast Oregon. All meetings are open
to the public in their entirety.
Information to be distributed to the RAC
is requested prior to the start of each
meeting.The August 7 field trip will consist of
a tour of lands with wildernesscharacteristics, and existing Wilderness
Study Areas in preparation for the RAC
to participate in the Lakeview Resource
Management Plan Amendment process.
Members of the public who want to
participate in the field tour must
provide their own transportation.
Agenda items for the Wednesday,
August 8, meeting include possible
management approaches for areas
identified by the BLM as lands with
wilderness characteristics for a formal
recommendation by the Southeast
Oregon RAC as part of the Lakeview
District's Resource Management Plan
Amendment process, development of
cross-boundary fuel breaks to protect
against wildfire, potential agency
changes to sage grouse management,
and any other business that may
reasonably come before the RAC. A final
agenda will be posted online at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac> at
least one week prior to the meeting.Before including your address, phone
number, email address, or other
personal identifying information in your
comments, please 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 we will be able to do
so.**Authority:** 43 CFR 1784.4-2**Holly Orr,***Acting Burns District Manager.*

[FR Doc. 2018-15585 Filed 7-19-18; 8:45 am]

BILLING CODE 4310-33-P**DEPARTMENT OF THE INTERIOR****National Park Service**[NPS-WASO-NRNHL-DTS#-25949;
PPWOCRADIO, PCU00RP14.R50000]**National Register of Historic Places;
Notification of Pending Nominations
and Related Actions****AGENCY:** National Park Service, Interior.**ACTION:** Notice.**SUMMARY:** The National Park Service is
soliciting comments on the significance
of properties nominated before June 30,
2018, for listing or related actions in the
National Register of Historic Places.**DATES:** Comments should be submitted
by August 6, 2018.**ADDRESSES:** Comments may be sent via
U.S. Postal Service and all other carriers
to the National Register of HistoricPlaces, National Park Service, 1849 C St.
NW, MS 7228, Washington, DC 20240.**SUPPLEMENTARY INFORMATION:** The
properties listed in this notice are being
considered for listing or related actions
in the National Register of Historic
Places. Nominations for their
consideration were received by the
National Park Service before June 30,
2018. Pursuant to Section 60.13 of 36
CFR part 60, written comments are
being accepted concerning the
significance of the nominated properties
under the National Register criteria for
evaluation.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.Nominations submitted by State
Historic Preservation Officers:**ALABAMA****Cleburne County**Cleburne County High School, 911
Willoughby St., Heflin, SG100002763**Houston County**Main Street Commercial District (Boundary
Increase), Roughly bounded by Museum
Ave., Crawford, Oates, Newton & College
Sts., Dothan, BC100002765**Jefferson County**Magnolia Avenue South Historic District,
Magnolia Ave. bounded by Richard
Arrington, Jr. Blvd. & 24th St. S,
Birmingham, SG100002766**Mobile County**Blue Bird Hardware and Seed, 2724 Old
Shell Rd., Mobile, SG100002768**DELAWARE****New Castle County**Homestead Hall, 362 Grears Corner Rd.,
Townsend, SG100002770**MASSACHUSETTS****Hampden County**Rose, John and Ruth, House, 944 Main Rd.,
Granville, SG100002772**MINNESOTA****Lake County**HARRIET B. (shipwreck), (Minnesota's Lake
Superior Shipwrecks MPS), Address
Restricted, Two Harbors vicinity,
MP100002773

RHODE ISLAND**Providence County**

Rumford Historic District (Boundary Decrease), (East Providence MRA), Pleasant St., Greenwood and Pawtucket Aves, East Providence, BC100002777

Rumford Historic District (Boundary Increase), (East Providence MRA), Pleasant St., Greenwood and Pawtucket Aves, East Providence, BC100002778

Additional documentation has been received for the following resources:

ALABAMA**Dallas County**

Riverview Historic District, Roughly bounded by Selma Ave., Satterfield and Lapsley Sts. and the Alabama R., Selma, AD90000887

Lauderdale County

Sannoner Historic District, Includes both sides of N. Pine and N. Court from Tuscaloosa Ave. to University of Alabama, Florence, AD76000336

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

IDAHO**Bonneville County**

Palisades Dam and Powerplant Historic District, US 26, .81 mi. S of jct. with Forest Road 260, Palisades vicinity, SG100002771

MONTANA**Sanders County**

Cougar Peak Lookout, (L-4 Fire Lookouts in the USFS Northern Region (Region 1), 1932-1967 MPS), Plains/Thompson Falls Ranger District, Lolo NF, Thompson Falls vicinity, MP100002774

NORTH CAROLINA**Craven County**

U.S. Post Office, Court House, and Custom House, 413 Middle St., New Bern, SG100002775

Authority: Section 60.13 of 36 CFR part 60.

Dated: July 5, 2018.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program and Deputy Keeper of the National Register of Historic Places.

[FR Doc. 2018-15513 Filed 7-19-18; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1123]

Certain Carburetors and Products Containing Such Carburetors Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 14, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Walbro, LLC of Tucson, Arizona. A supplement to the complaint was filed on June 22, 2018. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carburetors and products containing such carburetors by reason of infringement of certain claims of U.S. Patent No. 6,394,424 (“the ‘424 patent”); U.S. Patent No. 6,439,547 (“the ‘547 patent”); U.S. Patent No. 6,533,254 (“the ‘254 patent”); U.S. Patent No. 6,540,212 (“the ‘212 patent”); and U.S. Patent No. 7,070,173 (“the ‘173 patent”). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general or limited exclusion order, in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 16, 2018, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, 16, 18, and 19 of the ‘424 patent; claims 1 and 18 of the ‘547 patent; claims 1-7, 12, and 13 of the ‘254 patent; claims 12, 14, 15, and 18 of the ‘212 patent; and claims 54-57, 60, and 62-65 of the ‘173 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “handheld carburetors for small or utility gasoline engines that are used in chainsaws, leaf blowers, backpack blowers, trimmers, lawn trimmers, string trimmers, line trimmers, weed whackers, hedge trimmers, pole hedge trimmers, backpack hedge trimmers, earth augers, power augers, hole diggers, post hole diggers, ice augers, cultivators, mini-tillers, water pumps, electricity generators, inverter generators, mini dirt bikes, mini-bikes, pocket bikes, pit bikes, transfer pumps, brush cutters, clearing saws, pole saws, pole pruners, pruning saw, hammer drills, rotary hammers, sprayers, backpack sprayers, misters, backpack misters, post drivers, piling drivers, post pounders, multi-tools, engine powered drill, fogging machine, insect fogger, orchard fogger, mosquito fogger, mist blower, gasoline powered atomizer, duster, backpack duster, pressure washer, demolition saws, power cutters, cut off saw, cut-off saw, disc cutter, circular saw, concrete

saw, masonry saw, reciprocating saw, jack hammer, jackhammer, concrete breaker, drill punch, lawn edger, edger, bed redefiner, snow blower, snow broom, snow sweeper, power broom, powerbroom, shredder-vac, shredder vac, leaf shredder vacuum, leaf vacuum, leaf mulcher, mulching vacuum, planting auger, scooter, motorized skateboard, moped, go kart, outboard motor, wheeled line trimmer, vibratory concrete screed, compactor, core drill, soil sampler, earth drill, winch, capstan winch, motorized bicycle, bicycle engine conversion kit, Bike engine kit, bicycle engine kit, friction drive motor kit, aftermarket replacement engines, and aftermarket replacement carburetors.”

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Walbro, LLC, 2015 W. River Road #202, Tucson, AZ 85704.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ruixing Carburetor, Manufacturing Co., Ltd., Zhejiang, Zhejiang Ruian City and Auto Parts Industrial, Bas North Fengdu Five Road, No. 168, China
 Huayi Carburetor Factory, B210-5, Wuhuan Building, Yuan Jigang, Chongqing China
 Tillotson, Clash Industrial Estate, Tralee, Co. Kerry, Ireland
 Fujian Hualong Carburetor Co., Ltd., Fuding City Yongsan Industrial Zone 99, China
 Fuding Guangda General, Machinery Co., Ltd., Tietang Industrial District, Fuding City, Fujian Province, 355200 China
 Wuyi Henghai Tools Co., Ltd., Baihuashan Industrial Zone, Wuyi 321200, Jinhua, Zhejiang, China
 Fuding Youyi Trade Co., Ltd., No. 176, Yuhu Community, Taimushan Town, Fuding, Ningde, Fujian, 355203 China
 Amazon.com, Inc., 410 Terry Ave. N, Seattle, Washington 98109-5210
 Amerisun Inc., 1141 Bryn Mawr Ave., Itasca, Illinois 60143
 Ardisam, Inc., 2260 8th Ave., Cumberland, Wisconsin 54829
 Buffalo Corporation, 950 Hoff Rd., O'Fallon, Missouri 63366
 Cabela's Incorporated, One Cabela Dr., Sidney, Nebraska 69160
 Champion Power Equipment, Inc., 12039 Smith Ave., Santa Fe Springs, California 90670
 Feldmann Eng. & Mfg. Co., Ltd., 520 Forest Ave., Sheboygan Falls, Wisconsin 53085

FNA Group, Inc., 7152 99th St., Pleasant Prairie, Wisconsin 53185

Frictionless World, LLC, 1100 W. 120th Ave, Suite 600, Denver, Colorado 80234

Generac Power Systems, Inc., S45W29290 Highway 59, Waukesha, Wisconsin 53189

Husqvarna Professional Products, Inc., 9335 Harris Corners Parkway, Suite 500, Charlotte, North Carolina 29269

Imperial Industrial Supply Co., d/b/a DuroMax Power Equipment, 5800 Ontario Mills Parkway, Ontario, California 91764

Kmart Corporation, 3333 Beverly Rd., Hoffman Estates, Illinois 60179

Lowe's Companies, Inc., 1000 Lowes Boulevard, Mooresville, North Carolina 28117

MAT Industries, LLC, 6700 Wildlife Way, Lake Zurich, Illinois 60047

Menards, Inc., 4777 Menard Dr., Eau Claire, Wisconsin 54703

MTD Products Inc., 5965 Grafton Rd., Valley City, Ohio 44280

North American Tool Industries, 78 Commercial Rd., Huntington, Indiana 48750

Northern Tool & Equipment Co., Inc., 2800 Southcross Dr. W., Burnsville, Minnesota 55306

QV Tools LLC, 2731 Crimson Canyon Dr., Las Vegas, Nevada 89128

Sears, Roebuck and Co., 3333 Beverly Rd., Hoffman Estates, Illinois 60179

Target Corporation, 1000 Nicollet Mall, Minneapolis, Minnesota 55403

Techtronics Industries Co. Ltd of Hong Kong d/b/a Techtronic Industries Power Equipment, 29/F, Tower 2, Kowloon Commerce Centre, 51 Kwai Cheong Rd., Kwai Chung, New Territories, Hong Kong

The Home Depot, Inc., 2455 Paces Ferry Rd NW, Atlanta, Georgia 30339

Thunderbay Products, 115 N. Prentice St., Clayton, Wisconsin 54004

Tool Tuff Direct LLC, 15000 W. 44th Ave., Suite B, Golden, Colorado 80403

Tractor Supply Company, 5401 Virginia Way, Brentwood, Tennessee 37027

Walmart Inc., 703 SW 8th St., Bentonville, Arkansas 72716

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and

Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 17, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-15541 Filed 7-19-18; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On July 17, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Michigan in the lawsuit entitled *United States v. Gerdau Specialty Steel, N.A., Michigan*, Civil Action No. 18-12228.

The Complaint seeks civil penalties and injunctive relief for alleged violations of the Clean Air Act relating to excess opacity and emissions of particulate matter (“PM”); failure to follow good air pollution control practices in limiting PM emissions; violations of reporting and notification requirements; failure to conduct required performance testing for a number of pollutants; and violations of baghouse operation, monitoring, and inspection requirements. Under the proposed Consent Decree, Gerdau would be required to take a number of measures to control PM pollution and limit opacity. The proposed Consent Decree would require enclosure of a partially opened roof monitor at the

south end of the Facility’s main building, called the melt shop. Emissions that would otherwise be released into the atmosphere through the roof monitor would be captured by a new system that would route emissions to a new baghouse for pollution control. The proposed Consent Decree also contains interim measures to address PM emissions; operational requirements to limit emissions; and monitoring, recordkeeping, and reporting requirements. The proposed Consent Decree requires Gerdau to pay a \$325,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Gerdau Specialty Steel, N.A., Michigan*, D.J. Ref. No. 90–5–2–1–11453. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$12.40 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,
*Acting Assistant Section Chief,
Environmental Enforcement Section,
Environment and Natural Resources Division.*
[FR Doc. 2018–15586 Filed 7–19–18; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 18–056]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).
ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the “Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery” for approval under the Paperwork Reduction Act (PRA). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.
DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gatrie Johnson, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email or Gatrie.Johnson@NASA.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration’s commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections

will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency’s services will be unavailable.

II. Methods of Collection

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

The collections are voluntary;
The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

The collections are non-controversial and do not raise issues of concern to other Federal agencies;

Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;

Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which

generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

III. Data

Title: Extension of the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 2700–0153.

Type of review: Extension of approval for a collection of information.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local, or Tribal Government.

Average Expected Annual Number of activities: 60.

Average number of Respondents per Activity: 300.

Annual Responses: 18,000.

Frequency of Responses: Once per request.

Average minutes Per Response: 5.

Burden Hours: 1,500.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Gatree Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2018–15511 Filed 7–19–18; 8:45 am]

BILLING CODE 7510–13–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Agency Information Collection Activities: Extension of Information Collection; Comment Request

AGENCY: Office of the Director of National Intelligence (ODNI).

ACTION: Notice.

SUMMARY: In December 2011, the ODNI accepted responsibility from the Information Security Oversight Office (ISOO) to manage the Standard Form 714, *Financial Disclosure Report*, in accordance with the responsibilities assigned to the Director of National Intelligence (DNI) as the Security Executive Agent. The Standard Form 714 is used across the U.S. Government for assessing an individual's eligibility (or continued eligibility) for access to certain types of classified information. This standard form must be completed and submitted as a condition for access to designated classified information, along with a favorably adjudicated personnel security background investigation or reinvestigation. In accordance with the Office of Management and Budget's (OMB) process for Federal agency adherence to the Paperwork Reduction Act, this 30-day Notice is to advise of ODNI's intent to now submit Standard Form 714 to OMB for review and approval and to invite comments from the general public and other Federal Agencies. As the ODNI proposes no changes to Standard Form 714 and its instructions at this time, the ODNI is seeking to extend the current version of the Standard Form 714 for three additional years from its scheduled expiration on 31 August 2018. On 12 February 2018, the **Federal Register** published a Notice inviting the general public and other Federal agencies to comment on the ODNI's intent to extend the use of the current version of Standard Form 714 for an additional three years. The Notice resulted in one comment/suggestion from the general public related to "ways, including the use of information technology, to minimize the burden of the collection of information on all respondents to the Standard Form 714." ODNI responded directly to the individual thanking them for their

suggestion and stating that ODNI will take the suggestion into consideration.

DATES: Written comments must be received on or before August 20, 2018 to be assured of consideration.

ADDRESSES: Comments should be sent to OMB liaison to ODNI Jasmeet Seehra at jasmeet_k_seehra@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection and supporting statements should be directed to Ms. Patricia Gaviria, Director of the Information Management Division, Policy and Strategy, Office of the Director of National Intelligence, Washington, DC 20511; dni-foia@dni.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the ODNI is requesting extension in effect of Standard Form 714, proposing no changes to the Form and its instructions at this time. The ODNI invites the general public and other Federal agencies to comment on Standard Form 714. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection reflected in the Standard Form 714 meets the intent of section 1.3 ("Financial Disclosure") of Executive Order 12968, as amended ("Access to Classified Information"); (b) the accuracy of the estimated burden of the proposed information collection for Standard Form 714; (c) ways to enhance the quality, utility, and clarity of the information to be collected in the Standard Form 714; (d) ways, including the use of information technology, to minimize the burden of the collection of information on all respondents to the Standard Form 714; and (e) whether small businesses are affected by this collection. All comments will become a matter of public record.

Abstract: The National Security Act of 1947, as amended; section 3001 of the Intelligence Reform and Terrorism Prevention Act of 2004; and Executive Order 13467, "Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information," as amended, authorize the DNI, as the Security Executive Agent, to develop standard forms, including a standard financial disclosure form, that promotes uniformity and consistency in the implementation of the Government's security programs.

The Standard Form 714 contains information that is used to assist in making eligibility determinations for access to specifically designated

classified information pursuant to Executive Order 12968, as amended, "Access to Classified Information." The data may later be used as part of a review process to evaluate continued eligibility for access to such specifically designated classified information or as evidence in legal proceedings. In addition, law enforcement entities may use this data where pertinent to appropriate investigatory activity.

Respondent burden data follows below:

Title: Financial Disclosure Report.

OMB number: 3440-0001.

Agency form number: Standard Form 714.

Type of review: Regular.

Affected public: Business or other for-profit.

Estimated number of respondents: 86,000.

Estimated time per response: 2 hours.

Frequency of response: Annually.

Estimated total annual burden hours: 172,000 hours.

Dated: July 11, 2018.

Deirdre M. Walsh,

Chief Operating Officer.

[FR Doc. 2018-15592 Filed 7-19-18; 8:45 am]

BILLING CODE 9500-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on July 26, 2018 at U.S. Nuclear Regulatory Commission, Region I, 2100 Renaissance Blvd., Suite 100, King of Prussia, PA 19406-2713.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Thursday July 26, 2018—8:15 a.m. Until 12:00 p.m.

The Subcommittee will hear presentations by and hold discussions with NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301-415-2989 or Email:

Kent.Howard@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the Main Entrance, 2100 Renaissance Blvd., Suite 100, King of Prussia, PA 19406-2713. *Please bring valid identification to be permitted to enter the NRC Region I building.* After registering with Security, please contact Ms. Ann De Francisco (Telephone 601-337-5078) to be escorted to the meeting room.

Dated: July 16, 2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018-15539 Filed 7-19-18; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0001]

Sunshine Act Meeting Notice

DATE: Weeks of July 23, 30, August 6, 13, 20, 27, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 23, 2018

Tuesday, July 24, 2018

1:30 p.m. Affirmation Session (Public Meeting) (Tentative)
Powertech (USA) Inc. (Dewey-Burdock In Situ Uranium Recovery Facility) Petition for Review of LBP-17-9 (Tentative)

Week of July 30, 2018—Tentative

There are no meetings scheduled for the week of July 30, 2018.

Week of August 6, 2018—Tentative

There are no meetings scheduled for the week of August 6, 2018.

Week of August 13, 2018—Tentative

There are no meetings scheduled for the week of August 13, 2018.

Week of August 20, 2018—Tentative

There are no meetings scheduled for the week of August 20, 2018.

Week of August 27, 2018—Tentative

There are no meetings scheduled for the week of August 27, 2018.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at *Denise.McGovern@nrc.gov*.

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the

Secretary, Washington, DC 20555 (301–415–1969), or you may email Patricia.Jimenez@nrc.gov or Wendy.Moore@nrc.gov.

Dated: July 18, 2018.

Denise L. McGovern,
Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–15742 Filed 7–18–18; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2018–25, CP2018–269, MC2018–192 and CP2018–270]

New Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 24, 2018.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request’s acceptance date, and the authority cited by the Postal Service for each request. For each

request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service’s request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2018–25; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to a Global Expedited Package Services 7 Negotiated Service Agreement; *Filing Acceptance Date:* July 16, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 24, 2018.

2. *Docket No(s):* CP2018–269; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* July 16, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 24, 2018.

3. *Docket No(s):* MC2018–192 and CP2018–270; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 41 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 16, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.*, and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 24, 2018.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2018–15517 Filed 7–19–18; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule’s Competitive Products List.
DATES: *Date of required notice:* July 20, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 16, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 41 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2018–192, CP2018–270.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–15482 Filed 7–19–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83645; File No. SR–CboeEDGX–2018–023]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe EDGX Exchange, Inc.

July 16, 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 July 2, 2018, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) filed with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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 Act³ 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 to modify certain Routing Fees.

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 its fee schedule, effective July 2, 2018, to amend pricing for orders routed for securities at or above \$1.00, which yield fee code X. The Exchange currently assesses \$0.00290 per share for these orders. The Exchange is proposing to increase the rate from \$0.00290 per share to \$0.00300 per share. The Exchange notes that the proposed amount is in line with amounts assessed for similar transactions on another exchange.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ 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.

Particularly, the Exchange believes its proposed fees are reasonable taking into account routing costs and also notes that the proposed change is in line with the amount assessed for similar transactions by another exchange.⁸ The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies equally to all Members. The Exchange notes that routing through the Exchange is voluntary and also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

(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 the proposed routing fee will not impose an undue burden on competition because the Exchange will uniformly assess the affected routing fees on all Members. Additionally, Members may opt to disfavor the Exchange’s pricing if they believe that alternatives offer them better value or if they view the proposed fee as excessive. Further, excessive fees for participation would serve to impair an exchange’s ability to compete for order flow and members rather than burdening competition.

(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 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 Act⁹ and paragraph (f) of Rule 19b-4 thereunder.¹⁰ 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-2018-023 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-CboeEDGX-2018-023. 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

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See e.g., NYSE National, Inc. Schedule of Fees and Rebates, Section II, Routing Fees.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ See e.g., NYSE National, Inc. Schedule of Fees and Rebates, Section II, Routing Fees.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

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-CboeEDGX-2018-023 and should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-15498 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83640; File No. SR-CboeBZX-2018-050]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe BZX Exchange, Inc.

July 16, 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 July 5, 2018, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) 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 Act³ 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

Members⁵ of the Exchange pursuant to BZX 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.

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 its fee schedule applicable to its equities trading platform (“BZX Equities”). Particularly, the Exchange proposes to amend the Tape B Volume and Quoting Tiers effective July 2, 2018.

The Exchange currently offers one Tape B Volume and Quoting Tier under footnote 13, which provides an additional rebate of \$0.0001 per share for orders that add liquidity in Tape B securities where a Member is enrolled in at least 50 LMP Securities⁶ for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) Member has a NBBO Time⁷ greater than or equal to

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).

⁶ “LMP Securities” means a list of securities included in the Liquidity Management Program, the universe of which will be determined by the Exchange and published in a circular distributed to Members and on the Exchange’s website. Such LMP Securities will include all Cboe-listed ETPs and certain non-Cboe-listed ETPs for which the Exchange wants to incentivize Members to provide enhanced market quality. All Cboe-listed securities will be LMP Securities immediately upon listing on the Exchange. The Exchange will not remove a security from the list of LMP Securities without 30 days prior notice. See Cboe BZX U.S. Equities Exchange Fee Schedule.

⁷ “NBBO Time” means the average of the percentage of time during regular trading hours during which the Member maintains at least 100 shares at each of the NBB and NBO. See Cboe BZX U.S. Equities Exchange Fee Schedule.

15% or NBBO Size Time⁸ is equal to or greater than 25%; and (2) Member has a Displayed Size Time⁹ equal to or greater than 90%. Such rebates are applicable to orders that add liquidity which are appended with fee code B. The Exchange proposes to make two changes to the Tape B Volume and Quoting Tier.

First, the Exchange proposes to require that a Member is enrolled in and meets the requirements for at least 100 LMP Securities, an increase from the current requirement of 50. Second, the Exchange is proposing to require that at least 10 of the LMP Securities that a Member is enrolled in and meets the requirements for are BZX-listed securities.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4),¹² 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 also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposal reflects a change to a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange and enhance market quality in LMP Securities, including BZX-listed securities, and in Tape B securities.

The Exchange believes that increasing the threshold for Members to be enrolled in and meet the requirements for at least 50 LMP Securities to 100 LMP Securities is a reasonable means to incentivize Members to meet certain quoting standards in additional LMP Securities that the Exchange believes will narrow spreads, increase size at the inside, and increase liquidity depth on

⁸ “NBBO Size Time” means the percentage of time during regular trading hours during which there are size-setting quotes at the NBBO on the Exchange. See Cboe BZX U.S. Equities Exchange Fee Schedule.

⁹ “Displayed Size Time” means the percentage of time during regular trading hours during which the Member maintains at least 2,500 displayed shares on the bid and separately maintains at least 2,500 displayed shares on the offer that are priced no more than 2% away from the NBB and NBO, respectively. See Cboe BZX U.S. Equities Exchange Fee Schedule.

¹⁰ The Exchange notes that all BZX-listed securities are by definition LMP Securities.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹¹ 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).

the Exchange in such LMP Securities, which will increase market quality in LMP Securities, to the benefit of all market participants. Similarly, the Exchange believes that requiring that at least 10 of the LMP Securities that a Member is enrolled in and meets the requirements for are BZX-listed securities in order to receive the Tape B Volume and Quoting Tier rebate is a reasonable means to incentive enhanced quoting in BZX-listed securities in order to narrow spreads, increase size at the inside, and increase liquidity depth on the Exchange BZX-listed securities, to the benefit of all market participants and enhance the Exchange's standing as a listing venue.

The Exchange further believes that the proposed changes represent an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the Tape B Volume and Quoting Tier would continue to encourage Members to add additional liquidity to the Exchange in LMP Securities, including BZX-listed securities. The proposed changes also are not unreasonably discriminatory as they apply equally to all Members.

(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 the changes burden competition, but instead, enhance competition, as these changes are intended to increase the competitiveness of the Exchange as it is designed to enhance the market quality of LMP Securities, including BZX-listed securities, on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed changes are generally intended to enhance market quality in LMP Securities, including BZX-listed securities, and Tape B securities. As such, the proposal is a competitive proposal that is intended to add additional liquidity to the Exchange, which will, in turn, benefit the Exchange and all Exchange participants and enhance the Exchange's standing as a listing venue.

(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 Act¹³ and paragraph (f) of Rule 19b-4 thereunder.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 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-2018-050 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-CboeBZX-2018-050. 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-CboeBZX-2018-050 and should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-15506 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 83 FR 32932, 16 July 2018.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, July 18, 2018 at 10:00 a.m.

CHANGES IN THE MEETING: The following item will not be considered during the Open Meeting on Wednesday, July 18, 2018:

- Whether to propose amendments to the disclosure requirements in Rule 3-10 and Rule 3-16 of Regulation S-X.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: July 18, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018-15673 Filed 7-18-18; 4:15 pm]

BILLING CODE 8011-01-P

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83641; File No. SR–GEMX–2018–25]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Improvement Orders Entered into the Price Improvement Mechanism

July 16, 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 July 5, 2018, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX Rule 723, entitled “Price Improvement Mechanism for Crossing Transactions.”

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.

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

GEMX proposes to amend Rule 723, entitled “Price Improvement

Mechanism for Crossing Transactions.” Specifically, the Exchange proposes to amend Rule 723(c)(2) to expand the types of Improvement Orders³ that may be entered into the Price Improvement Mechanism or “PIM.” The Exchange also proposes to amend Rule 723(d)(1)–(3) to more specifically clarify terms such as “orders” and “responses” in that section.

Background

The Exchange adopted PIM as part of its application to be registered as a national securities exchange under its previous name of Topaz Exchange, LLC.⁴ In approving PIM, the Commission noted that it was largely based on a similar functionality offered by the International Securities Exchange, LLC (now Nasdaq ISE, LLC) (“ISE”).⁵ ISE received approval to establish its PIM in 2004 that would allow an ISE Electronic Access Member (“EAM”) to enter matched trades (“Crossing Transactions”).⁶ As noted in the Adopting Filing, a Crossing Transaction would be comprised of an order that the EAM represents as agent (“Agency Order”) and an order that is executable against the Agency Order for the full size of the Agency Order (the “Counter-Side Order”).⁷ In the Adopting Filing, ISE specified in Rule 723(c)(2) that Improvement Orders may be for the account of a Public Customer or for the Member’s own account.⁸ The Adopting Filing noted that ISE would broadcast Crossing Orders to all Members.⁹ Further, it was noted in the Adopting Filing that during a three second auction, all ISE Members could enter “Improvement Orders,” in penny increments, to improve the price of the

³ Rule 723(c)(1) defines an Improvement Order. The Exchange will designate via circular a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order (“Improvement Orders”).

⁴ See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10–209) (“Exchange Approval Order”). The Exchange subsequently changed its name to ISE Gemini and then later Nasdaq GEMX.

⁵ *Id.*

⁶ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR–ISE–2003–06) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 Thereto by the International Securities Exchange, Inc. To Establish Rules Implementing a Price Improvement Mechanism) (“Adopting Filing”).

⁷ The Counter-Side Order may represent interest for the EAM’s own account, or interest the EAM has solicited from one or more other parties, or a combination of both.

⁸ *Id.*

⁹ The broadcast message would include the series, price, and size of the Agency Order and whether it is to buy or sell.

Agency Order.¹⁰ The Adopting Filing stated that Improvement Orders may be for the account of a Public Customer or for the Member’s own account.¹¹ Finally, the Adopting Filing noted that during the exposure period, the aggregate size of the best prices, including the Counter-Side Order, Improvement Orders, and any change to either, would continually be updated and broadcast to all Members.¹²

Rule 723(c)(2)

With respect to the current limitation of Improvement Orders for the account of a Public Customer or for the Member’s own account, ISE noted in its Adopting Filing that “all ISE Members would be permitted to participate in a PIM . . . unrelated orders could compete in standard increments to trade with the Agency Order in the PIM. Such unrelated orders could include agency orders on behalf of Public Customers, market makers on other exchanges, and non-ISE member broker-dealers, as well as non-Improvement orders submitted by ISE members.”

At this time, the Exchange proposes to permit any GEMX Member to enter an Improvement Order marked as a response to a PIM auction similar to Nasdaq PHLX LLC (“Phlx”) ¹³ and Nasdaq BX, Inc. (“BX”) ¹⁴ rules. The Exchange no longer desires to limit Members who may enter Improvement Orders into PIM to simply those orders for the account of a Public Customer or for the Member’s own account. The Exchange desires to expand the types of orders that may be entered as Improvement Orders similar to Phlx and BX. The Exchange is therefore removing this limitation in Rule 723(c)(2) so that the proposed rule text would read: “Improvement Orders may be entered by all Members in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order.”

Rule 723(d)(1)–(3)

The Exchange proposes to amend GEMX Rule 723(d)(1)–(3), which

¹⁰ The ISE would broadcast Improvement Orders to all Members. Crossing Transactions and Improvement Orders would not be displayed in the ISE BBO and would not be disseminated to the Options Price Reporting Authority.

¹¹ GEMX Rule 723(c)(2).

¹² GEMX Rule 723(c)(4).

¹³ Phlx Rule 1087 permits any member to submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”).

¹⁴ BX Rules at Chapter VI, Section 9 provides that “A Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker dealer, or any other entity (“PRISM Order”).”

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

explains the manner in which a PIM Order shall be allocated to conform this text to the change which is proposed in Rule 723(c)(2). Rule 723(d)(1) currently provides, “At a given price, Priority Customer interest is executed in full before Professional Orders¹⁵ and any other interest of Members (*i.e.*, proprietary interest from Electronic Access Members and Exchange market makers).” The Exchange proposes to expand upon the term interest by adopting the defined terms “Priority Customer Interest” for Priority Customer Orders and Improvement Orders from Priority Customers, and “Professional Interest” for Professional Orders, Improvement Orders from non-Priority Customers, and Market Maker quotes. The Exchange believes that adding these defined terms would clarify what is meant by interest. As proposed, Professional Interest identifies all orders (including Improvement Orders) that are not for the account of a Priority Customer as well as Market Maker quotes, thereby incorporating the current reference to “Professional Orders” within its terms and eliminating the necessity to include the current rule text which provides, “any other interest of Members (*i.e.*, proprietary interest from Electronic Access Members and Exchange market makers).”

The Exchange proposes to amend Rule 723(d)(2) which currently provides, “After Priority Customer interest at a given price, Professional Orders and Members’ interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the Members’ interest.” The Exchange proposes to replace the reference to “Priority Customer interest” with the defined term “Priority Customer Interest” proposed to be added in Rule 723(d)(1), as described above. The Exchange also proposes to change “Professional Orders” to “Professional Interest” which will be defined in Rule 723(d)(1) to include Professional Orders as well as Improvement Orders from non-Priority Customers and Market Maker quotes. Since Professional Interest is defined in this manner, the Exchange also proposes to remove the language referring to “Members’ interest” from the sentence because Professional Interest would include all orders from non-Priority Customers and Market Maker quotes.

¹⁵ GEMX Rule 100(a)(52) provides the term “Professional Order” means an order that is for the account of a person or entity that is not a Priority Customer.

The Exchange proposes to amend Rule 723(d)(3) to again remove the rule text relating to “Members’ interest” and instead utilize the defined “Professional Interest” term consistent with proposed changes to Rule 723(d)(1) and (2). The Exchange also proposes to make similar changes to add the term “Professional Interest” to the sentence in Rule 723(d)(3) that currently reads: “Thereafter, all other orders, Responses, and quotes at the price point will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the order, Response or quote.” In particular, the language related to “other orders, Responses, and quotes” in this sentence will be replaced with “Professional Interest” since this term includes all orders from non-Priority Customers and Market Maker quotes, as described above. The Exchange notes that the references in this sentence to “Responses,” currently an undefined term, should instead refer to the defined term “Improvement Orders,” and the proposed changes should therefore clarify how Rule 723(d)(3) will apply. Finally, the Exchange proposes to replace the word “Priority Customer Orders” with “Priority Customer Interest” as defined in proposed Rule 723(d)(1) to clarify that those orders as well as responses (*i.e.*, Improvement Orders from Priority Customers) are applicable. The proposed amendments add more specificity to the exact order/quotes and responses which apply in this section.

The amendments to Rule 723(d)(1)–(3) conform to the proposed amendment to Rule 723(c)(2) and other proposed amendments as described above which do not change the manner in which PIM operates today, rather the other word changes seek to bring specificity to the manner in which order, quotes and responses are treated.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ 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’s proposal to amend Rule 723(c)(2) seeks to broaden the

types of orders that may be submitted as Improvement Orders into PIM. As ISE previously noted, in its Adopting Filing, all Members are able to participate in a PIM today as an unrelated order that rests on the Order Book. Unrelated orders that rest on the Order Book can participate in PIM and trade with the Agency Order in the PIM. The Exchange proposes to allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of GEMX Members to more directly participate in PIM and provide price improvement. The Exchange’s proposal is consistent with the Act because allowing a greater number of Members to directly respond with an Improvement Order in a PIM will increase the likelihood of price improvement in that auction thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. This approach will enable greater participation in PIM auctions.

The Exchange’s proposal to amend Rule 723(d) conforms the text with changes made with respect to the proposal to amend Rule 723(c)(2) for consistency. The proposed changes to remove the more generic “Members’ interest” and instead substitute very specific terms to define interest and add quotes provide more specificity as to the manner in which interest entered into PIM will be allocated. The Exchange’s proposed amendments to Rule 723(d)(1)–(3) are consistent with the Act because the amendments seek to conform the rule text to the proposed Rule 723(c)(2) amendment and describe in greater detail how interest will be allocated by defining terms and eligible interest and this transparency benefits investors and the public interest.

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’s proposal to amend Rule 723(c)(2) to broaden the types of orders that may be submitted as Improvement Orders into PIM does not unduly burden competition because all Members will be permitted to submit Improvement Orders directly into PIM to provide an even greater number of GEMX Members to more directly participate in PIM. The amendments to Rule 723(d) will conform the rule text and bring clarity to the allocation method for PIM.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²¹ 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 asked the Commission to waive the 30-day operative delay so that it may allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of GEMX Members an opportunity to more directly participate in PIM and provide price improvement. The Exchange states that it will issue an Options Trader Alert to notify Members of the date within which this functionality will be implemented. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-GEMX-2018-25 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-GEMX-2018-25. 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. 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-2018-25, and

should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-15501 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83639; File No. SR-ISE-2018-61]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees To Add Establish Fees and Rebates for NQX Options and Make Several Clarifying Changes

July 16, 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 July 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 the Exchange's Schedule of Fees.

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

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² 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).

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 recently received approval to list index options on the Nasdaq 100 Reduced Value Index (“NQX”) on a pilot basis.³ The Exchange began to list NQX on June 26, 2018, and filed on the same day a proposed rule change that waived fees and rebates for executions in NQX options from June 26–29, 2018.⁴ The

Exchange now proposes to amend its Schedule of Fees to adopt pricing for NQX.

By way of background, certain proprietary products such as NDX and NDXP are commonly included in or excluded from a variety of fee and rebate programs. The Exchange notes that the reason these products are often included in or excluded from certain programs is because the Exchange has expended considerable resources developing and maintaining its proprietary products. Similar to NDX and NDXP, NQX is a proprietary product. As such, the Exchange proposes to establish transaction fees for NQX options that are similarly structured to the transaction fees for NDX and NDXP options with some

differences as noted below. The Exchange also proposes to similarly include or exclude NQX options from several programs from which NDX and NDXP options are currently included or excluded. Lastly, the Exchange proposes a number of clarifying changes to the Schedule of Fees. Each change is discussed below.

Transaction Fees for NQX Options

The Exchange proposes to establish transaction fees and rebates for adding or removing liquidity from ISE (*i.e.*, maker/taker fees and rebates) in NQX options. The proposed maker/taker fees and rebates for NQX will apply to executions in both the regular and complex order book, according to the following schedule:

Market participant	Maker fee/rebate	Taker fee/rebate
Market Maker	(\$0.25)	\$0.00
Market Maker (for orders sent by Electronic Access Members)	(0.25)	0.00
Non-Nasdaq ISE Market Maker (FarMM)	0.25	0.25
Firm Proprietary/Broker-Dealer	0.25	0.25
Professional Customer	0.25	0.25
Priority Customer	0.00	0.00

The proposed pricing for NQX is similarly structured to how the Exchange currently prices its other proprietary products, NDX and NDXP, in that Non-Priority Customers,⁵ except for Market Makers (*i.e.*, Primary Market Makers and Competitive Market Makers) in this case, will be charged uniform transaction fees and Priority Customers⁶ will not be charged any fees.⁷ Furthermore, the proposed pricing for NQX will similarly apply to all executions in NQX, including Non-Priority Customer Crossing Orders⁸ in NQX. Unlike NDX and NDXP, which are currently charged the applicable complex order fees for Non-Select Symbols (*i.e.*, options overlying all symbols that are not in the Penny Program) in Section II, the proposed pricing for NQX applies to both regular and complex executions in NQX orders. The Exchange believes that this will promote trading activity in the new

product since complex executions in Non-Priority Customer NQX orders will mainly be charged at a lower rate.⁹

The proposed pricing for Market Maker orders, including those orders sent by Electronic Access Members (“EAMs”), is intended to encourage Market Maker activity in NQX, and the Exchange believes that the \$0.25 per contract maker rebate and taker fee waiver for Market Maker orders will provide such incentive. In addition, the proposed \$0.25 per contract maker rebate is intended to offset the proposed NQX license surcharge, as further discussed below, and will further incentivize Market Makers to provide liquidity in the new product during the initial months of trading.

In connection the foregoing changes, the Exchange proposes to remove language related to the NQX fee holiday from June 26–30, 2018 from its Schedule of Fees. The Exchange also

proposes to relocate the pricing for NDX and NDXP presently set forth in the separate table entitled “Index Options” within Section I, and the Non-Priority Customer license surcharge for index options presently within Section IV.C, to group them with the proposed fees and rebates for NQX. The Exchange proposes to set forth the foregoing index options fees in Section III, which currently contains pricing for FX options, and retitle that section as “Index Options Fees and Rebates.” FX options ceased trading on the Exchange upon the January 2018 expiry, after which the Exchange determined not to list additional expiry contracts for FX options. No market participant has traded FX options on the Exchange as of the January 2018 expiry. As such, the Exchange proposes to remove all references to specific pricing for FX options from its Schedule of Fees.

³ See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106). The NQX options contract is the same in all respects as the current Nasdaq-100 Index options contract (“NDX”) listed on the Exchange, except that NQX is P.M. settled and based on 1/5 of the value of the Nasdaq 100 Index. The Exchange notes that similar features are available with other index options contracts listed on the Exchange, including P.M. settled options on the full value of the Nasdaq 100 Index (“NDXP”).

⁴ See SR-ISE-2018-58 (not yet published).

⁵ “Non-Priority Customers” include Market Makers, Non-Nasdaq ISE Market Makers, Firm

Proprietary/Broker-Dealers, and Professional Customers.

⁶ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A).

⁷ See Securities Exchange Act Releases No. 80637 (May 10, 2017), 82 FR 22576 (May 16, 2017) (SR-ISE-2017-35) (among other changes, establishing flat transaction fees for executions of regular NDX orders) and No. 83144 (May 1, 2018), 83 FR 20107 (May 7, 2018) (SR-ISE-2018-38) (among other

changes, establishing flat transaction fees for executions of regular NDXP orders).

⁸ A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

⁹ For instance, a Non-Priority Customer complex order in a Non-Select Symbol (when trading against a Priority Customer) would normally be charged maker/taker fees ranging from \$0.86 to \$0.88 per contract. See Maker and Taker fee schedule in Section II. NQX is a Non-Select Symbol.

The Exchange proposes in the new Section III to restructure the index options fees described above into three separate subsections. First, the Exchange proposes to add a new subsection A, and list the transaction fees for NDX and NDXP in this subsection. As noted above, the fees are not being amended; rather, the existing fees in Section I are being relocated into Section III.A. The rule text in corresponding note 7 in Section I will be deleted since the substance is being relocated to Section III.A. Section III.A will be titled, “NDX Index Options Fees for Regular Orders” to clarify that these fees apply to executions in regular NDX and NDXP orders only, and the Exchange will separately note in Section III.A that for all executions in complex NDX and NDXP orders, the applicable complex order fees for Non-Select Symbols in Section II will apply.¹⁰

Second, the Exchange proposes to add a new subsection B, and list the proposed maker/taker fees and rebates for NQX, as discussed above, in this subsection. Section III.B will be titled, “NQX Index Options Fees and Rebates for Regular and Complex Orders” to clarify that these fees and rebates apply to executions in both regular and complex NQX orders.

Third, the Exchange proposes to add a new subsection C, and list the various Non-Priority Customer license surcharge fee amounts for the specified index options. Other than to include the proposed NQX license surcharge as further discussed below, the current fees are not being amended; rather, the existing fees in Section IV.C are being relocated into Section III.C. Section III.C will be titled, “Non-Priority Customer License Surcharge for Index Options.”

The Exchange considers it appropriate to group the index options fees as described above so that ISE’s pricing for index options may be easily located within its fee schedule. For the sake of clarity, the Exchange also proposes to note within Section I that for all executions in regular NDX, NDXP and NQX orders, the applicable index options fees in Section III will apply. The Exchange similarly proposes to note within Section II that for all executions in complex NQX orders, the NQX index options fees in Section III will apply. The Exchange believes that the proposed cross references will clarify how its pricing for NDX, NDXP and NQX will apply.

¹⁰ For purposes of the Schedule of Fees, “NDX” is defined therein as A.M. or P.M. settled options on the full value of the Nasdaq 100 Index, and therefore includes both NDX and NDXP options.

Priority Customer Complex Rebates

Today, the tiered Priority Customer Complex Rebates in Section II of the Schedule of Fees are not paid for NDX or NDXP. Under the Exchange’s proposal, the Priority Customer Complex Rebates will likewise not be paid for NQX.

Non-Priority Customer License Surcharge

Today as set forth in Section IV.C, the Exchange assesses a license surcharge of \$0.25 per contract for all Non-Priority Customer orders in NDX and NDXP, which applies to all executions in those symbols, including executions of NDX and NDXP orders that are routed to away markets in connection with the Options Order Protection and Locked/Crossed Market Plan (the “Plan”).¹¹ The Exchange now proposes to apply the \$0.25 per contract Non-Priority Customer license surcharge to NQX in order to recoup the costs associated with listing this proprietary product. Unlike NDX and NDXP, the Exchange is not proposing to apply this surcharge to NQX orders that are routed away at this time because NQX is currently listed exclusively on ISE. If NQX begins listing on any of the other Nasdaq, Inc.-owned exchanges, the Exchange will file any necessary rule change proposals with the Commission to apply the \$0.25 per contract surcharge in addition to the \$0.95 per contract route-out fee for those NQX orders that are routed away.¹²

Marketing Fee

By way of background, the Exchange administers a marketing fee program that helps Market Makers establish marketing fee arrangements with EAMs in exchange for those EAMs routing some or all of their order flow to the Market Maker. This program is funded through a fee of \$0.70 per contract, which is paid by Market Makers for each regular Priority Customer contract executed in Non-Select Symbols.¹³ This fee is currently waived for NDX and NDXP orders. The Exchange proposes to similarly waive the marketing fee for NQX orders.

Crossing Fee Cap

As set forth in Section IV.H of the Schedule of Fees, the Exchange currently caps Crossing Order fees at

¹¹ The Exchange applies a route-out fee to executions of orders in all symbols that are routed to away markets in connection with the Plan. Specifically, Non-Priority Customer orders in Non-Select Symbols pay a route-out fee of \$0.95 per contract. NDX and NDXP are Non-Select Symbols. See Schedule of Fees, Section IV.F.

¹² NQX is a Non-Select Symbol.

¹³ See Schedule of Fees, Section IV.E.

\$90,000 per month per member on all Firm Proprietary¹⁴ and Non-Nasdaq ISE Market Maker¹⁵ transactions that are part of the originating or contra side of a Crossing Order. Surcharge fees charged by the Exchange for licensed products (e.g., the \$0.25 per contract license surcharge for NDX and NDXP) and the fees for index options as set forth in Section I (e.g., the \$0.75 per contract fees for NDX and NDXP) are currently excluded from the calculation of this monthly fee cap. The Exchange now proposes to similarly exclude the license surcharge and fees for NQX from the calculation of the monthly Crossing Fee Cap. The Exchange also proposes to amend language in Section IV.H that currently states, “Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Section I . . .” by replacing the reference to Section I with Section III to reflect the proposed relocation of various index options fees, as further described above.

Clean-Up Changes

Lastly, the Exchange proposes a number of clarifying changes to its Schedule of Fees. In Section I, the Exchange proposes to amend note 6, which currently reads: “Market Maker fees are subject to tier discounts, as provided in Section IV.C.” The Exchange seeks to update the reference to Section IV.C, which presently sets forth the Non-Priority Customer license surcharge for index options, to Section IV.D, which sets forth the Market Maker discount tiers.¹⁶ In Section II, the Exchange proposes to delete the stray references to note 5, which is currently reserved, from the maker and taker fee schedule.¹⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

¹⁴ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

¹⁵ A “Non-Nasdaq ISE Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

¹⁶ The Exchange recently filed a rule change that renumbered the subsection containing the market maker tier discounts from Section IV.C to Section IV.D, but did not update the specific references within the fee schedule. See Securities Exchange Act Release No. 83002 (April 5, 2018), 83 FR 15655 (April 11, 2018) (SR-ISE-2018-27).

¹⁷ The Exchange recently filed a proposed rule change to delete the rule text within note 5, but did not delete the references to the note from maker and taker fee schedule in Section II. See Securities Exchange Act Release No. 83431 (June 14, 2018), 83 FR 28681 (June 20, 2018) (SR-ISE-2018-51).

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.

Transaction Fees for NQX Options

The Exchange believes that it is reasonable to assess the proposed maker/taker fees and rebates as discussed above for NQX because NQX will be an exclusively listed product on ISE only. Similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products.²⁰ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.²¹ Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NQX or separately execute PowerShares QQQ Trust (“QQQ”) options.²² Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.²³ When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products. The Exchange also believes that it is reasonable to assess the proposed fees and rebates for both regular and complex executions in NQX options, unlike NDX and NDXP which are assessed the normal complex rates in Section II, because the Exchange believes that this will promote trading

activity in NQX as further discussed above.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to provide a maker rebate of \$0.25 per contract and assess no taker fee to Maker Makers as compared to other market participants because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, the proposed pricing for Market Maker orders in NQX are intended to incentivize Market Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. As noted above, the \$0.25 per contract maker rebate is intended to offset the \$0.25 per contract NQX license surcharge, and the Exchange believes this will further incentivize Market Makers to provide liquidity in the new product during the initial months of trading. Additionally, the proposed NQX pricing for Market Makers will be applied equally to all Market Maker orders (including those orders sent by an EAM), as further discussed above.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to assess no transaction fees to Priority Customer orders in NQX because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity provides more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed pricing for Priority Customer orders in NQX is intended to attract more Priority Customer trading volume to the Exchange. In addition, the proposed NQX pricing for Priority Customers will apply equally to all Priority Customer orders, as further discussed above.

The Exchange further believes that the proposed fee of \$0.25 per contract for Non-Nasdaq ISE Market Maker, Firm Proprietary/Broker-Dealer,²⁴ and Professional Customer²⁵ orders in NQX is reasonable, equitable and not unfairly discriminatory because they are well within the range of amounts assessed for the Exchange’s other proprietary products, including the \$0.75 per

contract fee charged to those market participant orders in NDX and NDXP.²⁶ The lower fee amount of \$0.25 per contract for NQX options as compared to \$0.75 per contract for NDX and NDXP options is reasonable because NQX options is based on 1/5 of the value of the Nasdaq 100 Index whereas both NDX and NDXP are based on the full value of the Nasdaq 100, and the Exchange therefore seeks to assess corresponding reduced fees for this product. In addition, the proposed pricing for Non-Nasdaq ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders in NQX will be applied equally to those market participants, as further discussed above.

The Exchange believes that the proposed changes to eliminate language related to the NQX fee holiday, relocate and group the various index options fees within the Schedule of Fees, and make all of the clarifying changes related to the relocation, each as discussed above, are reasonable, equitable and not unfairly discriminatory. The proposed changes are all intended to bring greater clarity to the Schedule of Fees and will ensure that ISE’s pricing for index options may be easily located within its fee schedule. Finally, the Exchange believes that its proposal to remove obsolete references to specific pricing for FX options from its Schedule of Fees is reasonable, equitable and not unfairly discriminatory because FX options ceased trading on the Exchange upon the January 2018 expiry, as discussed above, and the specific pricing for FX options is therefore no longer applicable. No market participant can trade any FX options on ISE since the Exchange has determined not to list additional expiry contracts.

Priority Customer Complex Rebates

The Exchange believes that its proposal to eliminate the Priority Customer Complex Rebates for NQX is reasonable because even after the elimination of the rebate, Priority Customer complex orders in NQX will not be assessed any complex order transaction fees. As noted above, the Priority Customer Complex Rebates are likewise currently eliminated for NDX and NDXP. By contrast, public customer executions on C2 in RUT are subject to a \$0.15 per contract transaction fee.²⁷ The Exchange’s proposal to eliminate the Priority Customer Complex Rebates for NQX is equitable and not unfairly

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ For example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

²¹ See pricing for Russell 2000 Index (“RUT”) on Chicago Board Options Exchange, Incorporated’s (“CBOE”) Fees Schedule and on CBOE C2 Exchange, Inc.’s (“C2”) Fees Schedule.

²² QQQ is an exchange-traded fund based on the Nasdaq 100 Index.

²³ QQQ options overlie the same index as NDX, namely the Nasdaq 100 Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index (“IWM”), which is the ETF on RUT.

²⁴ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

²⁵ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

²⁶ See Index Options pricing table in the Schedule of Fees, Section I.

²⁷ See C2’s Fees Schedule, Section 1.C.

discriminatory because the Exchange will eliminate the rebate for all similarly situated members.

Non-Priority Customer License Surcharge

The Exchange believes that its proposal to charge a \$0.25 per contract Non-Priority Customer license surcharge for NQX is reasonable because the fee amount is the same as the amount for NDX and NDXP, and lower when compared to the \$0.45 per contract surcharge C2 applies to non-public customer transactions in RUT.²⁸ The proposed license surcharge for NQX will also help recoup costs associated with listing proprietary products. The Exchange also believes that its proposal to not apply the Non-Priority Customer license surcharge to NQX orders that are routed to away markets in connection with the Plan is reasonable because NQX is currently an exclusively listed product, as discussed above.

Further, the Exchange believes that its proposal to assess a Non-Priority Customer license surcharge of \$0.25 per contract to NQX options is equitable and not unfairly discriminatory because the Exchange will apply the same surcharge for all similarly situated members in a similar manner. The Exchange also believes that it is equitable and not unfairly discriminatory to not assess the surcharge to Priority Customer orders in NQX because Priority Customer orders bring valuable liquidity to the market, which in turn benefits other market participants.

Marketing Fee

The Exchange believes that its proposal to exclude NQX from the \$0.70 per contract marketing fee is reasonable because the purpose of the marketing fee is to attract order flow to the Exchange. Because NQX will be an exclusively listed product, a marketing fee whose purpose is to attract order flow to the Exchange is no longer necessary for NQX.

The Exchange's proposal to exclude NQX from the marketing fee is equitable and not unfairly discriminatory because the Exchange will apply this exclusion to all similarly situated members.

Crossing Fee Cap

The Exchange believes that its proposal to exclude the Non-Priority Customer license surcharge and transaction fees for NQX from the calculation of the monthly Crossing Fee Cap is reasonable because NQX will be an exclusively listed product. Similar to

NDX and NDXP, which are also excluded from the Crossing Fee Cap, the Exchange seeks to recoup the operational costs for listing proprietary products. The Exchange further believes that the proposed exclusion of NQX from the Crossing Fee Cap is equitable and not unfairly discriminatory because the Exchange will apply the exclusion all similarly situated members. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to amend Section IV.H to include the reference to the various index options fees in Section III, as discussed above, because it will conform Section IV.H to the changes proposed herein and clarify how this provision will be applied.

Clean-Up Changes

The Exchange believes that the clean-up changes to Sections I and II as described above are reasonable, equitable and not unfairly discriminatory because they are merely intended to bring greater clarity to the Schedule of Fees, to the benefit of all market participants.

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 its proposal to assess different maker/taker fees and rebates to different market participants for NQX options will impose an undue burden on competition because different market participants have different obligations and circumstances, as further discussed above. For example, Market Makers have quoting obligations that other market participants do not have. In addition, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute QQQ options. Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.²⁹ Furthermore, the proposed pricing changes will apply uniformly to all similarly situated market participants, as discussed above. For the foregoing reasons, the Exchange does not believe that the proposed changes to adopt pricing for NQX options as described above will impose an undue burden on 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.

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,³⁰ and Rule 19b-4(f)(2)³¹ thereunder. 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-2018-61 on the subject line.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

³¹ 17 CFR 240.19b-4(f)(2).

²⁸ See C2's Fees Schedule, Section 1.D.

²⁹ See note 23 above.

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-2018-61. 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-2018-61 and should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-15503 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83643; File No. SR-CboeEDGA-2018-012]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe EDGA Exchange, Inc.

July 16, 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 July 2, 2018, Cboe EDGA Exchange, Inc. ("Exchange" or "EDGA") 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 Act³ 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 Members⁵ and non-Members of the Exchange pursuant to EDGA 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.

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 its fee schedule to (i) amend its pricing model, (ii) eliminate Add Volume Tier 1 and (iii) amend certain routing fees, effective July 2, 2018.

Currently, the Exchange utilizes a low pricing model under which it charges a low fee or provides the execution free of charge. The Exchange proposes to amend its fee schedule to replace its current low pricing model to an inverted pricing model under which the Exchange will charge a fee to add liquidity and provide a rebate to remove liquidity.

Displayed Order Fee Change

In securities priced at or above \$1.00, the Exchange currently charges a fee of \$0.00030 per share for Displayed orders that add or remove liquidity. The Exchange proposes to assess a standard rate of \$0.00080 per share for Displayed orders that add liquidity for securities at or above \$1.00 that are appended with fee codes B, V, Y, 3 or 4. The Exchange also proposes to provide a rebate of \$0.00040 per share for orders that remove liquidity for securities at or above \$1.00 that are appended with fee codes N, W, 6, or BB. All Displayed orders in securities priced below \$1.00 would continue to be free.

Non-Displayed Order Fee Change

In securities priced at or above \$1.00, the Exchange currently charges a fee of \$0.00050 per share for Non-Displayed orders that remove liquidity other than orders that yield fee code DT and DR (*i.e.*, orders that yield fee codes HR, MT, PT). The Exchange notes that it does not assess a fee or provide a rebate for Non-Displayed orders that remove liquidity using Midpoint Discretionary Orders within discretionary range and yield fee code DT. The Exchange does assess a fee of \$0.00030 for Non-Displayed orders that remove liquidity using MidPoint Discretionary Orders that are not within discretionary range and yield fee code DR. The Exchange does not currently assess a fee or provide a rebate for Non-Displayed orders that add liquidity other than orders that yield fee code DA (*i.e.*, orders that yield fee codes DM, HA, MM, RP, PA). The Exchange does assess a fee of \$0.00030 per share for Non-

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).

³² 17 CFR 200.30-3(a)(12).

Displayed orders that add liquidity using Midpoint Discretionary orders not within dictionary range and yield fee code DA. In connection with its proposal to implement an inverted pricing model, and to simplify its fee schedule, the Exchange now proposes to provide a rebate of \$0.00040 per share to all Non-Displayed orders in securities priced above \$1.00 that remove liquidity and to charge \$0.00080 per share to all Non-Displayed orders that add liquidity. The Exchange does not propose to amend the fees charged for Non-Displayed orders in securities priced below \$1.00.

Additionally, in light of the change in pricing model, the Exchange does not wish to maintain Add Volume Tier 1 and accordingly proposes to eliminate it from the fee schedule.

The Exchange next proposes to amend certain routing fees. Particularly, for securities at or above \$1.00, the Exchange proposes to amend routing fees for the following orders: (i) Routed orders, pre and post market, which yield fee code 7 and are charged \$0.00270 per share, (ii) routed orders to EDGX, which yield fee code I and are charged \$0.00290 per share; (iii) routed orders, which yield fee code X and are charged \$0.00290 per share; (iv) routed orders using ROUX routing strategy, which yield fee code RX and are charged \$0.00280 per share and (v) routed orders using ROUT routing strategy, which yield fee code RT and are charged \$0.00260 per share. The Exchange is proposing to amend those rates as follows: (i) the fee for routed orders, pre and post market, which yield fee code 7, would be increased to \$0.00300 per share; (ii) the fee for routed orders to EDGX, which yield fee code I, would be increased to \$0.00300 per share; (iii) the fee for routed orders, which yield fee code X, would be increased to \$0.00300 per share; (iv) the fee for routed orders using ROUX routing strategy, which yield fee code RX, would be increased to \$0.00290 per share and (v) the fee for routed orders using ROUT routing strategy, which yield fee code RT, would be increased to \$0.00280 per share. The Exchange notes that the proposed amounts are in line with amounts assessed for similar transaction on other exchanges.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷

⁶ See e.g., Cboe EDGX U.S. Securities Fee Schedule, Fee Codes and Associated Fees. See also NYSE National, Inc. Schedule of Fees and Rebates, Section II, Routing Fees.

⁷ 15 U.S.C. 78f.

in general, and furthers the objectives of Section 6(b)(4),⁸ 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 its proposal to replace its current low fee model with a taker-maker pricing model where it would charge a fee for adding liquidity and provide a rebate for removing liquidity is equitable and reasonable as it would serve to simplify its fee schedule to provide a standard rate for orders that add liquidity and a standard rebate for orders that remove liquidity, while also eliminating its pricing incentive under Add Volume Tier 1. The proposed fee structure provides a simple and straightforward model that would treat Displayed and Non-Displayed orders equally.

The Exchange believes providing rebates for orders removing liquidity is reasonable, equitable and not unfairly discriminatory because it provides an incentive to bring additional liquidity to the Exchange, thereby promoting price discovery and enhancing order execution opportunities for Members. The Exchange believes that assessing fees for orders that add liquidity is reasonable, equitable and not unfairly discriminatory because the Exchange must balance the cost of credits for orders that remove liquidity. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they apply equally to all members. The Exchange also notes that other exchanges utilize taker-maker pricing models and notes that the proposed fees and rebates are in line with the fees and rebates assessed on other exchanges for similar transactions.⁹

The elimination of Add Volume Tier 1 is also equitable and reasonable because it would aid in simplifying the fee schedule and result in all Members being charged the same rates for all transactions regardless of their monthly volumes. The proposed change also applies to all Members.

The Exchange lastly believes its proposed changes relating to certain routing fees are reasonable taking into account routing costs and also notes that the proposed changes are in line with amounts assessed by other exchanges.¹⁰

⁸ 15 U.S.C. 78f(b)(4).

⁹ See e.g., Cboe BYX U.S. Equities Fee Schedule, Standard Rates, for transactions that add and remove liquidity. See also NYSE National, Inc. Schedule of Fees and Rebates, Section I.A General Rates, for transaction fees for adding liquidity.

¹⁰ See e.g., Cboe EDGX U.S. Securities Fee Schedule, Fee Codes and Associated Fees. See also NYSE National, Inc. Schedule of Fees and Rebates, Section II, Routing Fees.

The Exchange believes the proposed changes to its routing fees are equitable and not unfairly discriminatory because the proposed changes apply equally to all Members. The Exchange notes that routing through the Exchange is voluntary and also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is 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's competitors. The proposed rates and rebates 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 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 Act¹¹ and paragraph (f) of Rule 19b-4 thereunder.¹² 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

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-2018-012 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-CboeEDGA-2018-012. 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-CboeEDGA-2018-012 and should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-15505 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83646; File No. SR-MRX-2018-24]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend MRX Rule 723

July 16, 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 July 5, 2018, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX Rule 723, entitled "Price Improvement Mechanism for Crossing Transactions."

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqmrx.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.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX proposes to amend Rule 723, entitled "Price Improvement Mechanism for Crossing Transactions." Specifically, the Exchange proposes to amend Rule 723(c)(2) to expand the types of Improvement Orders³ that may be entered into the Price Improvement Mechanism or "PIM." The Exchange also proposes to amend Rule 723(d)(1)-(3) to more specifically clarify terms such as "orders" and "responses" in that section.

Background

The Exchange adopted PIM as part of its application to be registered as a national securities exchange.⁴ In approving PIM, the Commission noted that it was largely based on a similar functionality offered by the International Securities Exchange, LLC (now Nasdaq ISE, LLC) ("ISE").⁵ ISE received approval to establish its PIM in 2004 that would allow an ISE Electronic Access Member ("EAM") to enter matched trades ("Crossing Transactions").⁶ As noted in the Adopting Filing, a Crossing Transaction would be comprised of an order that the EAM represents as agent ("Agency Order") and an order that is executable against the Agency Order for the full size of the Agency Order (the "Counter-Side Order").⁷ In the Adopting Filing, ISE specified in Rule 723(c)(2) that Improvement Orders may be for the account of a Public Customer or for the Member's own account.⁸ The Adopting Filing noted that ISE would broadcast

³ Rule 723(c)(1) defines an Improvement Order. The Exchange will designate via circular a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order ("Improvement Orders").

⁴ See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10-221) (Exchange Approval Order). The Exchange subsequently changed its name to ISE Mercury and then later Nasdaq MRX.

⁵ *Id.*

⁶ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 Thereto by the International Securities Exchange, Inc. To Establish Rules Implementing a Price Improvement Mechanism) ("Adopting Filing").

⁷ The Counter-Side Order may represent interest for the EAM's own account, or interest the EAM has solicited from one or more other parties, or a combination of both.

⁸ *Id.*

Crossing Orders to all Members.⁹ Further, it was noted in the Adopting Filing that during a three second auction, all ISE Members could enter “Improvement Orders,” in penny increments, to improve the price of the Agency Order.¹⁰ The Adopting Filing stated that Improvement Orders may be for the account of a Public Customer or for the Member’s own account.¹¹ Finally, the Adopting Filing noted that during the exposure period, the aggregate size of the best prices, including the Counter-Side Order, Improvement Orders, and any change to either, would continually be updated and broadcast to all Members.¹²

Rule 723(c)(2)

With respect to the current limitation of Improvement Orders for the account of a Public Customer or for the Member’s own account, ISE noted in its Adopting Filing that “all ISE Members would be permitted to participate in a PIM . . . unrelated orders could compete in standard increments to trade with the Agency Order in the PIM. Such unrelated orders could include agency orders on behalf of Public Customers, market makers on other exchanges, and non-ISE member broker-dealers, as well as non-Improvement orders submitted by ISE members.”

At this time, the Exchange proposes to permit any MRX Member to enter an Improvement Order marked as a response to a PIM auction similar to Nasdaq PHLX LLC (“Phlx”)¹³ and Nasdaq BX, Inc. (“BX”)¹⁴ rules. The Exchange no longer desires to limit Members who may enter Improvement Orders into PIM to simply those orders for the account of a Public Customer or for the Member’s own account. The Exchange desires to expand the types of orders that may be entered as Improvement Orders similar to Phlx and BX. The Exchange is therefore removing this limitation in Rule 723(c)(2) so that the proposed rule text would read: “Improvement Orders may be entered

by all Members in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order.”

Rule 723(d)(1)–(3)

The Exchange proposes to amend MRX Rule 723(d)(1), which explains the manner in which a PIM Order shall be allocated to conform this text to the change which is proposed in Rule 723(c)(2). Rule 723(d)(1) currently provides, “At a given price, Priority Customer interest is executed in full before Professional Orders¹⁵ and any other interest of Members (*i.e.*, proprietary interest from Electronic Access Members and Exchange market makers).” The Exchange proposes to expand upon the term interest by adopting the defined terms “Priority Customer Interest” for Priority Customer Orders and Improvement Orders from Priority Customers, and “Professional Interest” for Professional Orders, Improvement Orders from non-Priority Customers, and Market Maker quotes. The Exchange believes that adding these defined terms would clarify what is meant by interest. As proposed, Professional Interest identifies all orders (including Improvement Orders) that are not for the account of a Priority Customer as well as Market Maker quotes, thereby incorporating the current reference to “Professional Orders” within its terms and eliminating the necessity to include the current rule text which provides, “any other interest of Members (*i.e.*, proprietary interest from Electronic Access Members and Exchange market makers).”

The Exchange proposes to amend Rule 723(d)(2) which currently provides, “After Priority Customer interest at a given price, Professional Orders and Members’ interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the Members’ interest.” The Exchange proposes to replace the reference to “Priority Customer interest” with the defined term “Priority Customer Interest” proposed to be added in Rule 723(d)(1), as described above. The Exchange also proposes to change “Professional Orders” to “Professional Interest” which will be defined in Rule 723(d)(1) to include Professional Orders as well as

Improvement Orders from non-Priority Customers and Market Maker quotes. Since Professional Interest is defined in this manner, the Exchange also proposes to remove the language referring to “Members’ interest” from the sentence because Professional Interest would include all orders from non-Priority Customers and Market Maker quotes.

The Exchange proposes to amend Rule 723(d)(3) to again remove the rule text relating to “Members’ interest” and instead utilize the defined “Professional Interest” term consistent with proposed changes to Rule 723(d)(1) and (2). The Exchange also proposes to make similar changes to add the term “Professional Interest” to the sentence in Rule 723(d)(3) that currently reads: “Thereafter, all other orders, Responses, and quotes at the price point will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the order, Response or quote.” In particular, the language related to “other orders, Responses, and quotes” in this sentence will be replaced with “Professional Interest” since this term includes all orders from non-Priority Customers and Market Maker quotes, as described above. The Exchange notes that the references in this sentence to “Responses,” currently an undefined term, should instead refer to the defined term “Improvement Orders,” and the proposed changes should therefore clarify how Rule 723(d)(3) will apply. Finally, the Exchange proposes to replace the word “Priority Customer Orders” with “Priority Customer Interest” as defined in proposed Rule 723(d)(1) to clarify that those orders as well as responses (*i.e.*, Improvement Orders from Priority Customers) are applicable. The proposed amendments add more specificity to the exact order/quotes and responses which apply in this section.

The amendments to Rule 723(d)(1)–(3) conform to the proposed amendment to Rule 723(c)(2) and other proposed amendments as described above which do not change the manner in which PIM operates today, rather the other word changes seek to bring specificity to the manner in which order, quotes and responses are treated.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the

⁹ The broadcast message would include the series, price, and size of the Agency Order and whether it is to buy or sell.

¹⁰ The ISE would broadcast Improvement Orders to all Members. Crossing Transactions and Improvement Orders would not be displayed in the ISE BBO and would not be disseminated to the Options Price Reporting Authority.

¹¹ MRX Rule 723(c)(2).

¹² MRX Rule 723(c)(4).

¹³ Phlx Rule 1087 permits any member to submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”).

¹⁴ BX Rules at Chapter VI, Section 9 provides that “A Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker dealer, or any other entity (“PRISM Order”).”

¹⁵ MRX Rule 100(a)(54) provides the term “Professional Order” means an order that is for the account of a person or entity that is not a Priority Customer.

¹⁶ 15 U.S.C. 78f(b).

objectives of Section 6(b)(5) of the Act,¹⁷ 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's proposal to amend Rule 723(c)(2) seeks to broaden the types of orders that may be submitted as Improvement Orders into PIM. As ISE previously noted, in its Adopting Filing, all Members are able to participate in a PIM today as an unrelated order that rests on the Order Book. Unrelated orders that rest on the Order Book can participate in PIM and trade with the Agency Order in the PIM. The Exchange proposes to allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of MRX Members to more directly participate in PIM and provide price improvement. The Exchange's proposal is consistent with the Act because allowing a greater number of Members to directly respond with an Improvement Order in a PIM will increase the likelihood of price improvement in that auction thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. This approach will enable greater participation in PIM auctions.

The Exchange's proposal to amend Rule 723(d) conforms the text with changes made with respect to the proposal to amend Rule 723(c)(2) for consistency. The proposed changes to remove the more generic "Members' interest" and instead substitute very specific terms to define interest and add quotes provide more specificity as to the manner in which interest entered into PIM will be allocated. The Exchange's proposed amendments to Rule 723(d)(1)–(3) are consistent with the Act because the amendments seek to conform the rule text to the proposed Rule 723(c)(2) amendment and describe in greater detail how interest will be allocated by defining terms and eligible interest and this transparency benefits investors and the public interest.

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's proposal to amend Rule 723(c)(2) to broaden the types of orders that may be submitted as Improvement

Orders into PIM does not unduly burden competition because all Members will be permitted to submit Improvement Orders directly into PIM to provide an even greater number of MRX Members to more directly participate in PIM. The amendments to Rule 723(d) will conform the rule text and bring clarity to the allocation method for PIM.

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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²¹ 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 asked the Commission to waive the 30-day operative delay so that it may allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of MRX Members an opportunity to more directly participate in PIM and provide price improvement. The Exchange states that it will issue an Options Trader Alert to notify Members of the date within which this functionality will be implemented. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

designates the proposed rule change operative upon filing.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MRX-2018-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-MRX-2018-24. 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

²² 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).

¹⁷ 15 U.S.C. 78f(b)(5).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2018-24, and should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-15504 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83647; File No. SR-BOX-2018-14]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt Rules Governing the Trading of Complex Qualified Contingent Cross and Complex Customer Cross Orders

July 16, 2018.

On May 22, 2018, BOX Options Exchange LLC (the "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 adopt rules governing the trading of Complex Qualified Contingent Cross and Complex Customer Cross Orders. The proposed rule change was published for comment in the *Federal Register* on June 8, 2018.³ The Commission has received no comments regarding the proposal.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the

self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is July 23, 2018.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designates September 6, 2018, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-BOX-2018-14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-15507 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83644; File No. SR-ISE-2018-62]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 723

July 16, 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 July 5, 2018, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 723, entitled "Price Improvement Mechanism for Crossing Transactions."

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

ISE proposes to amend ISE Rule 723, entitled "Price Improvement Mechanism for Crossing Transactions." Specifically, the Exchange proposes to amend Rule 723(c)(2) to expand the types of Improvement Orders³ that may be entered into the Price Improvement Mechanism or "PIM." The Exchange also proposes to amend Rule 723(d)(1)-(3) to more specifically clarify terms such as "orders" and "responses" in that section.

Background

ISE received approval to establish its PIM in 2004 that would allow an ISE Electronic Access Member ("EAM") to enter matched trades ("Crossing Transactions").⁴ A Crossing Transaction

³ Rule 723(c)(1) defines an Improvement Order. The Exchange will designate via circular a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order ("Improvement Orders").

⁴ See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR-ISE-2003-06) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 Thereto by the International Securities Exchange, Inc. To Establish Rules Implementing a Price Improvement Mechanism) ("Adopting Filing").

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83367 (June 4, 2018), 83 FR 26719.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

would be comprised of an order that the EAM represents as agent (“Agency Order”) and an order that is executable against the Agency Order for the full size of the Agency Order (the “Counter-Side Order”).⁵ ISE Rule 723(c)(2) provided that Improvement Orders may be for the account of a Public Customer or for the Member’s own account.⁶ The ISE noted it would broadcast Crossing Orders to all Members.⁷ During a three second auction, all ISE Members could enter “Improvement Orders,” in penny increments, to improve the price of the Agency Order.⁸ Improvement Orders may be for the account of a Public Customer or for the Member’s own account.⁹ During the exposure period, the aggregate size of the best prices, including the Counter-Side Order, Improvement Orders, and any change to either, would continually be updated and broadcast to all Members.¹⁰

Rule 723(c)(2)

With respect to the current limitation of Improvement Orders for the account of a Public Customer or for the Member’s own account, ISE noted in its Adopting Filing that “all ISE Members would be permitted to participate in a PIM . . . unrelated orders could compete in standard increments to trade with the Agency Order in the PIM. Such unrelated orders could include agency orders on behalf of Public Customers, market makers on other exchanges, and non-ISE member broker-dealers, as well as non-Improvement orders submitted by ISE members.”

At this time, the Exchange proposes to permit any ISE Member to enter an Improvement Order marked as a response to a PIM auction similar to Nasdaq PHLX LLC (“Phlx”) ¹¹ and Nasdaq BX, Inc. (“BX”) ¹² rules. The Exchange no longer desires to limit Members who may enter Improvement

Orders into PIM to simply those orders for the account of a Public Customer or for the Member’s own account. The Exchange desires to expand the types of orders that may be entered as Improvement Orders similar to Phlx and BX. The Exchange is therefore removing this limitation in Rule 723(c)(2) so that the proposed rule text would read: “Improvement Orders may be entered by all Members in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order.”

Rule 723(d)(1)–(3)

The Exchange proposes to amend Rule 723(d)(1)–(3), which explains the manner in which a PIM Order shall be allocated to conform this text to the change which is proposed in Rule 723(c)(2). Rule 723(d)(1) currently provides, “At a given price, Priority Customer interest is executed in full before Professional Orders ¹³ and any other interest of Members (*i.e.*, proprietary interest from Electronic Access Members and Exchange market makers).” The Exchange proposes to expand upon the term interest by adopting the defined terms “Priority Customer Interest” for Priority Customer Orders and Improvement Orders from Priority Customers, and “Professional Interest” for Professional Orders, Improvement Orders from non-Priority Customers, and Market Maker quotes. The Exchange believes that adding these defined terms would clarify what is meant by interest. As proposed, Professional Interest identifies all orders (including Improvement Orders) that are not for the account of a Priority Customer as well as Market Maker quotes, thereby incorporating the current reference to “Professional Orders” within its terms and eliminating the necessity to include the current rule text which provides, “any other interest of Members (*i.e.*, proprietary interest from Electronic Access Members and Exchange market makers).”

The Exchange proposes to amend Rule 723(d)(2) which currently provides, “After Priority Customer interest at a given price, Professional Orders and Members’ interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the Members’

interest.” The Exchange proposes to replace the reference to “Priority Customer interest” with the defined term “Priority Customer Interest” proposed to be added in Rule 723(d)(1), as described above. The Exchange also proposes to change “Professional Orders” to “Professional Interest” which will be defined in Rule 723(d)(1) to include Professional Orders as well as Improvement Orders from non-Priority Customers and Market Maker quotes. Since Professional Interest is defined in this manner, the Exchange also proposes to remove the language referring to “Members’ interest” from the sentence because Professional Interest would include all orders from non-Priority Customers and Market Maker quotes.

The Exchange proposes to amend Rule 723(d)(3) to again remove the rule text relating to “Members’ interest” and instead utilize the defined “Professional Interest” term consistent with proposed changes to Rule 723(d)(1) and (2). The Exchange also proposes to make similar changes to add the term “Professional Interest” to the sentence in Rule 723(d)(3) that currently reads: “Thereafter, all other orders, Responses, and quotes at the price point will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the order, Response or quote.” In particular, the language related to “other orders, Responses, and quotes” in this sentence will be replaced with “Professional Interest” since this term includes all orders from non-Priority Customers and Market Maker quotes, as described above. The Exchange notes that the references in this sentence to “Responses,” currently an undefined term, should instead refer to the defined term “Improvement Orders,” and the proposed changes should therefore clarify how Rule 723(d)(3) will apply. Finally, the Exchange proposes to replace the word “Priority Customer Orders” with “Priority Customer Interest” as defined in proposed Rule 723(d)(1) to clarify that those orders as well as responses (*i.e.*, Improvement Orders from Priority Customers) are applicable. The proposed amendments add more specificity to the exact order/quotes and responses which apply in this section.

The amendments to Rule 723(d)(1)–(3) conform to the proposed amendment to Rule 723(c)(2) and other proposed amendments as described above which do not change the manner in which PIM operates today, rather the other word changes seek to bring specificity to the

⁵ The Counter-Side Order may represent interest for the EAM’s own account, or interest the EAM has solicited from one or more other parties, or a combination of both.

⁶ *Id.*

⁷ The broadcast message would include the series, price, and size of the Agency Order and whether it is to buy or sell.

⁸ The ISE would broadcast Improvement Orders to all Members. Crossing Transactions and Improvement Orders would not be displayed in the ISE BBO and would not be disseminated to the Options Price Reporting Authority.

⁹ ISE Rule 723(c)(2).

¹⁰ ISE Rule 723(c)(4).

¹¹ Phlx Rule 1087 permits any member to submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”).

¹² BX Rules at Chapter VI, Section 9 provides that “A Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker dealer, or any other entity (“PRISM Order”).”

¹³ ISE Rule 100(a)(51) provides the term “Professional Order” means an order that is for the account of a person or entity that is not a Priority Customer.

manner in which order, quotes and responses are treated.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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's proposal to amend Rule 723(c)(2) seeks to broaden the types of orders that may be submitted as Improvement Orders into PIM. As ISE previously noted, all Members are able to participate in a PIM today as an unrelated order that rests on the Order Book. Unrelated orders that rest on the Order Book can participate in PIM and trade with the Agency Order in the PIM. The Exchange proposes to allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of ISE Members to more directly participate in PIM and provide price improvement. The Exchange's proposal is consistent with the Act because allowing a greater number of Members to directly respond with an Improvement Order in a PIM will increase the likelihood of price improvement in that auction thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. This approach will enable greater participation in PIM auctions.

The Exchange's proposal to amend Rule 723(d) conforms the text with changes made with respect to the proposal to amend Rule 723(c)(2) for consistency. The proposed change to remove the more generic "Members' interest" and instead substitute very specific terms to define interest and add quotes provide more specificity as to the manner in which interest entered into PIM will be allocated. The Exchange's proposed amendments to Rule 723(d)(1)–(3) are consistent with the Act because the amendments seek to conform the rule text to the proposed Rule 723(c)(2) amendment and describe in greater detail how interest will be allocated by defining terms and eligible interest and this transparency benefits investors and the public interest.

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's proposal to amend Rule 723(c)(2) to broaden the types of orders that may be submitted as Improvement Orders into PIM does not unduly burden competition because all Members will be permitted to submit Improvement Orders directly into PIM to provide an even greater number of ISE Members to more directly participate in PIM. The amendments to Rule 723(d) will conform the rule text and bring clarity to the allocation method for PIM.

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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b–4(f)(6) thereunder.¹⁷

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act¹⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)¹⁹ 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 asked the Commission to waive the 30-day operative delay so that it may allow all Members to submit Improvement Orders directly into PIM to provide an even greater number of ISE Members an opportunity to more directly participate in PIM and provide price improvement.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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.

¹⁸ 17 CFR 240.19b–4(f)(6).

¹⁹ 17 CFR 240.19b–4(f)(6)(iii).

The Exchange states that it will issue an Options Trader Alert to notify Members of the date within which this functionality will be implemented. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.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. 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–2018–62 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–ISE–2018–62. 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

²⁰ 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).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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. 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-2018-62, and should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-15499 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83638; File No. SR-CboeBYX-2018-011]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe BYX Exchange, Inc.

July 16, 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 July 2, 2018, 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 Act³ 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 to modify certain Routing Fees.

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 its fee schedule, effective July 2, 2018, to modify pricing for orders in securities at or above \$1.00 that are routed to a displayed market to remove liquidity using Parallel D, Parallel 2D, ROUT, ROUX or Post [sic] Away routing strategy, which orders yield fee code X. The Exchange currently assesses \$0.00290 per share for these orders. The Exchange is proposing to increase the rate from \$0.00290 per share to \$0.00300 per share. The Exchange notes that the proposed amount is in line with amounts assessed for similar transactions on another exchange.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ 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.

Particularly, the Exchange believes its proposed routing fee change is reasonable taking into account routing costs and also notes that the proposed change is in line with the amount assessed for similar transactions by another exchange.⁸ The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies equally to all Members. The Exchange notes that routing through the Exchange is voluntary and also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

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 the proposed routing fee will not impose an undue burden on competition because the Exchange will uniformly assess the affected routing fees on all Members. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value or if they view the proposed fee as excessive. Further, excessive fees for participation would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition.

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 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 Act⁹ and paragraph (f) of Rule 19b-4 thereunder.¹⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

²¹ 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).

⁵ See e.g., Cboe BZX U.S. Securities Fee Schedule, Fee Codes and Associated Fees, fee code X.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ See e.g., Cboe BZX Equities Exchange Fee Schedule, Fee Codes and Associated Fees, fee code X.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

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-2018-011 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-CboeBYX-2018-011. 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 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-2018-011, and should be submitted on or before August 10, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-15497 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83642; File No. SR-BX-2018-029]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rules at Chapter VII, Section 6 Related to Market Maker Quotations, Section 14 Related to Lead Market Maker Quotations and Section 15 Related to Directed Market Maker Quotations

July 16, 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 July 2, 2018, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rules at Chapter VII, Section 6 related to Market Maker quotations, Section 14 related to Lead Market Maker quotations and Section 15 related to Directed Market Maker quotations.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqbx.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

BX proposes to amend the current rule text of Chapter VII, Section 6(d), Section 14 and Section 15 related to quoting obligations for Market Makers, Lead Market Makers and Directed Market Makers, to restructure the current rule to mirror rule text utilized on Nasdaq Phlx LLC.³ The Exchange does not propose to amend the current quoting obligations, rather the Exchange proposes to more clearly state the current quoting obligations utilizing the same format as Phlx Rule 1081(c).

Chapter VII, Section 6(d)(i)

The Exchange proposes to amend Chapter VII, Section 6(d) to remove the word "continuous" from this first sentence in the rule. The Exchange is removing the word "continuous" because the Exchange notes that Market Makers quote a percentage of the day and therefore the word continuous may not accurately reflect the manner in which Market Makers quote on BX. The Exchange proposes to retitle Section 6(d) as "Intra-day Quotes."

The Exchange also proposes to replace references to "continuous" with "intra-day" within the Rulebook. The Exchange proposes to amend Chapter V, Section 3 to replace "continuous quoting" with "intra-day quoting." The Exchange proposes to amend proposed Chapter VII, Section 14(f)(4) to replace "continuous electronic quote obligation" with "intra-day electronic quote obligation." The Exchange proposes to amend proposed Chapter VII, Section 14(g) to replace "continuous quotes" with "intra-day quotes." The Exchange proposes to amend Chapter VII, Section 15(iii)(d) to replace "continuous electronic quote obligation" with "intra-day electronic quote obligation." The Exchange proposes to amend Chapter X, Section 7(c) to replace "continuous quotes" and "continuous bids and offers" with "intra-day quotes" and "intra-day bids and offers."

The Exchange proposes to amend Chapter VII, Section 6(d)(i) to delete the

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Phlx Rule 1081(c)(ii).

first sentence of this paragraph, “On a daily basis, a Market Maker must during regular market hours make markets consistent with the applicable quoting requirements specified in these rules, on a continuous basis in options in which the Market Maker is registered.” The Exchange believes that a Market Maker’s obligation to enter bids and offers for the options to which it is registered is currently noted in proposed Chapter VII, Section 6(d). The Exchange proposes to specifically detail a Market Maker’s quoting obligations in the proposed rule text and therefore believes that this sentence is not necessary because the following sentences replaces this sentence with the exception of the intra-day aspect as described below.

The Exchange proposes to add new rule text to Chapter VII, Section 6(d)(i). The first new sentence will provide “A Market Maker must enter bids and offers for the options to which it is registered, except in an assigned options series listed intra-day⁴ on the Exchange.” The Exchange believes this sentence is more specific than Section 6(d) because it accepts [sic] the intra-day quotes. Today, a Market Maker is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that Market Makers would not be responsible for quoting an intra-day addition. The Exchange believes that not counting intra-day adds of a series that were not available for the entire day of trading is consistent with the Act because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day. The Exchange also proposes to note, “On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below.” The Exchange proposes to note within the new rule text the specific quoting obligations for each type of Market Maker.

The Exchange is also adding rule text to explain the interplay between the quoting obligations for BX Market Makers who may also qualify as a Lead Market Maker, pursuant to Chapter VII, Section 14 or Directed Market Maker pursuant to Chapter VII, Section 15. Specifically, the Exchange proposes to add, similar to Phlx Rules,⁵ “An Options Participant will be required to

meet each market making obligation separately. A Market Maker who is also the Lead Market Maker, pursuant to Chapter VII, Section 14, will be held to the Lead Market Maker obligations in options series in which the Lead Market Maker is assigned and will be held to Market Maker obligations in all other options series where assigned. A Market Maker who receives a Directed Order,⁶ as described in Chapter VII [sic], Section 10, shall be held to the standard of a Directed Market Maker, as described in Chapter VII, Section 15.” The Exchange proposes to make clear that a BX Options Participant who is a Market Maker, Lead Market Maker and Directed Market Maker will have quoting obligations which may need to be separately met depending on the role.

Chapter VII, Section 6(d)(i)(1)

The Exchange proposes to remove the following sentence from Chapter VII, Section (d)(i)(1), “To satisfy this requirement, a Market Maker must quote 60% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as BX may announce in advance.” The Exchange proposes to replace this language with language that more technically defines the quoting obligation. The Exchange proposes the following rule text:

Market Makers, associated with the same Options Participant, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as BX may announce in advance, for which that Options Participant’s assigned options series are open for trading. Notwithstanding the foregoing, a Market Maker shall not be required to make two-sided markets pursuant to this Chapter VII, Section 6(d)(i)(1) in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.

The 60% requirement and the manner in which it is calculated is not being amended. The Exchange does not propose to amend the current quoting obligations, rather the Exchange proposes to more clearly state the current quoting obligations utilizing the same format as Phlx Rule 1081(c)(ii)(A). The Exchange notes the quoting obligations expressed as the cumulative number of seconds rather than 60% of the trading day. While the current rule indicates that the Exchange currently

reviews quoting as a percentage of the total number of minutes, the two standards are otherwise equivalent. Adding “associated with the same Options Participant” to the first sentence also makes clear that the obligation is at the firm level and that all associated Market Makers will be counted in arriving at the calculation for quoting obligations. The Exchange also states, “Notwithstanding the foregoing, a Market Maker shall not be required to make two-sided markets pursuant to this Chapter VII, Section 6(d)(i)(1) in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.” This exception exists today for BX and is simply being carried over into the new text from current Section 6(d)(i)(2). The definition of an adjusted option series is currently defined at Section 6(d)(i)(2) as an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares. This definition is being relocated to 6(d)(i)(1)(a), similar to Phlx’s structure and is defined as “Adjusted Options Series” throughout this rule.

Chapter VII, Section 6(d)(i)(2)

The Exchange proposes to add new rule text at Chapter VII, Section 6(d)(i)(2) which provides the method by which the Exchange will calculate the BX Market Maker quoting obligations. The Exchange proposes to state, that the Exchange will (i) take the total number of seconds the Options Participant disseminates quotes in each assigned options series, excluding Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater; and (ii) divide that time by the eligible total number of seconds each assigned option series is open for trading that day. Similar to Phlx Rule 1081(c)(ii)(D), the Exchange believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculated the quoting obligation. The Exchange is not amending the manner in which the quoting obligation is calculated, rather the Exchange is simply adding to the current rule the exact manner in which the Exchange determines the quoting percentage. The Exchange proposes to add, “Quoting is not required in every assigned options series.” This sentence is not currently contained in the rule. The Exchange is not proposing to amend its current practice, rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current

⁴ An intra-day add of a series shall be defined, for purposes of this Phlx Rule 1081 [sic], as an option series that is added manually on the same day the series begins trading.

⁵ See Phlx Rule 1081(c).

⁶ The term “Directed Order” means an order to buy or sell which has been directed, provided it is properly marked as such, to a particular market maker (“Directed Market Maker”). Directed Orders are handled within the System pursuant to Chapter VII [sic], Section 10. Directed Orders may be available only in certain options. See Chapter VII [sic], Section 1(e)(2).

obligation. Also, the Exchange proposes to state, “Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Options Participant.” This language is similar to the language currently being removed from Chapter VII, Section 6(d)(i)(1), “This obligation will apply to all of a Market Maker’s registered options collectively to all appointed issues, rather than on an option-by-option basis.” The proposed new language simply conforms the text to Phlx’s Rule 1081(c)(ii)(D).

Chapter VII, Section 6(d)(i)(3)

The Exchange proposes to also delete the following language from Chapter VII, Section 6(d)(i)(3), “This obligation will apply to all of a Market Maker’s registered options collectively to all appointed issues, rather than on an option-by-option basis. Compliance with this obligation will be determined on a monthly basis. However, determining compliance with the continuous quoting requirement on a monthly basis does not relieve a Market Maker of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligation each trading day.” The Exchange proposes to replace this language with the following language proposed in Section 6(d)(i)(3), “For purposes of the Exchange’s surveillance of an Options Participant compliance with this rule, the Exchange may determine compliance on a monthly basis. The Exchange’s monthly compliance evaluation of the quoting requirement does not relieve an Options Participant of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against an Options Participant for failing to meet the quoting obligation each trading day.” The Exchange’s amendment is not substantive, rather the amendment conforms the rule text to Phlx Rule 1081(c)(iii).

The Exchange proposes to remove the entire paragraph at current Section 6(d)(i)(2). As explained above this language is being relocated within the proposed rule text to Section 6(d)(i)(1) and subsection (a) to that paragraph. The Exchange notes that the sentence “Accordingly, the continuous quotation obligations set forth in this rule shall not apply to Market Makers respecting Quarterly Option Series, adjusted option series, and series with an expiration of nine months or greater” is being deleted and not relocated because this sentence

is redundant. Also, the Exchange proposes to amend current Section 6(d)(i)(3) by renumbering it (4) and also capitalizing “System” which is a defined term and renumbering a cross-reference.

Chapter VII, Section 14(f)

BX’s Rules at Chapter VII, Section 14(f) related to Lead Market Maker or “LMM” quotations. The Exchange is amending BX’s Rules to conform to Phlx’s Rules with respect to Specialists which are the equivalent of an LMM on BX. Similar to the changes for BX Market Makers, the Exchange proposes to more specifically state within Section 14(f) that an LMM must enter two-sided quotations. Further, “An LMM that enters a bid (offer) in a series of an option in which he is registered on BX must enter an offer (bid), except in an assigned options series listed intra-day⁷ on BX. These quotations must meet the legal quote width requirements specified in Chapter VII, Section 14(b)(iv), (v) and (vi).”

The Exchange is removing the words “may enter quotations only in the issues included in its appointment.” The Exchange is revising this paragraph to state, “An LMM must enter two-sided quotations. An LMM that enters a bid (offer) in a series of an option in which he is registered on BX must enter an offer (bid), except in an assigned options series listed intra-day on BX. These quotations must meet the legal quote width requirements specified in Chapter VII, Section 14(b)(iv), (v) and (vi). A Market Maker who is also the Lead Market Maker, pursuant to this Chapter VII, Section 14, will be held to the Lead Market Maker obligations in options series in which the Lead Market Maker is assigned and will be held to Market Maker obligations in all other options series where assigned pursuant to Chapter VII, Section 6(d).” The deletion of the words from this paragraph are replaced with the same concept in the new sentences where it is stating that the LMM enter a bid (offer) in a series of an options in which he is registered on BX.

Today, an LMM is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that LMMs would not be responsible for quoting an intra-day addition. The Exchange believes that not counting intra-day adds of a series that were not available for the entire day of trading is consistent with the Act because the LMM would not have the

opportunity to trade that particular options series for the entire trading day. As is the case today, an LMM must meet the legal quote width requirements specified in Section 14(b)(iv), (v) and (vi).

The Exchange also proposes to add to this paragraph the following sentence, “A Market Maker who is also the Lead Market Maker, pursuant to this Chapter VII, Section 14, will be held to the Lead Market Maker obligations in options series in which the Lead Market Maker is assigned and will be held to Market Maker obligations in all other options series where assigned pursuant to Chapter VII, Section 6(d).” This language will parallel the language currently proposed on Chapter VII, Section 6(d) and make clear that a BX Options Participant who is a Market Maker and a Lead Market Maker will have quoting obligations, which may need to be separately met depending on the role.

Chapter VII, Section 14(f)(1)

The Exchange proposes to remove the following sentence from Chapter VII, Section 14(f)(1), “An LMM must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue. Such quotations must meet the legal quote width requirements herein. These obligations will apply to all of the LMMs appointed issues collectively, rather than on an option-by-option basis. Compliance with this obligation will be determined on a monthly basis.” The Exchange proposes to replace this language with language that more technically defines the quoting obligation. The Exchange proposes the following rule text:

LMMs, associated with the same Options Participant, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as BX may announce in advance, for which that Option Participant’s assigned options series are open for trading. An LMM shall not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater. However, a LMM may still receive a participation entitlement in such series if it elects to quote in such series and otherwise satisfies the requirements of Chapter VI, Section 10.

The 90% requirement and the manner in which it is calculated is not being amended. The Exchange does not propose to amend the current quoting obligations, rather the Exchange proposes to more clearly state the current quoting obligations utilizing the same format as Phlx Rule 1081(c)(ii)(B).

⁷ See note 4 above.

The Exchange notes the quoting obligations expressed as the cumulative number of seconds rather than 90% of the trading day. The two standards are equivalent. The rule text in current Section 14(f)(1) is being revised and certain text is being relocated. The legal quote width obligations are now in Section 14(f) generally and the compliance obligations are being relocated to Section 14(f)(3) as described in more detail below. The rule text related to making a two-sided market in Quarterly Option Series, any adjusted option series, and any option series with an expiration of nine months or greater is being relocated from Section 14(f)(4) along with the definition for an Adjusted Option Series which is being relocated to Section 14(f)(1)(a) and is being defined. The Exchange is also relocating this sentence "However, a LMM may still receive a participation entitlement in such series if it elects to quote in such series and otherwise satisfies the requirements of Chapter VII, Section 10" from current Chapter VII, Section 14(f)(4). The Exchange is conforming the adjusted series definition to that of Phlx,⁸ which provides "An adjusted option series is an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares."⁹ The amendment of the definition will not result in an adjusted option series being treated differently for purposes of BX Rules.

Chapter VII, Section 14(f)(2)

The Exchange proposes to add new rule text at Chapter VII, Section 14(f)(2) which provides the method by which the Exchange will calculate the BX LMM quoting obligations. The Exchange proposes to state, that the Exchange will (i) take the total number of seconds the Options Participant disseminates quotes in each assigned options series, excluding Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for Market Makers; and (ii) divide that time by the eligible total number of seconds each assigned option series is open for trading that day. This language conforms to the language also proposed for Chapter VII, Section 6(d)(i)(2). Similar to Phlx, the Exchange

believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculated the quoting obligation. The Exchange proposes to add, "Quoting is not required in every assigned options series." This sentence is not currently contained in the rule. The Exchange is not proposing to amend its current practice, rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current obligation. Also, the Exchange proposes to state, "Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Options Participant." This language is similar to the language currently being removed from Chapter VII, Section 14(f)(1), "These obligations will apply to all of the LMMs appointed issues collectively, rather than on an option-by-option basis." The proposed new language simply conforms the text to Phlx's Rule 1081(c)(ii)(D).

Chapter VII, Section 14(f)(3)

The Exchange proposes to relocate the following rule text from current Section 14(f)(1) to new (f)(3) "BX Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances." The Exchange proposes to replace this rule text in current Section 14(f)(1), "However, determining compliance with the continuous quoting requirement on a monthly basis does not relieve an LMM of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against an LMM for failing to meet the continuous quoting obligation each trading day" with the following rule text:

For purposes of the Exchange's surveillance of an Options Participant compliance with this rule, the Exchange may determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve an Options Participant of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against an Options Participant for failing to meet the quoting obligation each trading day.

The Exchange is not amending the manner in which the surveillance functions today. The Exchange proposes to conform this rule text throughout the rule to mirror language utilized in Phlx Rule 1081(c)(iii) and also proposed new Chapter VII, Section 6(d)(i)(3). This rule

text mirrors language currently contained in Section 14(f)(1).

Chapter VII, Section 14(f)(2), (3) and (4)

The Exchange proposes to renumber current Section 14(f)(1)(i) as Section 14(f)(4). As noted herein, current Section 14(f)(4) is being relocated to within the rule text as explained above. The Exchange also proposes to renumber Section 14(f)(2) and (3), which are not being amended, as 14(g) and (h), respectively.

Chapter VII, Section 15(iii)

The Exchange proposes to amend Section 15(iii) related to Directed Market Maker quoting requirements to similarly add text to conform to Phlx Rule 1081(c)(ii)(C). The Exchange proposes to add to Section 15(iii), "A Directed Market Maker must enter two-sided quotations. A Directed Market Maker that enters a bid (offer) in a series of an option in which he is registered on BX must enter an offer (bid), except in an assigned options series listed intra-day on BX. These quotations must meet the legal quote width requirements specified in Chapter VII, Section 6(d)(ii)." Similar to the changes for BX Market Makers and Lead Market Makers, the Exchange proposes to more specifically state within Section 15(iii) that an Directed Market Maker must enter two-sided quotations. Today, a Directed Market Maker is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that Directed Market Makers would not be responsible for quoting an intra-day addition. The Exchange believes that not counting intra-day adds of a series that were not available for the entire day of trading is consistent with the Act because the Directed Market Maker would not have the opportunity to trade that particular options series for the entire trading day. As is the case today, a Directed Market Maker must meet the legal quote width requirements specified in Chapter VII, Section 6(d)(ii).

The Exchange also proposes to add to this paragraph the following sentence, "A Market Maker who receives a Directed Order, as described in Chapter VII [sic], Section 10, shall be held to the standard of a Directed Market Maker as described in Chapter VII, Section 15." This language will make clear where a Market Maker receives a Directed Order and what the quoting standard shall be for that Directed Market Maker.

⁸ See Phlx Rule 1081(c)(ii)(A)(i).

⁹ Chapter VII, Section 14(f)(4) provides the following definition for an adjusted options series, "For purposes of this Rule, an adjusted option series is an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying security."

Chapter VII, Section 15(iii)(a)

The Exchange proposes to adopt a new Section 15(iii)(a) and provide, Directed Market Makers, associated with the same Options Participant, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as BX may announce in advance, for which that Options Participant's assigned options series are open for trading. An Options Participant shall be considered directed in all assigned options once the Options Participant receives a Directed Order in any option in which they are assigned and shall be considered a Directed Market Maker until such time as an Options Participant notifies the Exchange that they are no longer directed. Notwithstanding the foregoing, an Options Participant shall not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater. Notwithstanding the obligations specified in subparagraph (iii) above, a DMM may still receive a participation entitlement in such series if it elects to quote in such series and otherwise satisfies the requirements of Chapter VII [sic], Section 10.

The Exchange notes that it is not amending the quoting obligations for Directed Market Makers. The Exchange is simply conforming the text to Phlx Rule 1081(c)(ii)(C). The Exchange is adding rule text to make clear, similar to Phlx Rule 1081(c)(ii)(C), when a Directed Market [sic] is considered to be directed. Similar to Phlx, an Options Participant shall be considered directed in all assigned options once the Options Participant receives a Directed Order in any option in which they are assigned and shall be considered a Directed Market Maker until such time as an Options Participant notifies the Exchange that they are no longer directed. The Exchange, similar to today, shall not apply quoting obligations to Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater.¹⁰ The Exchange is relocating language to Section 15(iii)(a) from Section 15(iv) which states, "a DMM may still receive a participation entitlement in such series if it elects to quote in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater series and otherwise

¹⁰ See current Chapter VII, Section 15(iv).

satisfies the requirements of Chapter VII [sic], Section 10."

Chapter VII, Section 15(iii)(a)(i)

The Exchange proposes to adopt a definition of an adjusted option series in subparagraph (i) similar to Phlx¹¹ which provides "An adjusted option series is an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares,"¹² and define it. The amendment of the definition will not result in an adjusted option series being treated differently for purposes of BX Rules.

Chapter VII, Section 15(iii)(b)

The Exchange proposes to add new rule text at Chapter VII, Section 15(iii)(b) which provides the method by which the Exchange will calculate the BX Directed Market Maker quoting obligations. The Exchange proposes to state, that the Exchange will (i) take the total number of seconds the Options Participant disseminates quotes in each assigned options series, excluding Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater; and (ii) divide that time by the eligible total number of seconds each assigned option series is open for trading that day. Similar to Phlx, the Exchange believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculated the quoting obligation.

The Exchange proposes to add, "Quoting is not required in every assigned options series." This sentence is not currently contained in the rule. The Exchange is not proposing to amend its current practice, rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current obligation.

Also, the Exchange proposes to state, "Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Options Participant." This language is similar to the language currently being removed from Chapter VII, Section 15(iii) "These obligations will apply collectively to all series in all of

¹¹ See Phlx Rule 1081(c)(ii)(A)(i).

¹² Chapter VII, Section 15(iv) provides the following definition for an adjusted options series, "For purposes of this Rule, an adjusted option series is an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying security."

the issues, rather than on an issue-by-issue basis." The proposed new language simply conforms the text to Phlx's Rule 1081(c)(ii)(D).

Chapter VII, Section 15(iii)(c)

The Exchange proposes to relocate the following rule text from current Section 15(iii) to new 15(iii)(c) "BX Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances." The Exchange proposes to add,

For purposes of the Exchange's surveillance of an Options Participant compliance with this rule, the Exchange may determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve an Options Participant of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against an Options Participant for failing to meet the quoting obligation each trading day.

The Exchange is not amending the manner in which the surveillance functions today. The Exchange proposes to conform this rule text throughout the rule to mirror language utilized in Phlx Rule 1081(c)(iii). The Exchange proposes to relocate and revise this language, "provide continuous two-sided quotations throughout the trading day in all options issues for which the Directed Market Maker is assigned for 90% of the time the Exchange is open for trading in each issue. Such quotations must meet the legal quote width requirements of Chapter VII, Section 6. These obligations will apply collectively to all series in all of the issues, rather than on an issue-by-issue basis. Compliance with this obligation will be determined on a monthly basis" as described herein into Sections 15(iii) and Section 15(iii)(a).

Chapter VII, Section 15(iii)(d)

The rule text concerning a technical failure is being relocated from Section 15(iii) to Section 15(iii)(d). The word "system" is being capitalized as that term is defined within the Rulebook. As noted herein, Section 15(iv) is being relocated to Section 15(iii)(a) and Sections 15(iii)(a)(i).

The Exchange believes this proposed rule will allow Market Makers to quickly compare obligations across Nasdaq affiliated markets.¹³

¹³ The Exchange intends to file a similar proposal for The Nasdaq Stock Market, LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC and Nasdaq MRX, LLC.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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 its proposed rule change provides further detail as to obligations of Market Makers, LMMs and Directed Market Makers on BX. The Exchange is not amending its current quoting obligations, rather the Exchange is proposing to amend its current rule text to bring greater transparency to the current quoting obligations by adding clear language which explains the manner in which BX will calculate the various quoting obligations for each type of Market Maker. The Exchange believes the proposed rule text is consistent with the Act because the proposed rule text protect investors and the public interest by providing clear language that will be utilized on all Nasdaq affiliate markets for easy comparison.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ 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 proposal does not impose a burden on competition because the Exchange will continue to uniformly calculate and apply the quoting obligations to all BX Market Makers as provided for in the proposed rule text. The Exchange's proposal does not modify the current quoting obligations on BX.

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 Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal to amend its Market Maker quoting obligations to add more detail to the current quoting requirements may become operative immediately upon filing. The Exchange believes that the proposal will bring greater transparency to the Exchange's rules. The Commission notes that the changes are substantially similar to Phlx Rule 1081(c). As such, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change operative upon filing.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act²³ to

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 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.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78s(b)(2)(B).

determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2018-029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2018-029. 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-BX-2018-029 and should be submitted on or before August 10, 2018.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-15502 Filed 7-19-18; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15584 and #15585; Texas Disaster Number TX-00500]

Presidential Declaration of a Major Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-4377-DR), dated 07/06/2018.

Incident: Severe Storms and Flooding.
Incident Period: 06/19/2018 and continuing.

DATES: Issued on 07/06/2018.

Physical Loan Application Deadline Date: 09/04/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 04/08/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/06/2018, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cameron, Hidalgo

Contiguous Counties (Economic Injury Loans Only):

Texas: Brooks, Kenedy, Starr, Willacy.
The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938

	Percent
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 155846 and for economic injury is 155850.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2018-15587 Filed 7-19-18; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15553 and #15554; NEW JERSEY Disaster Number NJ-00048]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New Jersey

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA-4368-DR), dated 06/08/2018.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 03/06/2018 through 03/07/2018.

DATES: Issued on 07/13/2018.

Physical Loan Application Deadline Date: 08/07/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 03/08/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for Private Non-Profit organizations in the State of NEW JERSEY, dated 06/08/2018, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Burlington

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2018-15588 Filed 7-19-18; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15590 and #15591; WEST VIRGINIA Disaster Number WV-00049]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of West Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA-4378-DR), dated 07/12/2018.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 05/28/2018 through 06/03/2018.

DATES: Issued on 07/12/2018.

Physical Loan Application Deadline Date: 09/10/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 04/12/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/12/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

²⁴ 17 CFR 200.30-3(a)(12).

Primary Counties: Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 155906 and for economic injury is 155910.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018-15591 Filed 7-19-18; 8:45 am]

BILLING CODE 8025-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. 670 (Sub-No. 2)]

Notice of Rail Energy Transportation Advisory Committee Vacancies

AGENCY: Surface Transportation Board.

ACTION: Notice of vacancies on federal advisory committee and solicitation of nominations.

SUMMARY: The Surface Transportation Board (Board) hereby gives notice of two vacancies on its Rail Energy Transportation Advisory Committee (RETAC) for representatives of the electric utility industry, one of which must be filled by a representative of a state- or municipally-owned utility. The Board is soliciting suggestions from the public for candidates to fill these vacancies.

DATES: Suggestions for candidates for membership on RETAC are due August 20, 2018.

ADDRESSES: Suggestions may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.gov>. Any person submitting a filing in paper format should send the original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 670 (Sub-No. 2),

395 E Street SW, Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Michael H. Higgins at 202-245-0284. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Board exercises broad authority over transportation by rail carriers, including rates and services (49 U.S.C. 10701-10747, 11101-11124), construction, acquisition, operation, and abandonment of railroad lines (49 U.S.C. 10901-10907), and consolidation, merger, or common control arrangements between railroads (49 U.S.C. 10902, 11323-11327).

The Board established RETAC in 2007 as a federal advisory committee consisting of a balanced cross-section of energy and rail industry stakeholders to provide independent, candid policy advice to the Board and to foster open, effective communication among the affected interests on issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, railroads, and users of energy resources. RETAC operates under the Federal Advisory Committee Act (5 U.S.C. App. 2, §§ 1-16).

RETAC's membership is balanced and representative of interested and affected parties, consisting of not less than: Five representatives from the Class I railroads; three representatives from Class II and III railroads; three representatives from coal producers; five representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility); four representatives from biofuel refiners, processors, or distributors, or biofuel feedstock growers or providers; one representative of the petroleum shipping industry; and, two representatives from private car owners, car lessors, or car manufacturers. RETAC may also include up to two members with relevant experience but not necessarily affiliated with one of the aforementioned industries or sectors. (The at-large seats are currently occupied by representatives of rail labor and the downstream petroleum production industry.) Members are selected by the Chairman of the Board with the concurrence of a majority of the Board. The Chairman may invite representatives from the U.S. Departments of Agriculture, Energy, and Transportation and the Federal Energy Regulatory Commission to serve on

RETAC in advisory capacities as *ex officio* (non-voting) members. The members of the Board serve as *ex officio* members of the Committee.

RETAC meets at least twice per year. Meetings are typically held at the Board's headquarters in Washington, DC, but may be held in other locations. Members of RETAC serve without compensation and without reimbursement of travel expenses. Further information about RETAC is available on the RETAC page of the Board's website at <http://www.stb.gov/stb/rail/retac.html>.

The Board is soliciting nominations from the public for candidates to fill two vacancies on RETAC for representatives of the electric utility industry (one of which must be a representative of a state- or municipally-owned utility) for a three-year term ending September 30, 2021. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RETAC, as long as they do so in a representative capacity, rather than an individual capacity. See *Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Comm'ns*, 79 FR 47,482 (Aug. 13, 2014). Members of RETAC are appointed to serve in a representative capacity.

Nominations for candidates to fill these vacancies should be submitted in letter form and should include: (1) The name of the candidate; (2) the interest the candidate will represent; (3) a summary of the candidate's experience and qualifications for the position; (4) a representation that the candidate is willing to serve as a member of RETAC; and, (5) a statement that the candidate agrees to serve in a representative capacity. Suggestions for candidates for membership on RETAC should be filed with the Board by August 20, 2018. Please note that submissions will be posted on the Board's website under Docket No. EP 670 (Sub-No. 2).

Authority: 49 U.S.C. 1321; 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: July 17, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2018-15604 Filed 7-19-18; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Summary Notice No. 2018–10]

Petition for Exemption; Summary of Petition Received; Air Evac EMS, Inc.**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 9, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0038 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200

New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Clarence Garden (202) 267–7489, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Lirio Liu,*Executive Director, Office of Rulemaking.***Petition for Exemption***Docket No.:* FAA–2018–0038.*Petitioner:* Air Evac EMS, Inc.*Section(s) of 14 CFR Affected:* 91.411(b) and 91.413(c).

Description of Relief Sought: Air Evac EMS, Inc. (Air Evac), holder of Air Carrier Certificate #EVCA731D, requests an exemption from §§ 91.411(b) and 91.413(c) of Title 14, Code of Federal Regulations. The proposed exemption, if granted, would allow Air Evac to perform testing on aircraft that are not included in its Air Carrier operation. Such testing would be conducted by qualified, trained, Air Frame & Power Plant technicians and would be documented.

[FR Doc. 2018–15533 Filed 7–19–18; 8:45 am]

BILLING CODE 4910–13–P**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Notice of Statute of Limitations on Claims; Final Federal Agency Actions on Proposed Highway in California****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of limitation on claims.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans. The actions relate to a proposed highway project, I–110 High-Occupancy Toll Lane Flyover Project 07–LA–110–PM 20.10/20.92 in the City and County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(J)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before 150 days after publication in the **Federal Register** for actions relate to a proposed highway project, I–110 High-Occupancy Toll Lane Flyover Project 07–LA–110–PM 20.10/20.92 in the City

and County of Los Angeles, State of California. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:*For Caltrans:*

Jason Roach Senior Environmental Planner Chief, Environmental Branch Caltrans District 7, 100 South Main Street, MS 16A, Los Angeles, CA 90012, Office Hours: 9 a.m.–4:00 p.m., Office Phone: (213) 897–0357, Email: jason.roach@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(J)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans, in cooperation with Metro, proposes to construct an elevated off-ramp structure on the NB I–110 between 30th St. and Figueroa St. Overcrossing in the City of Los Angeles. The proposed structure would bypass the bottleneck intersections at Flower St. and Adams Blvd. and NB I–110 HOT off-ramp to Adams Blvd., connecting the HOT lane traffic to Figueroa St. The structure would be approximately 1400 feet in length with two standard lanes (twelve feet in width) and a four-foot left shoulder as well as eight-foot right shoulder will be provided. All new structures will be within State right of way; minimal right of way acquisition will be required for maintenance, ingress/egress, access control, and setback purposes as well as emergency services access. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Finding of No Significant Impact (FONSI) for the project, approved on April 24, 2018 and the project was approved on June 28, 2018. The Caltrans FONSI can accessed at the following link <http://www.dot.ca.gov/dist07/resources/envdocs/>, or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

- (1) Council on Environmental Quality regulations;
- (2) National Environmental Policy Act (NEPA);

- (3) Moving Ahead for Progress in the 21st Century Act (MAP-21);
- (4) Department of Transportation Act of 1966;
- (5) Federal Aid Highway Act of 1970;
- (6) Clean Air Act Amendments of 1990;
- (7) Noise Control Act of 1970;
- (8) 23 CFR part 772 FHWA Noise Standards, Policies and Procedures;
- (9) Department of Transportation Act of 1966, Section 4(f);
- (10) Clean Water Act of 1977 and 1987;
- (11) Endangered Species Act of 1973;
- (12) Migratory Bird Treaty Act;
- (13) National Historic Preservation Act of 1966, as amended;
- (14) Historic Sites Act of 1935; and,
- (15) Executive Order 13112, Invasive Species.
- (16) Title VI of the Civil Rights Act of 1964

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Matt Schmitz,

Director, Project Delivery, FHWA—CA Division.

[FR Doc. 2018-15532 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0102; FMCSA-2015-0329; FMCSA-2015-0328; FMCSA-2015-0326; FMCSA-2015-0327]

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 15 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: 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 August 20, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2014-0102; FMCSA-2015-0329; FMCSA-2015-0328; FMCSA-2015-0326; and FMCSA-2015-0327 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 15 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 15 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 15 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 June 17, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 2 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Tanya Bland, (MD); and Joseph Woodle (AL)

The drivers were included in docket number FMCSA–2015–0326. Their exemptions are applicable as of June 17, 2018, and will expire on June 17, 2020.

As of June 24, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 4 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Paul Aseka (FL)
John Dumars (FL)
Michael McCarthy (MN)
Fernando Velasquez (TX)

The drivers were included in docket number FMCSA–2015–0328. Their exemptions are applicable as of June 24, 2018, and will expire on June 24, 2020.

As of June 25, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Daniel Tricolici (MA) has satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers.

This driver was included in docket number FMCSA–2015–0327. The exemption is applicable as of June 25, 2018, and will expire on June 25, 2020.

As of June 27, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 4 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers.

Glenn Ferguson (TX)
Anthony Panto (NJ)
Wayne Turner (IL)
Robert Wilson (TN)

The drivers were included in docket number FMCSA–2015–0329. Their exemptions are applicable as of June 27, 2018, and will expire on June 27, 2020.

As of June 29, 2018, and in accordance with U.S.C. 31136(e) and 31315, the following 4 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers.

Andrew Dueschle (TX)
Alfredo Ramirez (TX)
Julie Ramirez (TX)
Hayden Teesdale (TX)

The drivers were included in docket number FMCSA–2014–0102. Their exemptions are applicable June 29, 2018, and will expire on June 29, 2020.

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 19 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: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15546 Filed 7–19–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0061]

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 30 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 August 20, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0061 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 30 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 30 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

Matthew Albrecht

Mr. Albrecht, age 51, holds a class A CDL in Pennsylvania.

Kenji Batchelor

Mr. Batchelor, age 40, holds an operator’s license in North Carolina.

Richard W. Blaine

Mr. Blaine, age 36, holds an operator’s license in Pennsylvania.

Jeffrey D. Clark

Mr. Clark, age 51, holds an operator’s license in Connecticut.

Donald M. Craig

Mr. Craig, age 41, holds an operator’s license in Ohio.

William Entwistle

Mr. Entwistle, age 65, holds an operator’s license in New Jersey.

Donald Garber

Mr. Garber, age 28, holds an operator’s license in Ohio.

Chris Guidry

Mr. Guidry, age 39, holds an operator’s license in Louisiana.

Matthew Hamill

Mr. Hamill, age 42, holds an operator’s license in New York.

Austin Hernandez

Mr. Hernandez, age 36, holds an operator’s license in Texas.

Robert T. Hilber

Mr. Hilber, age 34, holds an operator’s license in Texas.

Scott E. Holmes

Mr. Holmes, age 46, holds an operator’s license in Iowa.

Roderick Lemoine

Mr. Lemoine, age 52, holds an operator’s license in Louisiana.

Gordon McAllister

Mr. McAllister, age 66, holds an operator’s license in South Carolina.

Gabriel L. McKelvey

Mr. McKelvey, age 35, holds an operator’s license in South Carolina.

Ervin Mitchell

Mr. Mitchell, age 39, holds a class A CDL in Texas.

Gary T. Nagel

Mr. Nagel, age 60, holds an operator’s license in Minnesota.

Albert Pizana

Mr. Pizana, age 47, holds an operator’s license in California.

Christopher Poole

Mr. Poole, age 41, holds an operator’s license in Ohio.

Ricardo O. Porras Payan

Mr. Porras Payan, age 36, holds an operator’s license in Texas.

Charles L. Perkins Jr.

Mr. Perkins, age 31, holds an operator’s license in Louisiana.

James R. Quinn

Mr. Quinn, age 36, holds an operator’s license in Tennessee.

William J. Richards

Mr. Richards, age 33, holds an operator’s license in Ohio.

Enos Smith, Jr

Mr. Smith, age 45, holds an operator’s license in Pennsylvania.

Khaoe K. Smith

Mr. Smith, age 42, holds a class A CDL in Georgia.

Ronell Smith

Mr. Smith, age 47, holds an operator's license in California.

Brandon Soto

Mr. Soto, age 33, holds an operator's license in Missouri.

Bryan Soto

Mr. Soto, age 29, holds an operator's license in Indiana.

Brett E. Wanner

Mr. Wanner, age 29, holds an operator's license in Pennsylvania.

Michael C. Wilson

Mr. Wilson, age 52, holds an operator's license in Kentucky.

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-2017-0061 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-2017-0061 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15575 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2018-0028]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 36 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on June 29, 2018. The exemptions expire on June 29, 2020.

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://](http://www.regulations.gov)

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 May 29, 2018, FMCSA published a notice announcing receipt of applications from 36 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (83 FR 24563). The public comment period ended on June 28, 2018, and no 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)(3).

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.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 29, 2018,

Federal Register notice (83 FR 24563) and will not be repeated in this notice.

These 36 applicants have had ITDM over a range of 1 to 31 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) 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 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 provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; 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 keeping 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 36 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Leobardo O. Antunez (WA)
 Alfred E. Apel (NY)
 Carl M. Bartlett (SD)
 Christopher A. Bell (IA)
 Gerald A. Brady (IA)
 Jeffrey Campbell (IN)
 Ricky L. Collett (OK)
 David M. Conrad (NM)
 Lee E. Crenshaw, Jr. (CT)
 Michael C. Crouch (OK)
 Matthew J. Doyal (GA)
 Maximiliano Duarte (AL)
 Thomas P. Dubia (NH)
 Michael W. Fellows (WA)
 Raydon R. Gall (ND)
 Clifford O. Hayter (FL)
 Anthony A. Helms, Sr. (SC)
 Brian D. Hopper (OK)
 Terry R. Hunter (IL)
 James C. Illingsworth (PA)
 Christopher M. Joswak (MI)
 Matthew S. Keas (KS)
 Matthew T. Leyden (NE)
 Jessica M. Merchen (GA)
 Charlie Moore, Jr. (NY)
 Wayne R. Mowery (PA)
 Jesteva L. Moye-Hosey (OH)
 Imelda Ortiz (NM)
 Wesley H. Pollock (OH)
 Robert J. Possley (WI)
 Samuel K. Sanders (KS)
 Leon J. Schlichte (IA)
 Landon H. Tuck (TX)
 Curtis D. Weinman (WA)
 Nathaniel W. Wessel (ME)
 Christopher H. Whitman (NC)

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(e) and 31315.

Issued on: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15543 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0107; FMCSA-2013-0109; FMCSA-2015-0119]

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 three 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 February 14, 2018. The exemptions expire on February 14, 2020.

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 April 27, 2018, FMCSA published a notice announcing its decision to renew exemptions for three 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 (83 FR 18624). The public comment period ended on May 29, 2018, 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 proceeding.

IV. Conclusion

Based upon its evaluation of the three 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):

Gregory L. Hrutkay, (PA)
John Johnson, (WI) and
George K. Webb, (MA).

The drivers were included in docket numbers FMCSA-2013-0107; FMCSA-2013-0109; FMCSA-2015-0119. Their exemptions are applicable as of February 14, 2018, and will expire on February 14, 2020.

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: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15544 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0033]

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 60 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 August 20, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2018-0033 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 60 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

Michael R. Allen

Mr. Allen, 66, has had ITDM since 2018. His endocrinologist examined him in 2018 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. Allen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Allen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Kenneth A. Bauer II

Mr. Bauer, 55, has had ITDM since 2012. His endocrinologist examined him in 2018 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. Bauer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bauer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Teresia K. Beaty

Ms. Beaty, 60, has had ITDM since 2017. Her endocrinologist examined her in 2018 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. Beaty understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Beaty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2018 and certified that she does not have diabetic retinopathy. She holds an operator's license from Indiana.

Myciah M. Bliesmer

Mr. Bliesmer, 24, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Bliesmer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bliesmer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Theodore F. Brassley, Jr.

Mr. Brassley, 61, has had ITDM since 2008. His endocrinologist examined him in 2018 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. Brassley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brassley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that

he does not have diabetic retinopathy. He holds a Class B CDL from Maine.

Al C. Broom

Mr. Broom, 68, has had ITDM since 2018. His endocrinologist examined him in 2018 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. Broom understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Broom meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

David A. Bruns

Mr. Bruns, 57, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Bruns understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bruns meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Indiana.

Todd W. Burdick

Mr. Burdick, 53, has had ITDM since 2012. His endocrinologist examined him in 2018 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. Burdick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burdick meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

William T. Casey

Mr. Casey, 53, has had ITDM since 2018. His endocrinologist examined him in 2018 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. Casey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Casey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Anthony Castano

Mr. Castano, 28, has had ITDM since 1997. His endocrinologist examined him in 2018 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. Castano understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Castano meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Richard T. Cisson III

Mr. Cisson, 21, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Cisson understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cisson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

John F. Daley

Mr. Daley, 59, has had ITDM since 2016. His endocrinologist examined him in 2018 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. Daley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Rhode Island.

Erik T. Davis

Mr. Davis, 21, has had ITDM since 2009. His endocrinologist examined him in 2018 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. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Robert J. Degrave

Mr. Degrave, 40, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Degrave understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Degrave 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.

Paul A. Diokpa

Mr. Diokpa, 56, has had ITDM since 2016. His endocrinologist examined him in 2018 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. Diokpa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Diokpa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Richard E. Dodge

Mr. Dodge, 71, has had ITDM since 2016. His endocrinologist examined him in 2018 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. Dodge understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dodge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oregon.

Jeremy A. Elley

Mr. Elley, 37, has had ITDM since 1992. His endocrinologist examined him in 2018 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. Elley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Elley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Montana.

John A. Evenson

Mr. Evenson, 68, has had ITDM since 2018. His endocrinologist examined him in 2018 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. Evenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Evenson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Gregory L. Faison

Mr. Faison, 44, has had ITDM since 2010. His endocrinologist examined him in 2018 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. Faison understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Faison meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator license from Maryland.

Ronald N. Falkowski

Mr. Falkowski, 60, has had ITDM since 2018. His endocrinologist examined him in 2018 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. Falkowski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Falkowski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Shawn L. Floyd

Ms. Floyd, 51, has had ITDM since 1994. Her endocrinologist examined her in 2018 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. Floyd understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Floyd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2018 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from Illinois.

Terrence M. Fontaine

Mr. Fontaine, 32, 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. Fontaine understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fontaine meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

David G. Foster

Mr. Foster, 59, has had ITDM since 2010. His endocrinologist examined him in 2018 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. Foster understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Foster meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Daniel A. Fry

Mr. Fry, 66, has had ITDM since 2018. His endocrinologist examined him in 2018 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 optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Samuel L. Gillespie

Mr. Gillespie, 53, 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. Gillespie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gillespie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class AM CDL from Tennessee.

Eddie C. Hall

Mr. Hall, 57, has had ITDM since 2011. His endocrinologist examined him in 2018 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. Hall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Jacob E. Heubner

Mr. Heubner, 40, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Heubner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heubner 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.

Michael P. Johnson

Mr. Johnson, 54, has had ITDM since 2015. His endocrinologist examined him in 2018 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. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy.

He holds a Class A CDL from Minnesota.

Ryan J. Keys

Mr. Keys, 21, has had ITDM since 1998. His endocrinologist examined him in 2018 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. Keys understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keys meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator from New York.

James C. Lee, Jr.

Mr. Lee, 40, has had ITDM since 2013. His endocrinologist examined him in 2018 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. Lee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Georgia.

Harold W. Lewis, Jr.

Mr. Lewis, 58, has had ITDM since 2010. His endocrinologist examined him in 2018 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. Lewis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lewis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Edward T. Martin

Mr. Martin, 71, 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. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Clavenda L. Mason

Ms. Mason, 64, 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. Mason understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Mason meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2018 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from Maryland.

Derek A. McGinty

Mr. McGinty, 45, has had ITDM since 2018. His endocrinologist examined him in 2018 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. McGinty understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. McGinty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Pamela J. Meziere

Ms. Meziere, 53, has had ITDM since 1973. Her endocrinologist examined her in 2018 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. Meziere understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Meziere meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2018 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Mississippi.

Mark A. Miller

Mr. Miller, 36, has had ITDM since 1993. His endocrinologist examined him in 2018 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 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Donald R. Mocaby

Mr. Mocaby, 72, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Mocaby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mocaby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

David B. Morel

Mr. Morel, 62, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Morel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morel 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 New Hampshire.

Cornelius W. Ott, Jr.

Mr. Ott, 63, has had ITDM since 2016. His endocrinologist examined him in 2018 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. Ott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Gene H. Owens

Mr. Owens, 68, has had ITDM since 2005. His endocrinologist examined him in 2018 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. Owens understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Owens meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kansas.

Jarek D. Perkins

Mr. Perkins, 32, has had ITDM since 1991. His endocrinologist examined him in 2018 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. Perkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Ohio.

Austin S. Pihuliak

Mr. Pihuliak, 22, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Pihuliak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pihuliak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Michael P. Poisson

Mr. Poisson, 41, has had ITDM since 2014. His endocrinologist examined him in 2018 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. Poisson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Poisson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Carl E. Rhoads

Mr. Rhoads, 67, has had ITDM since 2013. His endocrinologist examined him in 2018 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. Rhoads understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rhoads meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

John W. Ringbloom

Mr. Ringbloom, 66, has had ITDM since 2016. His endocrinologist examined him in 2018 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. Ringbloom understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ringbloom meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Leslie M. Rinker

Mr. Rinker, 70, has had ITDM since 2009. His endocrinologist examined him in 2018 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. Rinker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rinker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Rocky G. Roof

Mr. Roof, 51, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Roof understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roof 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 Missouri.

Lance U. Sapp

Mr. Sapp, 68, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Sapp understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sapp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does

not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Dwayne E. Smith

Mr. Smith, 55, has had ITDM since 2017. His endocrinologist examined him in 2018 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 ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Brian C. Smith

Mr. Smith, 39, has had ITDM since 1988. His endocrinologist examined him in 2018 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 ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from California.

Alex L. Soto

Mr. Soto, 27, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Soto understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Soto meets the requirements

of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Scott K. Stauffer

Mr. Stauffer, 59, has had ITDM since 2009. His endocrinologist examined him in 2018 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. Stauffer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stauffer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Jerry F. Summers

Mr. Summers, 38, has had ITDM since 2013. His endocrinologist examined him in 2018 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. Summers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Summers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

Gary R. Waldvogel

Mr. Waldvogel, 58, has had ITDM since 2018. His endocrinologist examined him in 2018 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. Waldvogel understands diabetes management and

monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waldvogel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Lee H. Watkins

Mr. Watkins, 77, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Watkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

John D. Wenger, Jr.

Mr. Wenger, 66, has had ITDM since 1998. His endocrinologist examined him in 2018 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. Wenger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wenger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

David B. Whitehead

Mr. Whitehead, 44, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Whitehead understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Whitehead meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

John J. Wille III

Mr. Wille, 60, has had ITDM since 2017. His endocrinologist examined him in 2018 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. Wille understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wille meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Utah.

Douglas W. Winslow

Mr. Winslow, 53, has had ITDM since 1991. His endocrinologist examined him in 2018 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. Winslow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Winslow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Illinois.

Christopher S. Wright

Mr. Wright, 53, has had ITDM since 2018. His endocrinologist examined him in 2018 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. Wright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wright meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

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-2018-0033 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-2018-0033 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15542 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1999-6156; FMCSA-1999-6480; FMCSA-2002-11714; FMCSA-2005-23099; FMCSA-2006-24015; FMCSA-2006-24783; FMCSA-2007-27515; FMCSA-2008-0021; FMCSA-2008-0106; FMCSA-2008-0174; FMCSA-2009-0206; FMCSA-2009-0291; FMCSA-2009-0303; FMCSA-2009-0321; FMCSA-2010-0050; FMCSA-2010-0082; FMCSA-2010-0114; FMCSA-2011-0299; FMCSA-2011-0324; FMCSA-2011-0379; FMCSA-2012-0039; FMCSA-2012-0104; FMCSA-2012-0106; FMCSA-2012-0159; FMCSA-2012-0160; FMCSA-2012-0161; FMCSA-2013-0174; FMCSA-2014-0002; FMCSA-2014-0003; FMCSA-2014-0005; FMCSA-2014-0006; FMCSA-2014-0007; FMCSA-2014-0008; FMCSA-2016-0024; FMCSA-2016-0027; FMCSA-2016-0028; FMCSA-2016-0030]

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 100 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 August 20, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-1999-6156; FMCSA-1999-6480; FMCSA-2002-11714; FMCSA-2005-23099; FMCSA-2006-24015; FMCSA-2006-24783; FMCSA-2007-27515; FMCSA-2008-0021; FMCSA-2008-0106; FMCSA-2008-0174; FMCSA-2009-0206; FMCSA-2009-0291;

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 August and are discussed below:

As of August 1, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 39 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 54948; 64 FR 68195; 65 FR 159; 65 FR 20251; 67 FR 10475; 67 FR 15662; 67 FR 17102; 67 FR 37907; 69 FR 8260; 69 FR 17267; 69 FR 26206; 71 FR 4194; 71 FR 6824; 71 FR 13450; 71 FR 16410; 71 FR 26601; 71 FR 26602; 71 FR 32183; 71 FR 41310; 72 FR 21313; 72 FR 32703; 73 FR 15255; 73 FR 15567; 73 FR 27015; 73 FR 27017; 73 FR 28186; 73 FR 36955; 74 FR 26464; 74 FR 43217; 74 FR 57551; 74 FR 60022; 74 FR 65842; 75 FR 1835; 75 FR 4623; 75 FR 9478; 75 FR 9482; 75 FR 14656; 75 FR 19674; 75 FR 20882; 75 FR 25917; 75 FR 27621; 75 FR 27622; 75 FR 27623; 75 FR 28682; 75 FR 36778; 75 FR 36779; 75 FR 39727; 76 FR 37173; 76 FR 75942; 77 FR 7657; 77 FR 10606; 77 FR 13689; 77 FR 15184; 77 FR 20879; 77 FR 22059; 77 FR 23797; 77 FR 26816; 77 FR 27847; 77 FR 27849; 77 FR 27850; 77 FR 29447; 77 FR 31427; 77 FR 33017; 77 FR 36338; 77 FR 38384; 77 FR 38386; 77 FR 44708; 78 FR 57679; 78 FR 67452; 78 FR 67460; 78 FR 78477; 79 FR 1908; 79 FR 10606; 79 FR 10608; 79 FR 14328; 79 FR 14333; 79 FR 14571; 79 FR 17641; 79 FR 18390; 79 FR 21996; 79 FR 22003; 79 FR 23797; 79 FR 27043; 79 FR 27681; 79 FR 28588; 79 FR 29495; 79 FR 35212; 79 FR 35218; 79 FR 35220; 79 FR 38649; 79 FR 38661; 79 FR 47175; 80 FR 49302; 80 FR 63869; 80 FR 80443; 81 FR 20433; 81 FR 20435; 81 FR 21655; 81 FR 26305; 81 FR 28138; 81 FR 39320; 81 FR 66718; 81 FR 66720; 81 FR 66724; 81 FR 77173; 81 FR 90050; 81 FR 91239; 81 FR 96196):

Julian Aguirre (TX)
Daniel A. Bahm (FL)
Kenneth J. Bernard (LA)

Brad T. Braegger (UT)
Walter M. Brown (SC)
Daniel M. Cannon (OR)
Cary Carn (NJ)
Ryan E. Cox (WI)
William C. Dempsey, Jr. (MA)
Richard W. Ellis (IA)
Ronald D. Flanery (KY)
Nicholas C. Georgen (IA)
Luis Gomez-Banda (NV)
Gary A. Goostree (OH)
Joshua V. Harrison (NJ)
Wesley V. Holland (NC)
Timothy B. Hummel (KY)
Walter J. Jurczak (NJ)
Charles J. Kennedy (OH)
Randall L. Mathis (AL)
Brian D. McClanahan (IL)
Lawrence C. Moody (NJ)
Norman V. Myers (WA)
Earl R. Neugerbauer (CO)
Hassan Ourahou (KY)
Joe Ramirez (CA)
Tommy L. Ray, Jr. (AL)
Justin T. Richman (IN)
Kevin L. Routin (KY)
Scott J. Schlenker (WA)
Andrew W. Schollett (CO)
Michael D. Singleton (IN)
John C. Smith (IL)
Temesgn H. Teklezig (WA)
George W. Thomas (SC)
Gary R. Thomas (OH)
Leslie D. Wallace (MO)
Wade W. Ward (WY)
John T. White, Jr. (NC)

The drivers were included in docket numbers FMCSA-1999-6156; FCMSA-1999-6480; FCMSA-2002-11714; FCMSA-2005-23099; FCMSA-2006-24783; FCMSA-2007-27515; FCMSA-2008-0021; FCMSA-2009-0206; FCMSA-2009-0291; FCMSA-2009-0303; FCMSA-2009-0321; FCMSA-2010-0050; FCMSA-2010-0082; FCMSA-2011-0299; FCMSA-2011-0324; FCMSA-2011-0379; FCMSA-2012-0039; FCMSA-2012-0104; FCMSA-2012-0106; FCMSA-2013-0174; FCMSA-2014-0002; FCMSA-2014-0003; FCMSA-2014-0005; FCMSA-2014-0006; FCMSA-2016-0024; FCMSA-2016-0027; FCMSA-2016-0028. Their exemptions are applicable as of August 1, 2018, and will expire on August 1, 2020.

As of August 6, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (75 FR 25918; 75 FR 39729; 77 FR 15184; 77 FR 27850; 77 FR 36336; 77 FR 36338; 77 FR 46795; 79 FR 38661; 81 FR 90050):

William L. Martin (OR)
Richard L. Miller (IN)

Lance C. Phares (NY)
Richard D. Tucker II (NC)
Jay Turner (OH)

The drivers were included in docket numbers FMCSA-2010-0082; FMCSA-2011-0379; FMCSA-2012-0159. Their exemptions are applicable as of August 6, 2018, and will expire on August 6, 2020.

As of August 8, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (79 FR 38659; 79 FR 53514; 81 FR 90050):

Jimmy A. Baker (TX)
Antonio A. Calixto (MN)
James W. Carter, Jr. (KS)
Larry G. Davis (TN)
Michael C. Doheny (CT)
George P. Ford (NC)
Ronnie L. Henry (KS)
Johnny L. Irving (MS)
Kevin L. Jones (SC)
Keith A. Kelley (ME)
David L. Miller (OH)
David Perkins (NY)
Randall H. Tempel (MT)
Cory J. Tivnan (WA)
Ricky W. Witt (IA)
John D. Woods (MI)

The drivers were included in docket number FMCSA-2014-0007. Their exemptions are applicable as of August 8, 2018, and will expire on August 8, 2020.

As of August 9, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (75 FR 34210; 75 FR 34211; 75 FR 34212; 75 FR 27888; 77 FR 40945; 79 FR 40945; 81 FR 90050):

Mark S. Berkheimer (PA)
Michael A. Jabro (MI)
Buddy W. Myrick (TX)
Charles L. Rill, Sr. (MD)

The drivers were included in docket number FMCSA-2010-0114. Their exemptions are applicable as of August 9, 2018, and will expire on August 9, 2020.

As of August 12, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 45214; 81 FR 66726):

David E. Campbell (NY)
James G. Cothren (GA)

Nenad Harnos (NJ)
 Matthew D. Hormann (MN)
 James W. Jones (AL)
 Duane R. Martin (PA)
 Roger S. Orr (IA)
 Richard D. Shryock (MO)
 Steven D. Sodders (OH)
 Keith R. Tyler (NC)

The drivers were included in docket number FMCSA–2016–0014. Their exemptions are applicable as of August 12, 2018, and will expire on August 12, 2020.

As of August 18, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 22 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (71 FR 14567; 71 FR 30228; 73 FR 28187; 73 FR 35195; 73 FR 35196; 73 FR 35197; 73 FR 35198; 73 FR 35199; 73 FR 35200; 73 FR 35201; 73 FR 38498; 73 FR 38499; 73 FR 48273; 73 FR 48275; 75 FR 25919; 75 FR 39729; 75 FR 44051; 77 FR 46153; 79 FR 46153; 81 FR 90050):

Donald L. Carman (OH)
 Christopher R. Cone (GA)
 Walter O. Connelly (WA)
 Roger D. Elders (MI)
 Lucious J. Erwin (TX)
 Riche Ford (CO)
 Kevin K. Friedel (NY)
 Steven G. Harter (OR)
 Andrew C. Kelly (WV)
 Jason W. King (MT)
 Billy J. Lewis (LA)
 Robert W. McMillian (MA)
 Richard A. Peterson (OR)
 Carroll G. Quisenberry (KY)
 Ryan J. Reimann (WI)
 Brandon J. See (IA)
 Ricky L. Shepler (PA)
 John L. Stone (PA)
 Nils S. Thornberg (OR)
 Daniel W. Toppings (WV)
 Christopher R. Whitson (NC)
 Aaron E. Wright (MI)

The drivers were included in docket numbers FMCSA–2006–24015; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2010–0082. Their exemptions are applicable as of August 18, 2018, and will expire on August 18, 2020.

As of August 19, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (79 FR 41737; 79 FR 56102; 81 FR 90050): Leamon V. Manchester (LA); Leverne F. Schulte, Jr. (OH)

The drivers were included in docket number FMCSA–2014–0008. Their

exemptions are applicable as of August 19, 2018, and will expire on August 19, 2020.

As of August 27, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Gregory S. Smith (AR) has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 38381; 77 FR 51846; 79 FR 41740; 81 FR 90050).

The driver was included in docket number FMCSA–2012–0160. The exemption is applicable as of August 27, 2018, and will expire on August 27, 2020.

As of August 29, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Rickey W. Goins (TN) has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 41879; 77 FR 52391; 79 FR 41735; 81 FR 90050).

The driver was included in docket number FMCSA–2012–0161. The exemption is applicable as of August 29, 2018, and will expire on August 29, 2020.

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 100 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: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15554 Filed 7–19–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2018–0051]

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 exempt eight 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 operate CMVs in interstate commerce.

DATES: The exemptions were applicable on May 30, 2018. The exemptions expire on May 30, 2020.

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 April 24, 2018, FMCSA published a notice announcing receipt of applications from eight individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (83 FR 17879). The public comment period ended on May 24, 2018, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting 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)(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 criteria¹ 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 proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy and seizure disorder prohibition in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

In reaching the decision to grant these exemption requests, FMCSA considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013, **Federal Register** notice (78 FR 3069) provides the current MEP recommendations which is the criteria the Agency uses to grant seizure exemptions.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the April 24, 2018 **Federal Register** notice (83 FR 17879) and will not be repeated in this notice.

These eight applicants have been seizure-free over a range of 23 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last two years. In each case, the applicant's treating physician verified his or her seizure

history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in 49 CFR 391.41(b)(8) 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 remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; 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 of 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 eight exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, 49 CFR 391.41(b)(8), subject to the requirements cited above:

Steven H. Ford (WI)
Scott Habeck (SD)
Nathan E. Kanouff (GA)
Richard L. Kienel, Jr. (GA)
Joe L. King, Jr. (NC)
Daniel L. Martin (IA)
Phillip Moore (CT)
Joshua Thomas (MN)

In accordance with 49 U.S.C. 31315(b)(1), each exemption will be valid for two years from the effective

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>.

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: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15577 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2018-0029]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 37 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on June 29, 2018. The exemptions expire on June 29, 2020.

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 May 29, 2018, FMCSA published a notice announcing receipt of applications from 37 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (83 FR 24576). The public comment period ended on June 28, 2018, and one comment was 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)(3).

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.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Vicky Johnson from the Minnesota Department of Public Safety stated that Minnesota has no objections to granting diabetes exemptions to Jon E. Behle, Gavin C. Gore, Stephen R. Henderscheidt, and Jose C. Rosario.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications,

experience, and medical condition of each applicant were stated and discussed in detail in the May 29, 2018, **Federal Register** notice (83 FR 24576) and will not be repeated in this notice.

These 37 applicants have had ITDM over a range of 1 to 22 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) 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 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 provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; 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 keeping 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 37 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Clayton W. Baenziger (CO)
John E. Behle (MN)
Myles S. Bolton (AK)
Francisco Chavez, Jr. (CA)
David C. Clarke (NE)
Steven R. Condon (NE)
Gilbert L. Fleming, Jr. (MD)
Gavin C. Gore (MN)
Johnny Gregg, Jr. (NC)
Thomas W. Guzier (IL)
Willard R. Hammond, Jr. (NY)
Greg C. Hardcastle (OR)
Joseph E. Heck (IA)
Stephen R. Henderschiedt (MN)
Larry D. Johnston (IA)
Leodon L. Killinger, Jr. (ME)
Joshua M. Lenhart (AK)
Michelle L. Logsdon (WV)
Tiernan E. McKinney (OH)
Kevin R. McClerren (IL)
Bryant L. Murray (UT)
Manuel C. Pineda (TX)
Kenneth M. Putt (VA)
John D. Randall (MO)
John F. Reilly (IL)
Tyree E. Rhodes (LA)
Jose C. Rosario (MN)
Matthew L. Shelley (VA)
Brian R. Smallcanyon (UT)
Kenneth J. Sortman (OH)
Gregory R. Suckow (SD)
Jack W. Terrio (LA)
Curtis D. Van Koevinger (MI)
Trent J. Vandyken (MN)
Gregory A. Westfall (OH)
Kevin L. Willis Sloan (MO)
Debra A. Wiss (WA)

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(e) and 31315.

Issued on: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15574 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0015]

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 nine 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 August 20, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2018-0015 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 nine 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

Paulo G. Clemente

Mr. Clemente, 32, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2018, his optometrist stated, "Full visual field testing done with the Humphrey field analyzer showed that Paul saw all the test objects in each eye and in my opinion would indicate that he has the visual competency to be a safe driver on the highway and be able to perform the driving tasks required to operate a commercial vehicle." Mr. Clemente reported that he has driven straight trucks for 11 years, accumulating 440,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Ronald W. Doskocil

Mr. Doskocil, 51, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2018, his ophthalmologist stated, "In my medical opinion, Mr. Doskocil does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Doskocil reported that he has driven straight trucks for 29 years, accumulating 1.45 million 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.

Loren D. Estad

Mr. Estad, 54, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2018, his optometrist stated, "In my opinion, Mr. Estad has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Estad reported that he has driven straight trucks for 38 years, accumulating 456,000 miles, and tractor-trailer combinations for 35 years, accumulating 3.5 million miles. He holds a Class AM CDL from North Dakota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Ryan P. Garner

Mr. Garner, 43, has a prosthetic right eye due to a traumatic incident in 1982. 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, "It is my assessment that I certify that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Garner reported that he has driven straight trucks for five years, accumulating 25,000 miles, and tractor-trailer combinations for four years, accumulating 200,000 miles. He holds a Class A CDL from Montana. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Kody D. Gleckler

Mr. Gleckler, 29, has aphakia in his left eye due to a traumatic incident in 2009. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2018, his optometrist stated, "In conclusion, in my opinion, I believe that he would have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Gleckler reported that he has driven straight trucks for ten years, accumulating 100,000 miles, and tractor-trailer combinations for ten years, accumulating 100,000 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.

Jeffrey W. Hawkins

Mr. Hawkins, 56, has had a retinal detachment in his left eye since 2011. The visual acuity in his right eye is 20/

20, and in his left eye, no light perception. Following an examination in 2017, his ophthalmologist stated, "In my medical opinion, the patient continues to have sufficient vision to perform driving tasks required as a commercial vehicle operator." Mr. Hawkins reported that he has driven tractor-trailer combinations for 35 years, accumulating 2.8 million miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Timothy D. Lundvall

Mr. Lundvall, 61, has had glaucoma in his right eye since 2013. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2018, his ophthalmologist stated, "In my opinion, Mr. Lundvall has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Lundvall reported that he has driven straight trucks for 30 years, accumulating 45,000 miles, and tractor-trailer combinations for 15 years, accumulating 900,000 miles. He holds a Class A CDL from Nebraska. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Eric D. Smith

Mr. Smith, 54, has had a cataract in his left eye since 2014. The visual acuity in his right eye is 20/15, and in his left eye, hand motion. Following an examination in 2018, his optometrist stated, "In my medical opinion, I feel that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Smith reported that he has driven tractor-trailer combinations for nine years, accumulating 1.35 million miles. He holds a Class A CDL from Georgia. His driving record for the last three years shows no crashes and one conviction for a moving violation in a CMV; failure to keep in proper lane.

Mark E. Thesing

Mr. Thesing, 59, has had optic nerve hypoplasia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2018, his optometrist stated, "It is my opinion that Mr. Thesing has sufficient vision to perform the driving tasks required to operate a commercial vehicle [sic] as he has demonstrated during his career requiring no restrictions." Mr. Thesing reported that he has driven straight trucks for 40 years,

accumulating 240,000 miles, and tractor-trailer combinations for eight years, accumulating 16,000 miles. He holds a Class A CDL from Minnesota. 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-2018-0015 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-2018-0015 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15552 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25854; FMCSA-2013-0108; FMCSA-2014-0382]

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 five 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 December 23, 2017. The exemptions expire on December 23, 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 February 15, 2018, FMCSA published a notice announcing its decision to renew exemptions for five 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 (FR 83 6927). The public comment period ended on March 19, 2018, 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 five 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 December 23, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following five individuals

have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 6927):

Gary Freeman (AL)
Aaron Gillette (SD)
David L. Kestner (VA)
Chad B. Smith (MA)
Trevor A. Williams (MN)

The drivers were included in docket numbers FMCSA-2006-25854; FMCSA-2013-0108; FMCSA-2014-0382. Their exemptions are applicable as of December 23, 2017, and will expire on December 23, 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: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15576 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0443]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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 five 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 May 19, 2018. The exemptions expire on May 19, 2020. Comments must be received on or before August 20, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2013-0443 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 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 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.]

The five individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), 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 five applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The five drivers in this notice remain in good standing with the Agency, have maintained their 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. 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 renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

As of May 19, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Thomas Bynum (NC)
Ronald A. Hartl (WI)
Craig Hoisington (NH)
Michael W. Miller (WI)
Peter M. Thompson (FL)

The drivers were included in docket number FMCSA–2013–0443. Their

exemptions are applicable as of May 19, 2018, and will expire on May 19, 2020.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; 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 of 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 five exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). 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: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15578 Filed 7–19–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-1999-6480; FMCSA-2001-11426; FMCSA-2002-11714; FMCSA-2002-12844; FMCSA-2003-15268; FMCSA-2003-16564; FMCSA-2004-19477; FMCSA-2006-23773; FMCSA-2006-24015; FMCSA-2007-0071; FMCSA-2007-27897; FMCSA-2008-0021; FMCSA-2009-0011; FMCSA-2009-0291; FMCSA-2009-0321; FMCSA-2010-0050; FMCSA-2011-0140; FMCSA-2011-0365; FMCSA-2011-0366; FMCSA-2011-0379; FMCSA-2011-0380; FMCSA-2012-0039; FMCSA-2013-0027; FMCSA-2013-0030; FMCSA-2013-0165; FMCSA-2013-0166; FMCSA-2013-0167; FMCSA-2013-0168; FMCSA-2013-0169; FMCSA-2013-0170; FMCSA-2013-0174; FMCSA-2014-0002; FMCSA-2014-0003; FMCSA-2014-0004; FMCSA-2015-0049; FMCSA-2015-0053; FMCSA-2015-0056; FMCSA-2015-0070; FMCSA-2015-0072; FMCSA-2015-0345; FMCSA-2015-0347; FMCSA-2015-0351; FMCSA-2016-0024; FMCSA-2016-0025]

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 119 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., 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 May 24, 2018, FMCSA published a notice announcing its decision to renew exemptions for 119 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 (64 FR 68195; 65 FR 20251; 67 FR 10471; 67 FR 15662; 67 FR 17102; 67 FR 19798; 67 FR 37907; 67 FR 68719; 68 FR 2629; 68 FR 37197; 68 FR 48989; 68 FR 74699; 69 FR 10503; 69 FR 17267; 69 FR 19611; 69 FR 26206; 69 FR 64806; 69 FR 71100; 70 FR 2705; 70 FR 42615; 71 FR 6826; 71 FR 6829; 71 FR 14566; 71 FR 16410; 71 FR 19602; 71 FR 19604; 71 FR 26602; 71 FR 30227; 72 FR 1053; 72 FR 1054; 72 FR 39879; 72 FR 40360; 72 FR 52419; 73 FR 6242; 73 FR 11989; 73 FR 15567; 73 FR 16950; 73 FR 27014; 73 FR 27015; 73 FR 27017; 73 FR 76440; 74 FR 26464; 74 FR 34632; 74 FR 41971; 74 FR 49069; 74 FR 64124; 74 FR 65842; 75 FR 1835; 75 FR 9477; 75 FR 9480; 75 FR 9482; 75 FR 13653; 75 FR 14656; 75 FR 19674; 75 FR 22176; 75 FR 27621; 75 FR 27622; 75 FR 28684; 76 FR 37169; 76 FR 50318; 76 FR 54530; 76 FR 62143; 76 FR 70212; 76 FR 78729; 77 FR 3552; 77 FR 5874; 77 FR 7233; 77 FR 10604; 77 FR 13689; 77 FR 13691; 77 FR 15184; 77 FR 17107; 77 FR 17108; 77 FR 17117; 77 FR 20879; 77 FR 23797; 77 FR 23800; 77 FR 26816; 77 FR 27849; 77 FR 27850; 77 FR 31427; 78 FR 24798; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 56986; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64271; 78 FR 64274; 78 FR 67454; 78 FR 67460; 78 FR 76395; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477; 79 FR 1908; 79 FR 2247; 79 FR 2748; 79 FR 4803; 79 FR 10602; 79 FR 10607; 79 FR 10609; 79 FR 10611; 79 FR 13085; 79 FR 14331; 79 FR 14333; 79 FR 14571; 79 FR 17641; 79 FR 17642; 79 FR 17643; 79 FR 18391; 79 FR 18392; 79 FR 21996; 79 FR 22000; 79 FR 22003; 79 FR 23797; 79 FR 28588; 79 FR

29498; 80 FR 31636; 80 FR 40122; 80 FR 48413; 80 FR 59230; 80 FR 62163; 80 FR 63839; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 1474; 81 FR 15401; 81 FR 15404; 81 FR 16265; 81 FR 17237; 81 FR 20433; 81 FR 20435; 81 FR 21647; 81 FR 21655; 81 FR 44680; 81 FR 48493; 81 FR 52516; 81 FR 66718; 81 FR 91239; 81 FR 96196). The public comment period ended on June 25, 2018, 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.

IV. Conclusion

Based upon its evaluation of the 119 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 May and are discussed below:

As of May 7, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 46 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 37197; 68 FR 48989; 69 FR 64806; 70 FR 2705; 70 FR 42615; 71 FR 6826; 71 FR 19602; 72 FR 1054; 72 FR 39879; 72 FR 40360; 72 FR 52419; 73 FR 6242; 73 FR 11989; 73 FR 16950; 74 FR 26464; 74 FR 34632; 74 FR 41971; 74 FR 49069; 74 FR 64124; 74 FR 65842; 75 FR 1835; 75 FR 9477; 75 FR 9480; 75 FR 9482; 75 FR 13653; 75 FR 22176; 76 FR 37169; 76 FR 50318; 76 FR 54530;

76 FR 62143; 76 FR 70212; 76 FR 78729; 77 FR 3552; 77 FR 5874; 77 FR 7233; 77 FR 10604; 77 FR 13689; 77 FR 13691; 77 FR 17107; 77 FR 17108; 77 FR 17117; 78 FR 24798; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 56986; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64271; 78 FR 64274; 78 FR 67454; 78 FR 67460; 78 FR 76395; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477; 79 FR 1908; 79 FR 2247; 79 FR 2748; 79 FR 4803; 79 FR 10602; 79 FR 10607; 79 FR 10609; 79 FR 10611; 79 FR 13085; 79 FR 14331; 79 FR 14333; 79 FR 17641; 79 FR 17642; 79 FR 17643; 79 FR 18391; 79 FR 22003; 80 FR 31636; 80 FR 40122; 80 FR 48413; 80 FR 59230; 80 FR 62163; 80 FR 63839; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 79414; 80 FR 80443; 81 FR 1284; 81 FR 1474; 81 FR 15401; 81 FR 15404; 81 FR 16265; 81 FR 17237; 81 FR 20433; 81 FR 20435; 81 FR 44680; 81 FR 48493; 81 FR 52516; 81 FR 91239);

David R. Alford (UT)
Bradley T. Alspach (IL)
Otto J. Ammer, Jr. (PA)
Terry L. Baker (KY)
Morris R. Beebe, II (CO)
Eugenio V. Bermudez (MA)
Dominic A. Berube (MA)
Troy C. Blackburn (OH)
Lester E. Burnes (NM)
Thomas F. Caithamer (IL)
Bruce A. Cameron (ND)
Freddie A. Carrasquillo (TX)
Mark Castleman (MN)
James A. Champion (WA)
Loren D. Chapman (MN)
Larry Chinn (WI)
Charles W. Cox (AR)
Walter F. Crean, III (CT)
Bryan K. Dalton (NC)
Vincent DeMedici (PA)
Johnny Dillard (SC)
John T. Edmondson (AL)
Kenneth J. Fisk (MI)
Brian W. Gillund (MN)
Patrick W. Griffin (OK)
Matt A. Guilmain (NH)
Raymond L. Herman (NY)
Elvin M. Hursh (PA)
James R. Leoffler (CO)
Melvin L. Lester (MS)
Jerry P. Lindesmith (OK)
Juan J. Luna (CA)
Stephen R. Marshall (MS)
Dale A. McCoy (ME)
Cole W. McLaughlin (SD)
John D. Morgan (PA)
Russell L. Moyers, Sr. (WV)
Ryan R. Ross (SC)
Steven C. Sheeder (IA)
Charles H. Strople (MA)
Eric Taniguchi (HI)
Robert L. Thies (IN)
Ronald L. Walker (FL)
Charles G. Warshun, Jr. (NY)
Alan T. Watterson (MA)

Oscar M. Wilkins (ME)

The drivers were included in docket numbers FMCSA–2003–15268; FMCSA–2004–19477; FMCSA–2006–23773; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2009–0011; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0140; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2013–0027; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2015–0049; FMCSA–2015–0053; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0072; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2015–0351. Their exemptions are applicable as of May 7, 2018, and will expire on May 7, 2020.

As of May 11, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 15184; 77 FR 27850; 79 FR 21996; 81 FR 91239):

Robert L. Brauns (IA)
Clifford W. Doran, Jr. (NC)
Geln C. Grimm (NJ)
Richard A. Pucker (WI)
John M. Riley (AL)
Jeffery A. Sheets (AR)

The drivers were included in docket numbers FMCSA–2011–0379; FMCSA–2011–0380. Their exemptions are applicable as of May 11, 2018, and will expire on May 11, 2020.

As of May 12, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (67 FR 68719; 68 FR 2629; 68 FR 74699; 69 FR 10503; 69 FR 71100; 71 FR 6826; 71 FR 6829; 71 FR 19602; 72 FR 1053; 73 FR 11989; 73 FR 15567; 73 FR 27015; 73 FR 76440; 75 FR 13653; 75 FR 19674; 77 FR 23797; 79 FR 23797; 81 FR 91239):

Leo G. Becker (KS)
Stanley W. Davis (TX)
Ray L. Emert (PA)
John W. Forgy (ID)
Neil W. Jennings (MO)
David A. Miller (NE)
Aaron S. Taylor (WI)

The drivers were included in docket numbers FMCSA–2002–12844; FMCSA–2003–16564; FMCSA–2006–23773; FMCSA–2008–0021. Their exemptions are applicable as of May 12, 2018, and will expire on May 12, 2020.

As of May 13, 2018, 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 vision requirement in the FMCSRs for interstate CMV drivers (81 FR 21647; 81 FR 21655; 81 FR 66718):

Jose O. Arroyo (CA)
Ronald H. Carey (PA)
James T. Curtis (NM)
Mark E. Dow (VT)
Danny R. Floyd (OH)
William J. Krysinski (MN)
Bradley K. Linde (IA)
Scott A. Palmer (NY)
Colby T. Smith (UT)
Carl J. Warnecke (OH)
Edwin E. West (MO)

The drivers were included in docket numbers FMCSA–2016–0024; FMCSA–2016–0025. Their exemptions are applicable as of May 13, 2018, and will expire on May 13, 2020.

As of May 16, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 23 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 14571; 79 FR 28588; 81 FR 91239; 81 FR 96196):

Luis A. Agudo (MN)
Dmitriy D. Bayda (WA)
Billy D. Devine (WA)
James G. Donze (MO)
Jeffrey D. Duncan (IN)
Dennis A. Feather (SC)
Robert E. Johnston, Jr. (WA)
Gregory J. Kuhn (NE)
David W. Leach (IL)
Jason S. Logue (GA)
David F. Martin (NJ)
Martin L. Mayes (GA)
Daniel A. McNabb, Jr. (KS)
Phillip L. Mello (CA)
Robert L. Murray (IL)
Steve W. Quenzer (SD)
Bradley W. Reed (AL)
Erik M. Rice (TX)
Tatum R. Schmidt (IA)
Harry J. Scholl (PA)
Jacob A. Shaffer (PA)
James S. Smith (AR)
Steven S. Smith, Jr. (PA)

The drivers were included in docket number FMCSA–2014–0003. Their exemptions are applicable as of May 16, 2018, and will expire on May 16, 2020.

As of May 21, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (75 FR 9480; 75 FR 14656; 75 FR 22176; 75 FR 28684; 77 FR 23800; 79 FR 22000; 81 FR 91239): Herbert C. Hirsch, (MO); Douglas L. Norman, (NC); Wayne J. Savage, (VA).

The drivers were included in docket numbers FMCSA–2009–0011; FMCSA–2010–0050. Their exemptions are applicable as of May 21, 2018, and will expire on May 21, 2020.

As of May 22, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (79 FR 18392; 79 FR 29498; 81 FR 91239):

James E. Baker (OH)
Aaron D. Barnett (IA)
Danny J. Goss (MO)
James P. Griffin (WA)
Dennis P. Hart (OR)
James D. Kessler (SD)
Sherell J. Landry (TX)
Ronald N. Lindgren (MN)
Rodney J. McMorrin (IA)
John L. Meese (MO)
Michael E. Schlachter (WY)
Kenneth W. Sigl (WI)
Elmer F. Winters (NC)

The drivers were included in docket number FMCSA–2014–0004. Their exemptions are applicable as of May 22, 2018, and will expire on May 22, 2020.

As of May 25, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (64 FR 68195; 65 FR 20251; 67 FR 10471; 67 FR 17102; 67 FR 19798; 69 FR 17267; 69 FR 19611; 71 FR 14566; 71 FR 16410; 71 FR 19604; 71 FR 30227; 73 FR 27014; 75 FR 27622; 77 FR 20879; 77 FR 26816; 77 FR 31427; 81 FR 91239):

Edward W. Hosier (MO)
Craig T. Jorgensen (WI)
Jose A. Lopez (CT)
Earl E. Martin (VA)
Joseph C. Powell (VA)
David L. Schachle (PA)
Mark Sobczyk (WI)

The drivers were included in docket numbers FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2006–24015; FMCSA–2012–0039. Their exemptions are applicable as of May 25, 2018, and will expire on May 25, 2020.

As of May 30, 2018, 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 requirement in the FMCSRs for interstate CMV drivers (67 FR 15662; 67 FR 37907; 69 FR 26206; 71 FR 26602; 73 FR 27017; 75 FR 27621; 77 FR 27849; 81 FR 91239): Joe W. Brewer, (SC); James W. Ellis, 4th, (NJ); Kevin R. Stoner, (PA).

The drivers were included in docket number FMCSA–2002–11714. Their exemptions are applicable as of May 30, 2018, and will expire on May 30, 2020.

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: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15553 Filed 7–19–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0034]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 14 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce.

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

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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

FMCSA received applications from 14 individuals who requested an exemption from the FMCSRs prohibiting persons with ITDM from operating a CMV in interstate commerce.

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)(3).

III. 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 than, the level that would be achieved absent such an exemption.

The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption and 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)(3). Therefore, the 14 applicants in this notice have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(3).

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. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following six applicants have had more than one hypoglycemic episode requiring hospitalization or the assistance of others, or has had one such episode but has not had one year of stability following the episode:

Anthony D. Anderson (MN)
Austin T. Brooks (MO)
Joshua G. Christensen (NC)
Alan C. Hageman (IA)
James Kopec (PA)
Samuel A. Rosseau (MA)

The following five applicants had other medical conditions making the applicant otherwise unqualified under the Federal Motor Carrier Safety Regulations:

Eugene C. Arnett (WI)
Donald L. Conklin (IN)
Steven C. Kasten (IL)
Daniel R. Leon (CO)
Lee H. Watkins (OH)

The following applicant, Anthony L. Golden (DE), did not have endocrinologists willing to make statements that he is able to operate CMVs from a diabetes standpoint.

The following applicant, Marty G. Niles (MT), had other miscellaneous reasons making the applicant otherwise unqualified under the Federal Motor Carrier Safety Regulations.

The following applicant, Robert J. Louis (LA), has peripheral neuropathy or circulatory insufficiency of the extremities likely to interfere with the ability to operate a CMV.

Issued on: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15564 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0071; FMCSA-2012-0044; FMCSA-2012-0107; FMCSA-2014-0015; FMCSA-2014-0016; FMCSA-2016-0037; FMCSA-2016-0039]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 133 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.

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:

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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 May 29, 2018, FMCSA published a notice announcing its decision to renew exemptions for 133 individuals from the insulin-treated diabetes mellitus prohibition in 49 CFR 391.41(b)(3) to operate a CMV in interstate commerce and requested comments from the public (83 FR 24581). The public comment period

ended on June 28, 2018, 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)(3).

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.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based upon its evaluation of the 133 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce in 49 CFR 391.64(3):

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of June and are discussed below:

As of June 1, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 33 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (81 FR 25486; 81 FR 66733):

Christopher R. Barwick (NC)
Jeffrey C. Bergen (MA)
Christopher J. Burgess (ID)
Edward D. Burman (MA)
Lynn J. Clark (UT)
Kenneth W. Day (TN)
Horace Dickinson (GA)
James R. Fifield (MI)
Scott A. Figert (OH)
Larry D. Funk (KS)
Steven S. Gray (CT)
Donald F. Greel, Jr. (MA)
John A. Jung (OH)
Jerry H. Kahn (MN)
Sean T. Lewis (NJ)
Edwin Lozada (FL)
Kevin S. Martin (MN)
Allysa B. Meirowitch (NY)
Brian L. Murray (WA)
Thomas V. Noyes (MA)
Benny M. Perez (PA)
Gregory S. Pethtel (OH)
Thomas J. Price (WY)
Theodore D. Reagle (PA)

Eric A. Richie (AZ)
 Keith E. Shumake (CO)
 William G. Simpson (CO)
 Stirling H.C. Sowerby (PA)
 John J. Steele (AL)
 Ryan M. Stumbaugh (PA)
 David J. Walker (IA)
 Shawn D. Weigel (KS)
 William H. Yocom (MO)

The drivers were included in docket number FMCSA–2016–0037. Their exemptions are applicable as of June 1, 2018, and will expire on June 1, 2020.

As of June 3, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (73 FR 16946; 73 FR 31734; 81 FR 96176):

Edward F. Connole (MA)
 Gary D. Coonfield (MO)
 Shannon D. Hanson (SD)
 Aundra Menefield (MS)
 James T. Rothwell (TN)
 Dalton T. Smith, Jr. (IL)
 Marvin D. Webster (KY)
 Travis S. Wolfe (WV)

The drivers were included in docket number FMCSA–2008–0071. Their exemptions are applicable as of June 3, 2018, and will expire on June 3, 2020.

As of June 5, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 20876; 77 FR 33264; 81 FR 96176):

Steven W. Beaty (SD)
 David D. Brown (MI)
 Evan P. Hansen (WI)
 John M. Kennedy, Jr. (NC)
 Jeremy A. Ludolph (KS)
 Gerald N. Martinson (ND)
 Glenn D. Taylor (NY)
 Thomas R. Toews (OR)
 James E. Waller, III (GA)

The drivers were included in docket number FMCSA–2012–0044. Their exemptions are applicable as of June 5, 2018, and will expire on June 5, 2020.

As of June 9, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 40 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (81 FR 28121; 81 FR 59728):

Matthew P. Ambrose (OH)
 Steven E. Beining (OH)
 Steven Belback (PA)

Roger D. Bragg (WV)
 John Ciesmelewski (NJ)
 Ernest W. Collett (TX)
 Daniel C. Crider (MN)
 Charla J. Donahy (TX)
 Richard D. Florio, Jr. (NY)
 Tyler J. Francis (KS)
 Calvin L. Frew (ID)
 Juda Friedman (NY)
 Dean Gage (NY)
 William Gallagher (PA)
 Harvey E. Gordon (MA)
 James W. Gorman, Jr. (MD)
 Christopher L. Greene (WY)
 Gregor C. Guisewhite (PA)
 Dennis T. Harding (MN)
 Brandon R. Hart (TX)
 Stephen E. Hochmiller (CO)
 Jack V. Holloway (IL)
 Richard L. Hubbard (MN)
 Stephen A. Kinney (MI)
 Russell L. Koehn (IL)
 Timothy C. LaRue (FL)
 Joseph M. Lopes (NH)
 William B. Onimus (PA)
 Victor M. Orta (TX)
 William D. Powell (IL)
 Lee A. Pulda (WI)
 William K. Sawyer II (NM)
 Jeffrey J. Schnacker (NE)
 Jeffrey D. Smith (MD)
 Anthony G. Stellatos (NJ)
 Trent A. Stuber (IL)
 LaDon L. Wallin (MN)
 Richard D. Webb (NY)
 Grady L. Wilson, Jr. (FL)
 Karl S. Yauneridge (MD)

The drivers were included in docket number FMCSA–2016–0039. Their exemptions are applicable as of June 9, 2018, and will expire on June 9, 2020.

As of June 20, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Gary R. Harper, (IN) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 29484; 79 FR 42628; 81 FR 96176).

The driver was included in docket number FMCSA–2014–0016. The exemption is applicable as of June 20, 2018, and will expire on June 20, 2020.

As of June 24, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 35 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 22573; 79 FR 35855; 81 FR 96176):

Joshua T. Adams (OH)
 Dennis W. Athey II (KS)
 John M. Behan, Jr. (MD)
 Kirk B. Berridge (KS)
 Francis P. Bourgeois (LA)
 Randall T. Buffkin (NC)

Heladio Castillo (WA)
 Purvis J. Chesson (VA)
 Jeff T. Enbody (VA)
 Larry S. Gibson, II (NC)
 James M. Halapchuk (PA)
 Jeffery A. Hall (ME)
 Henry W. Hartman (NY)
 Marlin R. Hein (IA)
 Vincenzo Ingrassellino (NY)
 Davis Jansen van Beek (MT)
 Baek J. Kim (MD)
 Shawn N. Kimble (PA)
 Darrel G. Klauer (WI)
 Stephen D. Lewis (NY)
 Alvin McClain (OR)
 Kenneth D. Mehmen (IA)
 Kyle B. Mitchell (CA)
 Michael A. Murrell (KY)
 Ryan R. Ong (CA)
 Gregory Paradiso (OH)
 Brian K. Patenaude (MA)
 William A. Schimpf (CA)
 Frank J. Sciulli (PA)
 Bryan J. Smith (ND)
 Edward L. Stauffer (PA)
 Kyle G. Streit (TX)
 Joseph D. Stutzman (PA)
 Raymond J. Vaillancourt (OH)
 Robert L. Weiland (PA)

The drivers were included in docket number FMCSA–2014–0015. Their exemptions are applicable as of June 24, 2018, and will expire on June 24, 2020.

As of June 26, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Tommy R. Riley, (IL) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 29484; 79 FR 42628; 81 FR 96176).

The driver was included in docket number FMCSA–2014–0016. The exemption is applicable as of June 26, 2018, and will expire on June 26, 2020.

As of June 27, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 27842; 77 FR 38383; 81 FR 96176):

Matthew R. Bagwell (NY)
 Eric J. Bright (IL)
 Kyle D. Dale (MO)
 Donald L. Philpott (WA)
 John Randolph (OK)
 Courtney R. Schiebout (IA)

The drivers were included in docket number FMCSA–2012–0107. Their exemptions are applicable as of June 27, 2018, and will expire on June 27, 2020.

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: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15565 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0011]

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 12 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 June 29, 2018. The exemptions expire on June 29, 2020.

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 May 29, 2018, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (83 FR 24585). The public comment period ended on June 28, 2018, and one comment was 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 one comment in this proceeding. Vicky Johnson stated that Minnesota Public Safety has no objections to granting a vision exemption to Thomas R. Krentz.

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 May 29, 2018, **Federal Register** notice (83 FR 24585) 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 12 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, central retinal vein occlusion, iris coloboma, optic atrophy, and prosthesis. In most cases, their eye conditions were not recently developed. Eight of the applicants were either born with their vision impairments or have had them since childhood. The four individuals that sustained their vision conditions as adults have had it for a range of 5 to 16 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 5 to 58 years. In the past three years, no drivers were involved in crashes, and no 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 12 exemption applications, FMCSA exempts the following drivers from the vision requirement, 49 CFR 391.41(b)(10), subject to the requirements cited above:

Joseph W. Davis (NC)
Joshua D. Giles (NC)
Michael J. Haubert (WI)

Thomas R. Krentz (MN)
Phil M. Lamp (WV)
Jeffery S. Lathrop (NC)
Terrence A. Odrick (DE)
James B. Powell (IL)
Raymond C. Smith (PA)
Zebrial C. Stahmer (MT)
Leon W. Tanksley, III (GA)
Timothy E. Thomas (NC)

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: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-15550 Filed 7-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0052]

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 exempt seven 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 operate CMVs in interstate commerce.

DATES: The exemptions were applicable on July 1, 2018. The exemptions expire on July 1, 2020.

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 May 24, 2018, FMCSA published a notice announcing receipt of applications from seven individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (83 FR 24153). The public comment period ended on June 25, 2018, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting 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)(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 criteria¹ 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 one comment in this proceeding. Vicky Johnson, an employee of the Minnesota Department of Public Safety (DPS), stated that the Minnesota DPS has no objections in the granting of an exemption to Jesse Hansen.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy and seizure disorder prohibition in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

In reaching the decision to grant these exemption requests, FMCSA considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013, **Federal Register** notice (78 FR 3069) provides the criteria the Agency uses to grant seizure exemptions.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information

System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the May 24, 2018 **Federal Register** notice (83 FR 24153) and will not be repeated in this notice.

These seven applicants have been seizure-free over a range of 22 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last two years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in 49 CFR 391.41(b)(8) 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 remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; 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 of 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 seven exemption applications, FMCSA

exempts the following drivers from the epilepsy and seizure disorder prohibition, 49 CFR 391.41(b)(8), subject to the requirements cited above:

Scott D. DeJarnette (KY)
James R. Grant (NH)
Jesse Hansen (MN)
Troy L. Nichols (IL)
Nick J. Ramirez (CA)
Scott A. Ready, Sr. (WI)
Michael A. Warren (MI)

In accordance with 49 U.S.C. 31315(b)(1), 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: July 13, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15545 Filed 7–19–18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the Santa Clara Valley Transportation Authority's (VTA's) Bay Area Rapid Transit (BART) Silicon Valley Phase II Extension project in Santa Clara County, California. The project will extend the BART system from the Berryessa/North San José Station through downtown San José to the Santa Clara Caltrain Station. The project will include design, construction, and future operation of a six-mile transit extension consisting of a five-mile-long single-bore tunnel; three transit stations in the City of San José, one transit station and a maintenance facility in the City of Santa Clara, and two ventilation structures along the alignment. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge this final environmental action.

¹ See http://www.ecfr.gov/cgi-bin/text-id?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-vol15/pdf/CFR-2015-title49-vol15-part391-appA.pdf>.

DATES: By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before December 17, 2018.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353-2577, or Alan Tabachnick, Environmental Protection Specialist, Office of Environmental Programs, (202) 366-8541. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency action by issuing a certain approval for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at <https://www.fta.dot.gov>.

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including NEPA [42 U.S.C. 4321-4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401-7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and action that is the subject of this notice follow:

Project name and location: Santa Clara Valley Transportation Authority's Bay Area Rapid Transit (BART) Silicon Valley Phase II Extension from the Berryessa/North San José Station to the Santa Clara Caltrain Station, in Santa Clara County, California.

Project Sponsor: The Santa Clara Valley Transportation Authority (VTA).

Project description: VTA's BART Silicon Valley Program consists of a 16-mile extension of the BART system from BART's existing Warm Springs/South Fremont Station in southern Fremont in Alameda County into Santa Clara

County through the Cities of Milpitas, San José, and Santa Clara. VTA's BART Silicon Valley Program is being implemented in two phases, the Phase I Project (Berryessa Extension) and the Phase II Project (Silicon Valley Extension). The Phase I Project is a 10-mile extension from the existing Warm Springs/South Fremont Station to the Berryessa/North San José Station in the City of San José. In 2010, FTA issued a Record of Decision (ROD) for the Phase I Project, which is currently under construction and scheduled to be open in late 2018. The Phase II Project consists of the remaining approximately six-mile extension of VTA's BART Silicon Valley Program, and is the subject of this limitation on claims notice. The Phase II Project was the subject of VTA's BART Silicon Valley Phase II Extension Project Final Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report and Section 4(f) Evaluation (SEIS/SEIR), dated February 2018, which included both NEPA and California Environmental Quality Act (CEQA) analyses. The project will consist of the design, construction and operation of approximately six miles of new double-track light rail transit to extend the BART system from the Berryessa/North San José Station through downtown San José to the Santa Clara Caltrain Station. The Notice of Availability for the Final Environmental Impact Statement for Phase I and II Projects was published in 2010.

Final agency actions: Section 4(f) determination, dated February 2018; Section 106 Programmatic Agreement dated May 9, 2018; project-level air quality conformity; and Record of Decision, dated June 4, 2018.

Supporting documentation: VTA's BART Silicon Valley Phase II Extension Project Draft Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report and Draft Section 4(f) Evaluation dated December 2016.

Elizabeth S. Riklin,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2018-15531 Filed 7-19-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2018-0110]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TIMELESS; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.
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 August 20, 2018.

ADDRESSES: Comments should refer to docket number MARAD-2018-0110. 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 TIMELESS is:

—Intended Commercial Use of Vessel:

“Passenger Charter”

—Geographic Region: “Florida, Georgia, North Carolina, South Carolina”

The complete application is given in DOT docket MARAD-2018-0110 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 section 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.

* * * * *

Dated: July 17, 2018.
By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.
[FR Doc. 2018-15538 Filed 7-19-18; 8:45 am]
BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 6, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 10, 2018.

Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA			
6769-M	CHEMOURS COMPANY FC LLC.	173.314, 173.315	To modify the special permit to authorize additional tank cars as approved packaging. (modes 1, 2)
10788-M	BEVIN BROS MANUFACTURING COMPANY.	173.302(a)	To modify the special permit to authorize attachments to cylinders prior to testing and to allow for alternative pressure testing requirements. (modes 1, 2, 3, 4, 5)
11827-M	FUJIFILM ELECTRONIC MATERIALS U.S.A., INC.	180.605(c)(1), 180.352(b)(3)	To modify the special permit to authorize an additional hazardous material. (modes 1, 2, 3, 4, 5)
14424-M	CHART, INC	172.301(c), 177.834(h)	To update the permit with the most current tank drawings. (mode 1)
20351-M	ROEDER CARTAGE COMPANY, INCORPORATED.	180.407(c), 180.407(e), 180.407(f).	To modify the special permit to remove the requirement for periodic internal visual inspections and to authorize an additional tank dedicated to acetonitrile transportation. (mode 1)

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is

requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 20, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and

Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 10, 2018.

Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
SPECIAL PERMITS DATA			
20680-N	ROTAREX, INC. NORTH AMERICA.	173.309(a)	To authorize the transportation in commerce of non-DOT specification cylinders for use as fire extinguishers. (mode 1).
20681-N	PROSERV UK LTD	173.302(a), 173.304(a), 173.201(c).	To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders for the transportation in commerce of the materials authorized by this special permit. (modes 1, 2, 3, 4).
20683-N	SPACE EXPLORATION TECHNOLOGIES CORP.	172.504(a)	To authorize the transportation in commerce of explosives incorporated into an article without placarding. (mode 1).
20684-N	LINDE GAS NORTH AMERICA LLC.	179.7, 179.300-15, 180.519(a).	To authorize the manufacture, mark, sale, and use of tank cars that use solid plugs in lieu of pressure relief devices and which are periodically retested in an alternative manner. (modes 1, 2, 3).
20685-N	TOYOTA MOTORSPORT GMBH.	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4).
20686-N	PETROLEUM HELICOPTER, INC.	172.101(j), 175.75(b), 175.700(a).	To authorize the transportation of Class 7 material aboard passenger-carrying aircraft. (mode 5).
20690-N	KIK Custom Products Inc	173.306(a)(3)(v)	To authorize the manufacture, mark, sale and use of pressurized, non-refillable aerosol product in metal non-DOT specification, DOT 2P, DOT 2Q and DOT 2Q1 containers that have been tested by an alternative method. (modes 1, 2, 3, 4, 5).
20690-N	KIK Custom Products Inc	173.306(a)(3)(v)	To authorize the manufacture, mark, sale and use of pressurized, non-refillable aerosol product in metal non-DOT specification, DOT 2P, DOT 2Q and DOT 2Q1 containers that have been tested by an alternative method. (modes 1, 2, 3, 4, 5).
20691-N	CARLETON TECHNOLOGIES, INC.	172.320, 173.54(a), 173.56(b), 173.57, 173.58, 173.60.	To authorize the transportation in commerce of up to 14 articles, each with not more than 0.51 grams net explosive weight, as classed as Division 1.4E, when packed in a special shipping container. (modes 1, 2, 3, 4).
20692-N	Tyvak Nano-Satellite Systems	173.185(a)	To authorize the transportation in commerce of spacecraft containing low production lithium batteries. (mode 4).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety

has received the application described herein.

DATES: Comments must be received on or before August 20, 2018.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of

Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 10, 2018.

Donald P. Burger,
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
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SPECIAL PERMITS DATA—Granted

9198-M	Interior Business Center	173.7(f)	To modify the special permit to authorize the incorporation of the "National Wildfire Coordination Group Standards" Handbook.
13208-M	BTG INTERNATIONAL LIMITED.	172.400, 172.500, 172.200, 173.302a(a)(1).	To modify the special permit to authorize an additional hazmat to bring the permit in line with international regulations.
14301-M	GASCON (PTY) LTD	178.274(b), 178.276(b)	To modify the special permit to authorize portable tanks to be designed, constructed, certified and stamped in accordance with Section VIII Division 2 of the ASME Code.
14951-M	HEXAGON LINCOLN, INC	173.301(f), 173.302(a)	To modify the special permit to authorize an increase in tank volume from 8,500 liters to 12,000 liters and to authorize a shorter length for the sample test tube.
16231-M	THALES ALENIA SPACE	173.185(a)	To modify the special permit to authorize batteries of up to 12 cells rather than only batteries with 12 cells.
20418-M	CIMARRON COMPOSITES, LLC.	173.302(a)	To modify the special permit to authorize an increase in bar pressure from 250 to 300, an increase in volume to 3,000 liters and authorize additional hazmat. (modes 1,2,3)
20511-M	ARMOTECH s.r.o	107.807(b)(1), 173.301(a)(1), 173.302(a)(1), 173.302(f)(1), 173.302(f)(2), 178.71(q), 178.71(t).	To modify the special permit to authorize a new part number/design type and to clarify some of the language in the special permit.
20541-M	ISGEC HEAVY ENGINEERING LTD.	179.300-19(a)	To modify the special permit to authorize changes to the shell and overall length of the tank cars.
20549-M	CORNERSTONE ARCHITECTURAL PRODUCTS LLC.	172.400, 172.700(a), 172.102(c)(1), 172.200, 172.300.	To modify the special permit to authorize a specially designed packaging filled with a material formulated to suppress lithium battery fires and absorb the smoke, gases and flammable electrolyte associate with those fires.
20567-N	OMNI TANKER PTY. LTD	107.503(b), 107.503(c), 172.102(c)(3), 172.203(a), 173.241, 173.242, 173.243, 178.345-1, 178.347-1, 178.348-1, 180.405, 180.413(d).	To authorize the manufacture, mark, sale, and use of non-DOT specification cargo tanks and cargo tank motor vehicles.
20588-N	Nantong Tank Container Co., Ltd.	178.274(b)	To authorize the manufacture, marking, sale and use of UN portable tanks conforming to portable tank code T50 that have been designed, constructed and stamped in accordance with Section VIII, Division 2 of the ASME Code (plus applicable Code Cases) as the primary pressure vessel code based upon a design reference temperature of 46.1 °C.
20602-N	THE BOEING COMPANY	173.1, 173.56	To authorize the transportation in commerce of spacecraft containing certain hazardous materials in non-DOT specification packagings.
20604-N	ELSTER AMERICAN METER COMPANY, LLC.	173.185(c)(3)(i)	To authorize the transportation in commerce of lithium batteries contained in equipment without certain markings on each package.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20608-N	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	173.302a(a)(1)	To authorize the transportation in commerce of compressed air in non-DOT specification cylinders.
20619-N	GLOBALTECH ENVIRONMENTAL CORP.	.....	To authorize the manufacture, mark, sale, and use of packagings, intended to contain batteries of mixed chemistries, as not subject to certain hazard communication requirements.
20622-N	APPLE INC	172.101(j), 173.185(a)	To authorize the transportation in commerce of low production lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft.
20624-N	JAGUAR LAND ROVER NORTH AMERICA, LLC.	172.101(j)	To authorize the transportation in commerce of lithium ion batteries in excess of 35 kg by cargo-only aircraft.
20629-N	SPACEFLIGHT, INC	173.185(e)(3)(i), 173.185(e)(3)(ii).	To authorize the transportation in commerce of lithium batteries in alternative packaging.
20644-N	CRI CATALYST COMPANY LP.	172.102(c)(2)	To authorize the transportation in commerce of 50G large packagings containing solid environmentally hazardous substances via air.
20648-N	ARMOTECH s.r.o	107.807(a), 107.807(b), 107.807(c), 178.69(a)(1), 178.69(b).	To authorize the transportation in commerce of foreign manufactured special permit cylinders manufactured under IIA oversight.
20662-M	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	173.219(b)	To modify the special permit to authorize use of packagings authorized in Packing Instruction 134 of 49 CFR 173.62.
20662-N	DEPARTMENT OF DEFENSE (MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND).	173.219(b)	To authorize the transportation in commerce of non-self-inflating life-saving appliances (parachutes), which contain Division 1.4C and 1.4S explosives.
20666-N	KOREAN AIR LINES CO., LTD.	172.101(j)(1), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain explosives which are forbidden for transport by cargo only aircraft.
20672-N	ATLAS AIR, INC	172.101(j), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of explosives by cargo aircraft which is forbidden in the regulations.
20678-N	Parsons Corporation	172.101(j)	To authorize the transportation in commerce of lithium ion batteries that exceed the 35 kg weight restriction by cargo aircraft.

SPECIAL PERMITS DATA—Denied

20551-N	MONDY GLOBAL, INC	173.304(a)	To authorize the transportation in commerce of non-DOT specification cylinders containing refrigerant gases for the purpose of transferring the materials to compliant packagings outside of the port area.
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SPECIAL PERMITS DATA—Withdrawn

16415-M	VOLKSWAGEN GROUP OF AMERICA, INC.	173.302a	To modify the special permit to authorize an additional 2.2 hazmat.
20577-N	PETROLEUM HELICOPTER, INC.	175.700(a)	To authorize the transportation in commerce of Class 7 materials aboard passenger-carrying aircraft.
20660-N	AVIAKOMPANIYa UKRAINA-AEROALYANS, PrAT.	172.101(j), 172.101(j)(1), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1).	To authorize the transportation in commerce of explosives by cargo only aircraft in amounts forbidden by the regulations.
20676-N	PRAXAIR DISTRIBUTION, INC.	173.24(c), 180.205(d)	To authorize the one-time, one-way shipment of cylinders involved in a fire for test and inspection.
20679-N	SPEAR POWER SYSTEMS, LLC.	172.101(j), 173.185(g)	To authorize the transportation in commerce of lithium ion batteries that exceed the 35 kg weight limit.

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunities: Capital Magnet Fund; 2018 Funding Round

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting

Applications for the fiscal year (FY) 2018 Funding Round of the Capital Magnet Fund (CMF).
Announcement Type: Announcement of funding opportunity.
Funding Opportunity Number: CDFI-2018-CMF.
Catalog of Federal Domestic Assistance (CFDA) Number: 21.011.

Dates:

TABLE 1—FY 2018 CAPITAL MAGNET FUND FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
OMB Standard Form (SF)–424 Mandatory form ... Create AMIS Account (if Applicant doesn't have one).	August 20, 2018 August 27, 2018	11:59 p.m 11:59 p.m	Electronically via <i>Grants.gov</i> . Electronically via Awards Management Information System (AMIS).
Last day to contact Capital Magnet Fund Staff	September 13, 2018	5:00 p.m ..	Service Request via AMIS or CDFI Fund Helpdesk: 202–653–0421 or <i>cmf@cdfi.treas.gov</i> .
CMF Application and Required Attachments	September 17, 2018	5:00 p.m ..	Electronically via AMIS.

Executive Summary: The Capital Magnet Fund (CMF) is administered by the Community Development Financial Institutions Fund (CDFI Fund). Through the CMF, the CDFI Fund provides financial assistance grants to Community Development Financial Institutions (CDFIs) and to qualified Nonprofit Organizations that have the development or management of affordable housing as one of their principal purposes. All awards provided through this Notice of Funds Availability (NOFA) are subject to funding availability.

I. Program Description

A. Authorizing Statute and Regulation: The CMF was established through the Housing and Economic Recovery Act of 2008 (HERA), which added section 1339 to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. For a complete understanding of the program, the CDFI Fund encourages Applicants to review the CMF interim rule (12 CFR part 1807) as amended February 8, 2016 (the CMF Interim Rule), this NOFA, the CDFI Fund's environmental quality regulation (12 CFR part 1815), the CMF funding application (referred to hereafter as the "Application," meaning the application submitted in response to this NOFA), and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200; 78 FR 78590) (Uniform Administrative Requirements or UAR). Each capitalized term used in this NOFA, but not defined herein, shall have the respective meanings assigned to them in the CMF Interim Rule, the Application, or the Uniform Administrative Requirements.

Details regarding Application content requirements are found in the Application and related materials at www.cdfifund.gov/cmfi.

B. History: The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. Since its creation in 1994, the CDFI Fund has awarded approximately \$3 billion to CDFIs, community development and affordable housing organizations, and financial institutions through the CMF, Community Development Financial Institutions Program (CDFI Program), the Native American CDFI Assistance Program (NACA Program), the Bank Enterprise Award Program (BEA Program), and the Financial Education and Counseling Pilot Program. In addition, the CDFI Fund has allocated more than \$54 billion in tax credit allocation authority through the New Markets Tax Credit Program (NMTC Program) and has issued \$1.4 billion in guarantees through the CDFI Bond Guarantee Program.

C. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200): The Uniform Administrative Requirements codify financial, administrative, procurement, and program management standards that Federal award-making agencies must follow. Per the Uniform Administrative Requirements, when evaluating award applications, awarding agencies must evaluate the risks to the program posed by each applicant, and each applicant's merits and eligibility. These requirements are designed to

ensure that applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and single audit findings. In addition, the Uniform Administrative Requirements include guidance on audit requirements and other award compliance requirements for award Recipients.

D. Priorities: The purpose of the CMF is to attract private capital for and increase investment in the Development, Preservation, Rehabilitation, or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income, and Low-Income Families, as well as Economic Development Activities, which, In Conjunction With Affordable Housing Activities, implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area. To pursue these objectives, the CDFI Fund has established the following priorities for the FY 2018 funding round: (i) Applications where at least 20 percent of all rental Affordable Housing units that will be financed and/or supported with FY 2018 CMF Awards are targeted to Very Low-Income Families and/or at least 20 percent of all Homeownership Affordable Housing units that will be financed and/or supported with FY 2018 CMF Awards are targeted to Low-Income Families; and (ii) Applications proposing to use the CMF Award to leverage private capital to finance and/or support Affordable Housing Activities and Economic Development Activities. Additionally, the CDFI Fund seeks to fund Applications serving

geographically diverse Areas of Economic Distress, including Metropolitan Areas and Underserved Rural Areas. In particular, the priority for geographic diversity includes funding highly qualified Applications that serve states not included in the Service Areas of Recipients in the past two CMF rounds (FY 2016 and FY 2017): Iowa, Maine, North Dakota and Wyoming as well as the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa and Puerto Rico. Finally, the CDFI Fund seeks to fund highly qualified Applications proposing to serve areas “most impacted and distressed” resulting from a major disaster declared in 2017 as identified by the Department of Housing and Urban Development (HUD) and published in the **Federal Register** (83 FR 5844).

E. Funding limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA.

II. Federal Award Information

A. Funding Availability: The CDFI Fund plans to award approximately \$142.9 million in grants for the CMF FY 2018 round under this NOFA. HERA prohibits the CDFI Fund from obligating more than 15 percent of the aggregate available in CMF Awards to any Applicant, its Subsidiaries and Affiliates in the same funding round. Affiliated entities are not allowed to apply separately under this NOFA. To provide an example of the size of awards in past CMF rounds, the CDFI Fund notes that in the FY 2017 CMF round, the statutory cap was \$18 million, but the largest amount awarded was \$7.5 million, while the average award was \$3 million. Moreover, given administrative and compliance responsibilities for Recipients, the CDFI Fund will not accept Applications for the FY 2018 round that request less than \$500,000, and will not provide awards below \$500,000 to any CMF Award Recipient for the FY 2018 CMF Round.

The CDFI Fund reserves the right, in its sole discretion, to provide a CMF Award in an amount other than that which the Applicant requests; however, the Award amount will not exceed the Applicant’s award request as stated in its Application. An Applicant may receive only one Award through the FY 2018 CMF Round.

B. Types of Awards: The CDFI Fund will provide CMF Awards in the form of grants. CMF Awards must be used to support the eligible activities as set forth in 12 CFR 1807.301. CMF Awards cannot be “passed through” to third-

party entities, whether Affiliates, Subsidiaries, or others, to undertake the eligible activities set forth in 12 CFR 1807.301, without the prior written approval of the CDFI Fund.

C. Limitations on using CMF Awards in conjunction with other CDFI Fund awards/allocations: 1. A CMF Award Recipient may not use its CMF Award and awards/allocations from other CDFI Fund programs to finance and/or support activities in the same property unless the CMF Award dollars are used to finance/support a different “phase” of development than what is funded by other CDFI Fund program awards/allocations. The separate phases of development financing are considered to be: (1) Predevelopment; (2) acquisition; (3) site work (preconstruction); (4) construction/rehabilitation; (5) permanent financing; or (6) bridge financing between two or more phases. If the Recipient has received multiple CMF Awards, these awards are not subject to this phasing restriction and may be combined in the same Project phase. The term “Recipient” includes the CMF Award Recipient and any Affiliates.

If providing Homeownership assistance, a CMF Award may be used in conjunction with awards/allocations from other CDFI Fund programs only if the Project can be divided into such phases and the CMF Award is used in a different phase from the other CDFI Fund program awards/allocations. To clarify, a CMF Award cannot be used for a Homeownership property that is permanently financed (or supported) by both the Recipient’s CMF Award and an award/allocation from another CDFI Fund program (e.g., down payment assistance funded from CMF dollars may not be combined with a permanent mortgage funded from another CDFI Fund program).

2. Costs financed and/or supported by the Recipient’s other awards/allocations from CDFI Fund programs, including awards from prior CMF rounds, may not be counted or reported as Leveraged Costs for the CMF Award, as further set forth in the Assistance Agreement. While the Recipient’s other CMF Awards may be used to finance/support the same property, each award must separately meet the program requirements as outlined in the applicable Assistance Agreement and the CMF Interim Rule (12 CFR part 1807); the same units and Leveraged Costs may not be counted towards meeting the programmatic requirements for more than one CMF Award. The term “Recipient” includes the CMF Award Recipient and any Affiliates.

In all cases, the CMF Award remains subject to the following restriction imposed by the CDFI Bond Guarantee Program: Award funds received under any CDFI Fund program cannot be used by any participant of the CDFI Bond Guarantee Program, including Qualified Issuers, Eligible CDFIs, and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk Share Pool for a Bond Issue (all capitalized terms used in this sentence, other than “CMF Award”, shall have the meanings ascribed to them in the CDFI Bond Guarantee Program regulations and applicable guidance).

D. Anticipated Start Date and Period of Performance: The CDFI Fund anticipates the period of performance for the FY 2018 CMF Round to begin in early 2019. The period of performance for each CMF Award begins with the date that the CDFI Fund announces the Recipients of FY 2018 CMF Awards and continues until the end of the ten-year period of affordability for all Projects financed and/or supported with the CMF Award, as set forth at 12 CFR 1807.401(d) and 12 CFR 1807.402, and as further set forth in the Assistance Agreement, during which time the Recipient must meet certain performance goals.

E. Eligible Activities: A CMF Award must support or finance activities that attract private capital for and increase investment in (i) the Development, Preservation, Rehabilitation, or Purchase of Affordable Housing for primarily Low-, Very Low- and Extremely Low-Income Families, and (ii) Economic Development Activities. CMF Awards may only be used as follows: (i) To provide Loan Loss Reserves, (ii) to capitalize a Revolving Loan Fund, (iii) to capitalize an Affordable Housing Fund, (iv) to capitalize a fund to support Economic Development Activities, (v) for Risk-Sharing Loans, or (vi) to provide Loan Guarantees. No more than 30 percent of a CMF Award may be used for Economic Development Activities. For the FY 2018 CMF Round, the CDFI Fund will allow all Recipients to use up to 5 percent of their CMF Award for Direct Administrative Expenses. The amount available for Direct Administrative Expenses may only be used for direct costs (as defined by the Uniform Administrative Requirements) incurred by the Recipient and related to the financing and/or support of a Project. The CDFI Fund considers the tracking of impacts and outcomes associated with Projects financed and/or

supported by a CMF Award to fall under Direct Administrative Expenses. Any portion of the amount available for Direct Administrative Expenses may be used for direct costs related to the effective tracking and evaluation of program or evidence-based outcomes for Projects.

III. Eligibility Information

A. Eligible Applicants: In order to be eligible to apply for a CMF Award, an Applicant must either be a Certified CDFI or a Nonprofit Organization, as defined in 12 CFR 1807.104. Table 2 indicates the criteria that each entity

type must meet in order to be eligible for a CMF Award pursuant to this NOFA. Note: A Certified CDFI that is also a Nonprofit Organization only needs to meet the Certified CDFI eligibility criteria described in Table 2, below, in order to be eligible for a CMF Award.

TABLE 2—APPLICANT ELIGIBILITY REQUIREMENTS

Category	Eligibility requirements
Certified CDFI	<ul style="list-style-type: none"> • Has been in existence as a legally formed entity for at least 3 years prior to the AMIS Application deadline under this NOFA; • Has been determined by the CDFI Fund to meet the CDFI certification requirements set forth in 12 CFR 1805.201 and as verified in the CDFI's AMIS account as of the date of this NOFA; and • Has not been notified by the CDFI Fund that its certification has been terminated.
Nonprofit Organization	<ul style="list-style-type: none"> • In cases where the CDFI Fund has provided a Certified CDFI with written notification that it no longer meets one or more certification standards and has been given an opportunity to cure, the CDFI Fund will continue to consider this Applicant to be a Certified CDFI until it has received a final determination that its certification has been terminated. • Has been in existence as a legally formed entity for at least 3 years prior to the AMIS Application deadline under this NOFA; • Meets the definition of Nonprofit Organization set forth in 12 CFR 1807.104. • Demonstrates, through articles of incorporation, by-laws, or other board-approved documents, that the development or management of affordable housing are among its principal purposes; and • Demonstrates by providing an attestation in the Application that at least thirty-three and one-third percent of its total assets are dedicated to the development or management of affordable housing.
Application type and submission method through <i>Grants.gov</i> and Awards Management Information System (AMIS).	<ul style="list-style-type: none"> • Each Applicant must submit the required Application documents listed in Table 4. • The CDFI Fund will only accept Applications that use the official Application templates provided on the <i>Grants.gov</i> and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • All Applicants must submit the required documents in two locations: (1) <i>Grants.gov</i> and (2) AMIS. <ul style="list-style-type: none"> ○ <i>Grants.gov</i>: Applicants must submit the Office of Management and Budget (OMB) Standard Form (SF) 424 Mandatory (Application for Federal Assistance) form. ○ AMIS: Applicants must submit all other required Application materials. ○ All Applicants must register in the <i>Grants.gov</i> and AMIS systems to submit an Application successfully. The CDFI Fund strongly encourages Applicants to register as early as possible to meet the deadlines in Table 1. • <i>Grants.gov</i> and the SF-424 Mandatory form: <ul style="list-style-type: none"> ○ <i>Grants.gov</i> is a common website for federal agencies to post discretionary funding opportunities and for grantees to find and apply to them. ○ The SF-424 must be submitted in <i>Grants.gov</i> before the other Application materials are submitted in AMIS. Applicants are strongly encouraged to submit their SF-424 as early as possible via the <i>Grants.gov</i> portal. ○ Because the SF-424 is part of the Application, if the SF-424 is not accepted by <i>Grants.gov</i>, the CDFI Fund will not review any materials submitted in AMIS and the Application will be deemed ineligible. ○ The SF-424 must be submitted under the FY 2018 CMF Funding Opportunity Number. • AMIS: <ul style="list-style-type: none"> ○ AMIS is the CDFI Fund's enterprise-wide information technology system that will be used to submit and store organization and Application information with the CDFI Fund. ○ Applicants are only allowed one Capital Magnet Fund Application submission in AMIS.
Employer Identification Number (EIN)	<ul style="list-style-type: none"> • Each Applicant must have a unique EIN assigned by the Internal Revenue Service. • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization.
DUNS number	<ul style="list-style-type: none"> • The EIN of the Applicant organization in AMIS must match the EIN on the SF-424 submitted through <i>Grants.gov</i>. • Pursuant to OMB guidance (68 FR 38402), each Applicant must apply using its unique DUNS number in <i>Grants.gov</i>. • The CDFI Fund will reject an Application submitted with the DUNS number of a parent or Affiliate organization. • The DUNS number of the Applicant in AMIS must match the DUNS number on the SF-424 submitted through <i>Grants.gov</i>.
System for Award Management (SAM) ...	<ul style="list-style-type: none"> • Each Applicant must have an active SAM registration in order to submit the required Application materials through <i>Grants.gov</i>. • SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. See <i>SAM.gov</i> for more information. • Applicants must have a DUNS number and an EIN in order to register in SAM. • Applicants must complete registration in SAM in order to be able to complete the <i>Grants.gov</i> registration and submit an SF-424.
AMIS Account	<ul style="list-style-type: none"> • Each Applicant must register as an organization in AMIS and submit all required Application materials through the AMIS portal. • If the Applicant does not fully register its organization in AMIS by the deadline set forth in Table 1, its Application will be rejected without further consideration. • The Authorized Representative must be included as a "user" in the Applicant's AMIS account. • An Applicant that fails to properly register and update its AMIS account may miss important communications from the CDFI Fund or not be able to successfully submit an Application.
501(c)(4) status	<ul style="list-style-type: none"> • Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to apply for or receive a CMF Award.
Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	<ul style="list-style-type: none"> • An Applicant may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination, issued within the last 3 years as of the date of this NOFA, indicates the Applicant has violated any of the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601 <i>et seq.</i>); and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.
Debarment Check	<ul style="list-style-type: none"> • The CDFI Fund will conduct a debarment check and will not consider an Application if the Applicant is delinquent on any Federal debt or otherwise ineligible to receive a Federal award.

TABLE 2—APPLICANT ELIGIBILITY REQUIREMENTS—Continued

Category	Eligibility requirements
Depository Institution Holding Company Applicant.	<ul style="list-style-type: none"> In the case where a CDFI Depository Institution Holding Company Applicant intends to carry out the activities of its award through its Subsidiary CDFI Insured Depository Institution, the Application must be submitted by the CDFI Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary CDFI Insured Depository Institution. The Authorized Representative of the Depository Institution Holding Company Applicant must certify that the information included in the Application represents that of the Subsidiary CDFI Insured Depository Institution, and that the Award will be used to support the Subsidiary CDFI Insured Depository Institution for the eligible activities outlined in the Application.
Insured CDFI—Insured Credit Union and Insured Depository Institution.	<ul style="list-style-type: none"> To be eligible for an Award, each Insured Depository Institution Applicant must have a CAMELS/CAMEL rating (rating for banks and credit unions, respectively), by its Federal regulator of at least “3.” Organizations with CAMELS/CAMEL ratings of “4 or 5” will not be eligible for awards. Organizations with a Prompt Corrective Action directive from its regulator will not be eligible for awards. The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining eligibility of Insured Depository Institution Applicants.

Any Applicant that does not meet the criteria in Table 2 is ineligible to apply for a CMF Award under this NOFA. Further, Section III.B describes additional considerations applicable to

prior Recipients and/or Allocatees under any CDFI Fund program.
 B. *Prior Recipients and/or Allocatees:* Applicants must be aware that success in a prior round of any of the CDFI Fund’s programs is not indicative of

success under this NOFA. Prior Recipients and/or Allocatees under any CDFI Fund program are eligible to apply under this NOFA, except as noted in Table 3:

TABLE 3—ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHICH ARE PRIOR AWARD/ALLOCATION RECIPIENTS

Criteria	Description
Pending resolution of noncompliance	<ul style="list-style-type: none"> The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues if the CDFI Fund has not yet made a final compliance determination.
Noncompliance status	<ul style="list-style-type: none"> The CDFI Fund will not consider an Application submitted by an Applicant that has a previously executed award agreement(s) if, as of the date of the NOFA, (i) the CDFI Fund has made a determination that such entity is noncompliant with a previously executed agreement and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. The CDFI Fund will not consider any Applicant that has defaulted on a CDFI Fund program loan within five years of the AMIS Application deadline.

C. *Contacting the CDFI Fund:* Accordingly, Applicants that are prior Recipients and/or Allocatees under any CDFI Fund program are advised to comply with requirements specified in an Assistance Agreement, allocation agreement, bond loan agreement, or agreement to guarantee. All outstanding reporting and compliance questions should be directed to the Office of Certification, Compliance Monitoring and Evaluation help desk by AMIS Service Requests or by telephone at (202) 653-0421; except in the case of Capital Magnet Fund reporting and compliance questions, which should be directed to the Capital Magnet Fund help desk by completing a Service Request through the Awards Management Information System using “CMF—Compliance” as the Service Request type. Alternatively, the public can contact Capital Magnet Fund staff via email at CMF@cdfi.treas.gov. The CDFI Fund will not respond to Applicants’ reporting, compliance, or disbursement telephone calls or email inquiries that are received after 5:00 p.m. ET on September 13, 2018 until after the Application deadline. The CDFI Fund will respond to technical issues related to AMIS Accounts

through 5:00 p.m. ET on September 17, 2018, via AMIS Service Requests, or at AMIS@cdfi.treas.gov, or by telephone at (202) 653-0422.
 D. *Cost sharing or matching funds requirements:* Not applicable.
 E. *Other Eligibility Criteria:*
 1. Entities that Submit Applications Together with Affiliates: As part of the Application review process, the CDFI Fund considers whether Applicants are Affiliates, as such term is defined in 12 CFR 1807.104. If an Applicant and its Affiliate(s) wish to submit Applications, they must do so through one of the Affiliated entities, in one Application; an Applicant and its Affiliates may not submit separate Applications. If Affiliates submit multiple or separate Applications, the CDFI Fund may, at its discretion, reject all such Applications received or select only one of the submitted Applications to deem eligible, assuming that Application meets all other eligibility criteria in Section III of this NOFA.
 Furthermore, an Applicant that receives an award in this CMF round may not become an Affiliate of another Applicant that receives an award in this CMF round at any time after the submission of a CMF Application under

this NOFA. This requirement will also be a term and condition of the Assistance Agreement (see additional Application guidance materials on the CDFI Fund’s website at <http://www.cdfifund.gov/cmef> for more details).
 2. An Applicant will not be eligible to receive a CMF Award if the Applicant fails to demonstrate in the Application that its CMF Award would result in Eligible Project Costs (Leveraged Costs plus those costs funded by the CMF Award) that equal at least 10 times the amount of the CMF Award. Note that no costs attributable to Direct Administrative Expenses may be considered Eligible Project Costs.
IV. Application and Submission Information
 A. *Address to Request Application Package:* Application materials can be found on the Grants.gov and the CDFI Fund’s website at www.cdfifund.gov/cmef. Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk by email at cmf@cdfi.treas.gov or by phone at (202) 653-0421.
 B. *Content and Form of Application Submission:* The CDFI Fund will post to its website, at www.cdfifund.gov/cmef,

instructions for accessing and submitting an Application. Detailed Application content requirements are found in the Application and related guidance documents.

All Applications must be prepared in English and calculations must be made in U.S. dollars. Table 4 lists the required funding Application documents for the

FY 2018 CMF Round. Applicants must submit all required documents for the Application to be deemed complete. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has

not specifically requested will not be reviewed or considered as part of the Application. Information submitted must accurately reflect the Applicant's activities and/or its Subsidiary Insured Depository Institution, in the case where the Applicant is an Insured Depository Institution Holding Company.

TABLE 4—FUNDING APPLICATION DOCUMENTS

Application document	Submission format	Required?
Standard Form (SF) 424 Mandatory Form	Fillable PDF in <i>Grants.gov</i> .	Required for all Applicants.
CMF Application	AMIS	Required for all Applicants.
Attachments to the Application		
Audited financial statements, including any Single Audit filed with the Federal Audit Clearinghouse, if the Applicant was required to have a Single Audit completed (most recent 2 fiscal years).	PDF in AMIS	Required for all Applicants.
Any management letters related to the audited financial statements (most recent 2 fiscal years).	PDF in AMIS	Required for all Applicants.
State Charter, Articles of Incorporation, or other establishing documents designating that the Applicant is a nonprofit or not-for-profit entity under the laws of the organization's State of formation.	PDF in AMIS	Required only for Applicants that are <i>not</i> Certified CDFIs.
A certification demonstrating tax exempt status from the IRS. For Applicants that are governmental instrumentalities only, and as long as all other eligibility requirements are met, the CDFI Fund will accept a legal opinion from counsel, in form and substance acceptable to the CDFI Fund, opining that the Applicant is exempt from federal taxation.	PDF in AMIS	Required only for Applicants that are <i>not</i> Certified CDFIs.
Articles of incorporation, by-laws or other documents demonstrating that the Applicant has a principal purpose of managing or developing affordable housing.	PDF in AMIS	Required only for Applicants that are <i>not</i> Certified CDFIs.

The CDFI Fund has a sequential, two-step process that requires the submission of Application documents in separate systems and on separate deadlines. The SF-424 form must be submitted through *Grants.gov* and all other Application documents through the AMIS portal. The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved by the CDFI Fund. The separate Application deadlines for the SF-424 and all other Application materials are listed in Tables 1 and 5. Only the Authorized Representative or Application Point of Contact designated in AMIS may submit the Application through AMIS.

Applicants are strongly encouraged to submit the SF-424 as early as possible through *Grants.gov* in order to provide sufficient time to resolve any submission problems. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process, as the CDFI Fund does not administer the *Grants.gov* system.

The CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as soon as possible, as it may take several weeks to complete

(refer to the following link: <http://www.grants.gov/web/grants/register.html>). An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. If an Applicant has not previously registered with *Grants.gov*, it must first successfully register with SAM, as described in Section IV.D below.

C. Dun and Bradstreet Data Universal Numbering System (DUNS): Pursuant to the Uniform Administrative Requirements, each Applicant must provide as part of its Application submission, a valid Dun & Bradstreet Data Universal Numbering System (DUNS) number. Any Applicant without a DUNS number will not be able to register in SAM or register and submit an Application in the *Grants.gov* system. Please allow sufficient time for Dun & Bradstreet to respond to inquiries and/or requests for DUNS numbers.

D. System for Award Management (SAM): Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application materials through that platform. The SAM registration process can take a month or longer to complete. A signed notarized letter identifying the authorized Entity

Administrator for the entity associated with the DUNS number is required by SAM before the registration will be activated. This requirement is applicable to new entities registering in SAM, as well as existing entities with registrations being updated or renewed in SAM. Applicants cannot register in SAM without both an EIN and DUNS number. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency. The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit its Application by the Application deadline. Applicants must contact SAM directly with questions related to registration or SAM account changes, as the CDFI Fund does not maintain this system. For more information about SAM, please visit <https://www.sam.gov>.

TABLE 5—GRANTS.GOV REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Obtain a DUNS number	Dun & Bradstreet	One Week.*
Register in <i>SAM.gov</i>	System for Award Management (SAM)	One Month.*
Register in <i>Grants.gov</i>	<i>Grants.gov</i>	One Week.**

* Applicants are advised that the stated duration are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account, has not yet received a DUNS number, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a DUNS number, an EIN number, and is already registered in *SAM.gov*.

E. *Submission Dates and Times:* documents related to the FY 2018 CMF

1. Submission Deadlines: Table 6 lists Funding Round:
the deadlines for submission of the

TABLE 6—FY 2018 CMF DEADLINES FOR APPLICANTS

Document	Deadline	Time—eastern time (ET)	Submission method
SF-424 Mandatory form	August 20, 2018	11:59 p.m. ET	Electronically via <i>Grants.gov</i> .
Create AMIS Account (if the Applicant does not already have one).	August 27, 2018	11:59 p.m. ET	Electronically via AMIS.
CMF Application and Required Attachments	September 17, 2018	5:00 p.m. ET	Electronically via AMIS.

2. Confirmation of Application Submission in *Grants.gov* and AMIS: Applicants are required to submit the OMB SF-424 Mandatory Form through the *Grants.gov* system, under the FY 2018 Capital Magnet Fund Funding Opportunity Number (listed at the beginning of this NOFA). All other required Application materials must be submitted through the AMIS website. Application materials submitted through each system are due by the applicable deadline listed in Table 6. Applicants must submit the SF-424 by an earlier deadline than that of the other required Application materials in AMIS. If the SF-424 is not successfully accepted through *Grants.gov* by the corresponding deadline, the Applicant will not be able to submit the additional Application materials in AMIS, and the Application will be deemed ineligible. Thus, Applicants are strongly encouraged to submit the SF-424 as early as possible in the *Grants.gov* portal, given submission problems may impact the ability to submit a complete Application.

(a) *Grants.gov* Submission Information: Each Applicant will receive an initial email from *Grants.gov* immediately after submitting the SF-424, confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF-424. Within 48 hours, the Applicant will receive a second email which will indicate if the submitted SF-424 was either successfully validated or rejected with errors. However, Applicants should not

rely on the email notification from *Grants.gov* to confirm that their SF-424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF-424 by checking *Grants.gov* directly. The Application materials submitted in AMIS are not accepted by the CDFI Fund until *Grants.gov* has validated the SF-424. If using the *Grants.gov* Workspace function, please note that the Application package has not been submitted if you have not received a tracking number.

(b) AMIS Submission Information: AMIS is a web-based portal where Applicants will directly enter their Application information and add required attachments listed in Table 4. Each Applicant must register as an organization in AMIS in order to submit the required Application materials through this portal. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The CDFI Fund strongly encourages the Applicant to allow sufficient time to confirm the Application content, review the material submitted, and remedy any issues prior to the Application deadline. Applicants can only submit one Application in AMIS. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not

unlock or allow multiple Application submissions.

Prior to submission, each Application in AMIS must be signed by an Authorized Representative. An Authorized Representative is an officer, or other individual, who has the actual authority to legally bind and make representations on behalf of the Applicant; consultants working on behalf of the Applicant cannot be designated as Authorized Representatives. The Applicant may include consultants as Application point(s) of contact, who will be included on any communication regarding the Application and will be able to submit the Application, but cannot sign the Application. The Authorized Representative and/or Application point(s) of contact must be included as “Contacts” in the Applicant’s AMIS account. The Authorized Representative must also be a “user” in AMIS. An Applicant that fails to properly register and update its AMIS account may miss important communications from the CDFI Fund or fail to submit an Application successfully. Only the Authorized Representative or Application point of contact, listed in the Application, can submit the Application in AMIS. After submitting its Application, the Applicant will not be permitted to revise or modify its Application in any way or attempt to negotiate the terms of an award.

3. Multiple Application Submissions: Applicants are only permitted to submit one complete Application. However, the

CDFI Fund does not control *Grants.gov*, which does allow for multiple application submissions. Thus, if an Applicant submits multiple SF-424 Applications in *Grants.gov*, the CDFI Fund will only review the SF-424 Application submitted in *Grants.gov* that is attached to the AMIS Application. Applicants can only submit one Application through AMIS.

4. Late Submission: The CDFI Fund will not accept an Application submitted after the applicable *Grants.gov* or AMIS Application deadline, except where the submission delay was a direct result of a Federal government administrative or technological error. This exception includes any errors associated with *Grants.gov*, *SAM.gov*, AMIS or any other applicable government system. Please note that this exception does not apply to errors arising from obtaining a DUNS number from Dun & Bradstreet, which is not a government entity. An Applicant unable to make timely submission of its Application due to any errors in the process of obtaining a DUNS number will not be allowed to submit its Application after the Application deadline has passed. In the event of a government administrative or technological error causing delay, the Applicant must submit a request for acceptance of late Application submission and include documentation of the error no later than two business days after the applicable Application deadline. The CDFI Fund will not respond to requests for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests via

Service Request in AMIS with the subject line of “FY2018 CMF: Late Application Submission Request.”

5. Intergovernmental Review: Not Applicable.

6. Funding Restrictions: CMF Awards are limited by the following:

(a) A Recipient shall use CMF Award funds only for the eligible activities set forth in 12 CFR 1807.301 and as described in Section II.C and Section II.E of this NOFA and its Assistance Agreement.

(b) A Recipient may not disburse CMF Award funds to an Affiliate, Subsidiary, or any other entity without the CDFI Fund’s prior written approval.

(c) CMF Award dollars shall only be paid to the Recipient.

(d) The CDFI Fund, in its sole discretion, may pay CMF Awards in amounts, or under terms and conditions, which are different from those requested by an Applicant. However, the CDFI Fund will not grant an Award in excess of the amount requested by the Applicant.

V. Application Review Information

A. *Criteria:* All complete and eligible Applications will be reviewed in accordance with the criteria and procedures described in the CMF Interim Rule, this NOFA, the Application guidance, and the Uniform Administrative Requirements. As part of the review process, the CDFI Fund reserves the right to contact the Applicant by telephone, email, mail, or through an on-site visit for the sole purpose of clarifying or confirming Application information at any point during the review process. The CDFI Fund reserves the right to collect such

additional information from Applicants as it deems appropriate. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or its Application may be rejected. For the sake of clarity, specific application evaluation criteria are described in the context of the overall Application review and selection process described in Section V.B. below.

B. Review and Selection Process:

The CDFI Fund will evaluate each complete and eligible Application using the multi-phase review process described in this Section. For the first two parts of the review process, the Quantitative Assessment and External Review, the Applications will be grouped into two categories: (1) Financing entities and (2) housing developers/managers. Certified CDFIs will be categorized as financing entities. Nonprofit Organizations will select whether they are primarily financing entities or housing developers/managers. These two groups will be evaluated on the criteria listed in this section. The CDFI Fund may elect to use a different criteria where appropriate, in order to evaluate the financial health, capacity, and strategies of these distinct entity types. In general, these differences are noted in this section and the Application.

1. Quantitative Assessment: Each complete and eligible Application will receive a numeric score based on the responses to quantitative questions in the Application. Applications may receive a score of up to 100 points based on the following factors outlined in Table 7.

TABLE 7—QUANTITATIVE ASSESSMENT FACTORS

Section	Points	Assessment criteria
Business and Leveraging Strategy	40	<ul style="list-style-type: none"> • Private leverage multiplier. • Reasonableness of projected activities based on track record. • Applicant-level leverage multiplier. • Whether the Application is proposing to serve Iowa, Maine, North Dakota, Wyoming, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa or Puerto Rico.
Community Impact	35	<ul style="list-style-type: none"> • Percent of rental housing units targeted to Very Low-Income (VLI) or below (50 percent of AMI or below). • Percent of Homeownership units targeted to Low-Income or below (80 percent of AMI or below). • Relevant track record of financing and/or supporting units targeted to VLI or LI families. • Commitment to only finance Economic Development Activities in Low-Income Areas (if proposing Economic Development Activities). • Percent of housing units to be financed and/or supported in Areas of Economic Distress.
Organizational Capacity	25	<ul style="list-style-type: none"> • Capitalization. • Operating Performance. • Liquidity. • Audit Results.

Within the Business and Leveraging Strategy Section of the Quantitative Assessment, an Applicant will generally score more favorably to the extent it: Proposes to leverage a higher multiplier of private capital (up to 10 times the

amount of the CMF Award); has a volume of projected activities supported by its track record; and is proposing to leverage some portion of capital at the Applicant-level. An Applicant will also score slightly more favorably if it is

proposing to serve Iowa, Maine, North Dakota, Wyoming, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa or Puerto Rico.

Within the Community Impact Section, an Applicant will generally

score more favorably to the extent that it commits to one or more of the following: Financing and/or supporting a higher percentage of rental housing units targeted to Very Low-Income Families (if proposing to use CMF for rental housing), and/or financing and/or supporting a higher percentage of Homeownership units targeted to Low-Income Families (if proposing to use CMF for Homeownership). The Applicant will also score more favorably to the extent that it commits to: Financing and/or supporting Economic Development Activities in Low-Income Areas only (if proposing to use CMF for Economic Developments Activities), and financing and/or supporting a higher percentage of units located in Areas of Economic Distress. Areas of Economic Distress are census tracts: (a) Where at least 20 percent of households that are Very Low-Income (50 percent of AMI or below) spend more than half of their income on housing; or (b) where the unemployment rate is at least 1.5 times the national average; or (c) that are Low-Income Housing Tax Credit Qualified Census Tracts; or (d) where greater than 20 percent of households have incomes below the poverty rate and the rental vacancy rate is at least 10 percent; or (e) where greater than 20 percent of the households have incomes below the poverty rate and the homeownership vacancy rate is at least 10 percent; or (f) are Underserved Rural Areas as defined in the CMF Interim Rule (as amended February 8, 2016; 12 CFR part 1807).

Within the Financial Health section, Applicants will generally score more favorably to the extent that their 3-year financial data indicate, among other things, the following: Strong capitalization; strong operating performance; strong liquidity; and that the Applicant has not had any negative findings (*e.g.*, opinion other than unqualified; a “going concern paragraph;” repeat findings of reportable conditions; material weaknesses in internal control) in any of the three most recently completed annual audits, including its Single Audit, if applicable.

Once the quantitative score is determined, Applicants in each of the two categories (financing entities and housing developers/managers) will be ranked in descending order based on their quantitative review score. The top 80 percent of Applications in each category will be forwarded to the next level of review: External Review. The CDFI Fund reserves the right to forward additional Applications to the External Review phase in order to ensure that a diversity of geographies (including

different states as well as Metropolitan and Rural Areas) are served by the Applicants reviewed in the External Review phase. The CDFI Fund also reserves the right to forward all Applicants to the External Review phase, regardless of Quantitative Assessment score, if fewer than 140 CMF Applications are received.

2. External Review: Applications that advance from the Quantitative Assessment will be separately scored by two or more external non-Federal reviewers who are selected based on criteria that include: A professional background in affordable housing or a background community and economic development finance with experience with affordable housing. These reviewers must complete the CDFI Fund’s conflict of interest process and be approved by the CDFI Fund. Reviewers will be assigned a set number of Applications, consisting of either financing entity Applicants or housing developer/manager Applicants, to review. The reviewer will provide a score for each of the Applications assessed in accordance with the scoring criteria outlined in Section V.B.2 of this NOFA and the Application materials.

The external reviewer’s evaluation will result in the Application being awarded up to 100 total points by each reviewer. These points will be distributed across three sections: Business and Leveraging Strategy (40 possible points), Community Impact (35 possible points), and Organizational Capacity (25 possible points). An Applicant’s final External Review score will be a composite based on the external reviewers’ evaluation and Quantitative Assessment factors. The majority of the score will be based on the external reviewers’ evaluation.

(a) Business and Leveraging Strategy (40 points): In the Business and Leveraging Strategy section, the Applicant will address: (i) The needs of communities and persons in its proposed Service Area and the extent to which the proposed strategy addresses these needs; (ii) the affordable housing, economic development, and financing gaps addressed by its business strategy; (iii) the projected CMF activities and track record; (iv) the role CMF plays in its project financing strategy; (v) its strategy for leveraging private capital with a CMF Award; and (vi) its strategy for leveraging its CMF Award at the Enterprise-level, through re-investments, and/or at the Project-level (as applicable).

An Applicant will generally score more favorably in the criteria evaluated by the external reviewer to the extent that it: (i) Clearly aligns its proposed

CMF Award activities with the affordable housing needs and financing gaps it identifies; (ii) demonstrates that its strategy and activities will result in more favorable financing rates and terms; (iii) demonstrates that its projected activities are achievable based on the Applicant’s strategy and track record; (iv) describes a clear process for locating projects and proposes activities that have a clear need for CMF financing; (v) has a credible pipeline of projects; (vi) has a clear strategy for and track record of leveraging private capital; and (vii) has a clear strategy for and demonstrates a track record of leveraging funds at the Enterprise-level, through re-investments, and/or at the Project-level (as applicable). The extent to which the Applicant proposes to meet the disaster recovery needs of the areas “most impacted and distressed” resulting from a major disaster declared in 2017 (as identified by HUD and published in the **Federal Register** at 83 FR 5844) will also be considered in the External Review phase.

(b) Community Impact (35 points): In the Community Impact Section, the Applicant will address: (i) The extent to which the Applicant’s strategy is likely to lead to the Affordable Housing and/or Economic Development Activities impacts referenced in the Application; (ii) its strategy and track record of financing and/or supporting housing units targeted to Low-Income Families (for Homeownership) and to Very Low-Income Families (for rental); (iii) its plans for financing and/or supporting Affordable Housing in Areas of Economic Distress; (iv) its community engagement and partnerships; (v) if applicable, its strategy and track record of financing and/or supporting Economic Development Activities and how these activities fit in a Concerted Strategy and will benefit the residents of nearby Affordable Housing.

An Applicant will generally score more favorably in the criteria evaluated by the external reviewer to the extent that it: (i) Demonstrates how its business strategy will result in one or more of the Affordable Housing and/or Economic Development Activities impacts identified in the Application and the extent to which it has articulated and quantified measurements and evidence to support these impacts; (ii) demonstrates a clear and compelling strategy for financing and/or supporting housing units targeted to Low-Income Families (for Homeownership) and Very-Low Income Families (for rental); (iii) presents a strong ability to finance and/or support Affordable Housing in Areas of Economic Distress; (iv) has community engagement and

partnerships that will lead to greater unit production, allow the Applicant to serve geographic areas it otherwise could not reach, and/or result in identified community impacts that benefit Affordable Housing residents; and (v) for Economic Development Activities, demonstrates how its proposed Economic Development Activities fit within a Concerted Strategy and will benefit the residents of the nearby Affordable Housing.

(c) Organizational Capacity (25 points): In the Organizational Capacity section, the Applicant will discuss: (i) Its management team and key staff; (ii) the roles and responsibilities of those staff in managing a CMF Award; (iii) its past experience managing Federal awards (including past CMF Awards); and (iv) its financial health and lending or property portfolio (as applicable).

An Applicant will generally score more favorably in the criteria evaluated by the external reviewer to the extent that it demonstrates: (i) Strong qualifications of its key personnel with respect to their skills and experience in identifying investments, underwriting or developing similar projects (as applicable), managing a portfolio of similar activities and ensuring compliance with program requirements; (ii) success in administering prior CMF Awards, CDFI and/or other Federal program awards; (iii) strong financial health; and (iv) solid portfolio performance (as applicable).

(d) Scoring anomaly: If, in the case of a particular Application, the reviewers' total External Review scores vary significantly from each other, the CDFI Fund may, in its sole discretion, obtain the evaluation and numeric scoring of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

3. Internal Review: At the conclusion of the External Review phase, each group of Applications (financing entities and housing developers/managers) will be ranked separately based on their External Review score. The CMF Program Manager will then determine the overall number of Applications that will be initially forwarded for Internal Review. The CMF Program Manager may elect to initially forward up to 50 Applications to the Internal Review phase to receive further consideration for a CMF Award. Such Applications will be forwarded for Internal Review in descending order of External Review score. The forwarded Applications will be drawn from the financing entity and housing developer/manager groups in proportion to each group's representation in the overall

Application pool. For example, if the Applicant pool is 60 percent financing entities and 40 percent housing developers/managers and the CMF Program Manager elects to forward 50 Applications to the Internal Review Phase, the highest scoring 30 Applications from the financing entity group and the highest scoring 20 Applications from the housing developers/managers group would be forwarded to Internal Review.

These forwarded Applications will constitute the highly qualified pool. During the Internal Review, CDFI Fund staff will prioritize the Applications in the highly qualified pool for an award based on a combination of the following criteria: (i) Final External Review score; (ii) alignment with CMF statutory and policy priorities; (iii) the overall quality of the Applicant's strategy; and (iv) the Applicant's organizational capacity and financial health. The CDFI Fund will not attempt to ensure any specific balance of financing entities and housing developers/managers in the final Award pool.

In assessing the Application's alignment with CMF statutory and policy priorities, CDFI Fund staff will consider the following factors, including, but not limited to: The Applicant's proposed activities in Areas of Economic Distress; income targeting of the portfolio of Affordable Housing units to be financed and/or supported; the amount of private capital it will leverage with a CMF Award; and the amount of new Enterprise-level private capital that the Applicant will attract to its Service Area.

In assessing the quality of the Applicant's strategy, the CDFI Fund staff will consider the following factors, including, but not limited to: (i) The quality of the Applicant's strategy with respect to how the strategy and financing activities address identified community needs; (ii) whether the proposed financing activities will help to fill the financing gaps in their market; (iii) whether the CMF funds will contribute to the Applicant offering more favorable rates and terms than are currently available in its Service Area; (iv) whether the Applicant's projections are supported by its organizational track record, as well as the quality of its pipeline; (v) whether the proposed deployment/redeployment schedule is realistic, achievable and risk has been appropriately considered; (vi) the likely success of the strategy to leverage private capital; (vii) whether the strategy is adaptable to changing market conditions; (viii) whether the Applicant's strategy is likely to create identified community impacts and the

extent to which the Applicant has articulated quantifiable measurements and evidence to support these impacts; (ix) the Applicant's approach for financing/supporting Affordable Housing in Areas of Economic Distress and meeting Affordable Housing income targeting goals; and (x) to the extent the Applicant is proposing to undertake Economic Development Activities, how those activities are part of a Concerted Strategy and will benefit residents of affordable housing.

In assessing the Applicant's organizational capacity and financial health, the CDFI Fund Staff will consider the following factors, including, but not limited to, the Applicant's: Financial position and organizational strength; ability to meet Federal Award management standards and file appropriate reports and address findings from audits; and staff capacity. Applicants may be re-prioritized for an Award or Award amounts may be reduced as a result of this analysis.

In the case of an Applicant that has received awards from other Federal programs, the CDFI Fund reserves the right to contact officials from the appropriate Federal agency or agencies to determine whether the Recipient is in compliance with current or prior award agreements, and to take such information into consideration before making a CMF Award.

In addition to the criteria outlined above, the Applicant's ability to deploy the CMF Award in a timely manner will be a key determinant in funding recommendation. Deployment considerations may include the Applicant's track record of activities compared with projections, the Applicant's progress in committing and/or deploying past CMF Awards, and whether the Applicant received a FY 2018 CDFI/NACA Program award for a similar business strategy as the proposed use of the CMF Award. The CDFI Fund may also consider the geographies served when determining funding recommendations.

4. Selection: Once Applications have been internally evaluated and preliminary award determinations have been made, the Applications will be forwarded to a selecting official for a final award determination. After preliminary award determinations are made, the selecting official will review the list of potential Recipients to determine whether the Recipient pool meets the following statutory objectives:

(a) The potential Recipients' proposed Service Areas collectively represent broad geographic coverage throughout the United States; and

(b) The potential Recipients' proposed activities equitably represent both Metropolitan Areas and Rural Areas. For the purposes of the FY 2018 CMF Round, the term Rural Areas is defined per 12 CFR 1282.1 (Enterprise Duty To Serve Final Rule) as (i) A census tract outside of a Metropolitan Statistical Area as designated by the Office of Management and Budget; or (ii) A census tract in a Metropolitan Statistical Area as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area's Urbanized Areas, as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2. The CDFI Fund will publish a dataset indicating which census tracts are designated as Rural Areas for the FY 2018 Round on its website.

The CDFI Fund reserves the right to modify CMF Award amounts and/or the CMF Recipient pool if deemed necessary to achieve either of these statutory objectives. In order to evaluate the geographic coverage of the potential CMF Recipient pool, Applicants will be asked to designate one of the following three Service Area types in their Applications: Local, Statewide, or Multi-State. These Service Area types are further defined in the Application; the largest Service Area an Applicant can propose is a 10 state Multi-State Service Area. To achieve greater investment in Rural Areas and/or broader geographic coverage, the CDFI Fund may consider an Application ranked outside of the highly qualified pool to receive an Award. However, the CDFI Fund will not award an Application that scores in the bottom 50 percent of the External Review score rankings. During the selection process, the CDFI Fund also reserves the right to modify or place restrictions on the Service Area requested in any Applicant's Application in order to further these statutory objectives.

In cases where the selecting official's award determination varies significantly from the initial CMF Award amount recommended by the CDFI Fund staff review, the CMF Award recommendation will be forwarded to a reviewing official for final determination. The CDFI Fund, in its sole discretion, reserves the right to reject an Application and/or adjust CMF

Award amounts as appropriate, based on information obtained during the review process.

5. **Insured Depository Institution Applicants:** In the case of Applicants that are Insured Depository Institutions or Insured Credit Unions, the CDFI Fund will consider safety and soundness information from the Appropriate Federal Banking Agency or Appropriate State Agency, as applicable. If the Applicant is a CDFI Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal Banking Agency and Appropriate State Agency about both the CDFI Depository Institution Holding Company and the CDFI Insured Depository Institution that will expend and carry out the Award. If the Appropriate Federal Banking Agency or Appropriate State Agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

6. **Right of Rejection:** The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the attention of the CDFI Fund that adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an Application, or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines that any portion of the Application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website. There is no right to appeal the CDFI Fund's award decisions. The CDFI Fund's award decisions are final.

7. **Anticipated Award Announcement:** The CDFI Fund anticipates making CMF Award announcements in early 2019.

VI. Federal Award Administration Information

A. **Award Notification:** Each successful Applicant will receive notification from the CDFI Fund stating

that its Application has been approved for an award. Each Applicant not selected for an award will receive notification and provided a debriefing document in its AMIS account.

B. **Administrative and Policy Requirements Prior to Entering into an Assistance Agreement:** The CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take other actions as it deems appropriate if, prior to entering into an Assistance Agreement, information (including an administrative error) comes to the CDFI Fund's attention that adversely affects the following: The Recipient's eligibility for an award; the CDFI Fund's evaluation of the Application; the Recipient's compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Recipient's part.

If the Recipient's certification status as a CDFI changes prior to entering into an Assistance Agreement, the CDFI Fund reserves the right, in its sole discretion, to re-calculate the CMF Award, or modify the Assistance Agreement based on the Recipient's non-CDFI status.

By receiving notification of a CMF Award, the Recipient agrees that, if the CDFI Fund becomes aware of any information (including an administrative error) prior to the Effective Date of the Assistance Agreement that either adversely affects the Recipient's eligibility for an CMF Award, or adversely affects the CDFI Fund's evaluation of the Recipient's Application, or indicates fraud or mismanagement on the part of the Recipient, the CDFI Fund may, in its discretion and without advance notice to the Recipient, rescind the notice of award or take other actions as it deems appropriate.

The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Assistance Agreement, signed by an Authorized Representative of the Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA for any criteria described in Table 8:

TABLE 8—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements.	<ul style="list-style-type: none"> • If a Recipient received a prior award or allocation under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, as of the date of the notice of award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a Payment of CMF Award, until said prior Recipient or Allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. • If such a prior Recipient or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the CMF Award made under this NOFA. • Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete, nor that it met reporting requirements. If said prior Recipient or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of Award and the CMF Award made under this NOFA.
Failure to maintain CDFI Certification (if applicable) or eligible Nonprofit Organization status (if applicable).	<ul style="list-style-type: none"> • A Recipient must be a Certified CDFI or an eligible Nonprofit Organization, as each is defined in the CMF Interim Rule and this NOFA, prior to entering into an Assistance Agreement. <p>If, at any time prior to entering into an Assistance Agreement under this NOFA, an Applicant that is a Certified CDFI has submitted reports (or failed to submit an annual certification report as instructed by the CDFI Fund) to the CDFI Fund that demonstrate noncompliance with the requirements for certification, but the CDFI Fund has yet to make a final determination regarding whether or not the entity is Certified, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a Payment of CMF Award, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.</p> <ul style="list-style-type: none"> • If the Applicant is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the CMF Award made under this NOFA.
Pending resolution of noncompliance.	<ul style="list-style-type: none"> • If, at any time prior to entering into an Assistance Agreement under this NOFA, an Applicant that is a prior CDFI Fund award Recipient or Allocatee under any CDFI Fund program has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement, but the CDFI Fund has yet to make a final determination regarding whether or not the entity is in default of its previous assistance, award, allocation, bond loan agreement, or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement and/or to delay making a Payment of CMF Award, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. • If said prior Recipient or Allocatee is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the notice of award and the CMF Award made under this NOFA.
Default or Equivalent Noncompliance status.	<ul style="list-style-type: none"> • If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient is in default (or equivalent noncompliance status) of an active, previously executed agreement with the CDFI Fund and the Recipient was provided written notification of such determination, the CDFI Fund can delay entering into an Assistance Agreement, until the Recipient has cured the default (or equivalent noncompliance status), if applicable, by taking actions the CDFI Fund has specified within the specified timeframe.
Final Default and Sanctions	<ul style="list-style-type: none"> • If the CDFI Fund has found the Recipient in final default of a prior executed agreement and provided notification of sanctions, the CDFI Fund may delay entering into an Assistance Agreement with the Recipient, impose conditions prior to entering in Assistance Agreement, or modify or rescind all or a portion of the CMF Award made under this NOFA within the time period specified in such notification.
Compliance with Federal civil rights requirements.	<ul style="list-style-type: none"> • The CDFI Fund will terminate and rescind the Assistance Agreement and the CMF Award made under this NOFA if, prior to entering into an Assistance Agreement under this NOFA, the Recipient receives a final determination, made within the last 3 years of the date of this NOFA, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the CMF Award Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601 <i>et seq.</i>); and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.
Do Not Pay	<ul style="list-style-type: none"> • The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient is identified as an ineligible Recipient in the Do Not Pay database. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government.
Safety and soundness	<ul style="list-style-type: none"> • If it is determined that the Recipient is or will be incapable of meeting its CMF Award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Assistance Agreement.

C. *Assistance Agreement*: Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the CDFI Fund in order to become a Recipient and receive Payment. Each CMF Award under this NOFA generally will have a period of performance that begins with the announcement date of the award and continues until the end of the period of affordability, as set forth at 12 CFR 1807.401(d) and 12 CFR 1807.402, and as further set forth in the Assistance Agreement.

1. The Assistance Agreement will set forth certain required terms and

conditions of the CMF Award, which will include, but not be limited to:

- (a) The amount of the award;
- (b) The approved uses of the award;
- (c) The approved Service Area in which the award may be used;
- (d) Performance goals and measures;
- (e) Reinvestment requirements for Program Income; and
- (f) Reporting requirements for all Recipients.

2. Prior to executing the Assistance Agreement, the CDFI Fund may, in its discretion, allow Recipients to request changes to the Service Area of the Award and certain performance goals

and measures. The CDFI Fund, in its sole determination, may approve or reject these requested changes or propose other modifications, including a reduction in the Award amount. The CDFI Fund will only approve performance goals and measures or Service Area changes if it determines that such requested changes do not undermine the competitive process upon which the CMF Award determination was made. The CDFI Fund may also, in its discretion, provide Recipients the opportunity to add states to their Service Area in order to serve states not already covered in the Award

pool and to further HERA’s goal that the CMF serve geographically diverse areas of every state. Any modifications agreed upon prior to the execution of the Assistance Agreement will become a condition of the Award.

3. The Assistance Agreement shall provide that, prior to any determination by the CDFI Fund that a Recipient has failed to comply substantially with the Act, the CMF Interim Rule, or the environmental quality regulations, the CDFI Fund shall provide the Recipient with reasonable notice and opportunity for hearing. If the Recipient fails to comply substantially with the Assistance Agreement, the CDFI Fund may:

- (a) Require changes in the performance goals set forth in the Assistance Agreement;
- (b) Reduce or terminate the CMF Award; or
- (c) Require repayment of any CMF Award that has been distributed to the Recipient.

4. The Assistance Agreement shall also provide that, if the CDFI Fund determines noncompliance with the terms and conditions of the Assistance Agreement on the part of the Recipient, the CDFI Fund may:

- (a) Bar the Recipient from reapplying for any assistance from the CDFI Fund; or
- (b) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.

5. In addition to entering into an Assistance Agreement, each Applicant

selected to receive a CMF Award must furnish to the CDFI Fund a certificate of good standing from the jurisdiction in which it was formed. The CDFI Fund may, in its sole discretion, also require the Applicant to furnish an opinion from its legal counsel, the content of which may be further specified in the Assistance Agreement, and which, among other matters, opines that:

- (a) The Recipient is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it transacts business;
- (b) The Recipient has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein;
- (c) The Recipient has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement;
- (d) The Recipient is not in default of its articles of incorporation or formation, bylaws or operating agreements, other organizational or establishing documents, or any agreements with the Federal government; and
- (e) The CMF affordability restrictions that are to be imposed by deed restrictions, covenants running with the land, or other CDFI Fund approved mechanisms are recordable and enforceable under the laws of the State and locality where the Recipient will undertake its CMF activities.

D. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the Capital Magnet Fund Application has been assigned the following control number: 1559–0036.

E. Reporting: The CDFI Fund will require each Recipient that receives a CMF Award through this NOFA to account for and report to the CDFI Fund on the use of the CMF Award. This will require Recipients to establish administrative controls, subject to the Uniform Administrative Requirements and other applicable OMB guidance. The CDFI Fund will collect information from each such Recipient on its use of the CMF Award annually following Payment and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the components listed in Table 9:

TABLE 9—REPORTING REQUIREMENTS

Criteria	Description
Single Audit Narrative Report (or like report).	The Recipient must submit, via AMIS, a Single Audit Narrative Report for each year of its period of performance notifying the CDFI Fund whether it is required to have a single audit pursuant to OMB Single Audit requirements.
Single Audit (if applicable)	If a nonprofit Recipient is required to complete a Single Audit Report, it must be submitted to the Federal Audit Clearinghouse (see 2 CFR subpart F—Audit Requirements in the Uniform Requirements) and AMIS (optional).
Financial Statement Audit	For-profit and nonprofit Recipients must submit a Financial Statement Audit (FSA) report in AMIS, performed by an independent certified public accountant, as specified in the Assistance Agreement. This report will not be required for Insured Credit Unions, Insured Depository Institutions, or Depository Institution Holding Companies.
Performance Report	The Recipient must submit a performance report not less than annually, which is a progress report on the Recipient’s use of the CMF Award towards meeting its performance goals, affordable housing outcomes, and the Recipient’s overall performance. The CMF Performance Report covers the Announcement Date through the Investment Period for the CMF Award and the ten-year Affordability Period for each Project. The Investment Period shall mean the period beginning with the Effective Date of the Assistance Agreement and ending not earlier than the fifth year anniversary of the Effective Date, or as otherwise established in the Assistance Agreement. The Affordability Period shall mean, for each Project, the period beginning on the date when the Project is placed into service and consisting of the full ten consecutive years thereafter, or as otherwise established in the Assistance Agreement. If the Recipient fails to meet a performance goal or reporting requirements, it must submit an explanation of noncompliance via AMIS.
Environmental Review	The Recipient shall submit the Environmental Review Notification Report each time the Recipient identifies a new proposed CMF project for which (i) a categorical exclusion does not apply and/or (ii) the Recipient determines that the proposed project does involve actions that normally require an Environmental Impact Statement, as described in 12 CFR part 1815. The Environmental Review Notification Report must be submitted to the CDFI Fund no later than ninety (90) days prior to the date that funds are Committed to a project.

Each Recipient is responsible for the timely and complete submission of the annual reporting documents. The CDFI Fund will use such information to

monitor each Recipient’s compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the CMF. The CDFI Fund

reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting

requirements will be modified only after notice to Recipients.

F. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the CMF Award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with the Federal statutes, regulations, and the terms and conditions of the CMF Award.

The cost principles used by Recipients must be consistent with

Federal cost principles; must support the accumulation of costs as required by the principles; and must provide for adequate documentation to support costs charged to the CMF Award. In addition, the CDFI Fund will require Recipients to: Maintain effective internal controls; comply with applicable statutes and regulations, the Assistance Agreement, and related guidance; evaluate and monitor compliance; take action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. Availability: The CDFI Fund will respond to questions and provide support concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the

date of the publication of this NOFA until the close of business on the third business day preceding the Application deadline. The CDFI Fund will not respond to questions or provide support concerning the Application that are received after 5:00 p.m. ET on said date, until after the Application deadline. CDFI Fund IT support will be available until 5:00 p.m. ET on date of the Application deadline. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund’s website at <http://www.cdfifund.gov/cmf>. The CDFI Fund will post on its website responses to questions of general applicability regarding the CMF.

B. The CDFI Fund’s contact information is listed in Table 10:

TABLE 10—CONTACT INFORMATION

Type of question	Preferred method	Telephone No. (not toll free)	Email addresses
CMF	Submit a Service Request in AMIS	202–653–0421	cmf@cdfi.treas.gov .
CDFI Certification	Submit a Service Request in AMIS	202–653–0423	ccme@cdfi.treas.gov .
Compliance Monitoring and Evaluation ...	Submit a Service Request in AMIS	202–653–0423	ccme@cdfi.treas.gov .
Information Technology Support	Submit a Service Request in AMIS	202–653–0422	AMIS@cdfi.treas.gov .

The preferred method of contact is to submit a Service Request (SR) within AMIS. For a CMF Application question, select “General Inquiry” for the record type and select “CMF—Application” for the type. For a CDFI Certification or Compliance question, select “General Inquiry” for the record type and select the appropriate type. For Information Technology, select “General Inquiry” for the record type and select “CMF—AMIS technical problem” for the type. Failure to select the appropriate type of SR could result in delays in responding to your question.

C. Communication with the CDFI Fund: The CDFI Fund will use AMIS to communicate with Applicants and Recipients, using the contact information maintained in their respective AMIS accounts. Therefore, the Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact persons and Authorized Representatives, email addresses, fax numbers, phone numbers, and office addresses) in its AMIS account(s). For more information about AMIS please see the Help documents posted at <https://amis.cdfifund.gov/s/Training>.

VIII. Other Information

The CMF regulations are set forth in 12 CFR part 1807. 12 CFR 1807.105 provides the CDFI Fund the ability to

waive any part of the regulations for good cause: “The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the Federal Register.” Pursuant to this requirement, the CDFI Fund is publishing notification in this NOFA that it hereby waives a portion of 12 CFR 1807.501 for all Recipients of CMF Awards.

A. Statement of Facts: Per § 4569(h)(4) of HERA, grants under CMF “shall be committed for use within 2 years.” Pursuant to HERA, the CDFI Fund issued regulations through the CMF Interim Rule (12 CFR part 1807). 12 CFR 1807.501(a) requires CMF Recipients to issue Commitments for use of the Award within two years of the Effective Date of the Assistance Agreement. 12 CFR 1807.501(b) requires that the Commitment be a written, legally binding agreement to provide CMF Award proceeds to a qualifying Family, developer, or project sponsor for each

specific Project. A legally-binding agreement means that the Recipient must have a counterparty to which it can issue the Commitment. This definition of Commitment effectively precludes CMF Award Recipients from Committing CMF Award dollars to an Affordable Housing or Economic Development Activity where the Recipient itself conducts or provides Loan Loss Reserves for the Development, Preservation, Rehabilitation, or Purchase of Affordable Housing or Economic Development Activity, and there is not a counterparty to effectuate a legally-binding agreement.

B. Grounds for Waiver: The CDFI Fund has discovered that Recipients are varied in their business models and entity types and thus their ability to identify a separate legal entity to demonstrate the CMF Award is Committed also varies. Some Recipients are developers and will use their CMF Awards for predevelopment activities and thus have not created a separate legal entity in the early stages of a Project. Those Recipients that are tribal entities may not be able to create a separate legal entity due to the laws of their tribal government. Recipients that are using their CMF Award for Purchase often are required to have a mortgage lending license under state law that allows them to provide mortgages. Thus

requiring a Recipient to have a legally binding agreement with an entity that has a mortgage lending license is often not feasible. In this scenario, it is more reliable to have the Recipient provide the mortgage financing directly to the Low-Income Families. The CDFI Fund has determined that for the purpose of evidencing Commitment to a Project for Purchase and achieving Project Completion for Purchase, a Recipient's entire portfolio of Homeownership financed and/or supported with its CMF Award will be deemed a Project.

For the above stated reasons, the CDFI Fund is issuing a general waiver herein of 12 CFR 1807.501(b) in cases where the CMF Award Recipient serves in the role as the developer for the Project or is financing and/or supporting a Project for Purchase and the Project is not owned, sponsored, or being developed by a limited partnership or limited liability company or other separate entity. Additionally, the CDFI Fund is issuing a general waiver herein of 12 CFR 1807.501(b) in cases where the Recipient is committing its CMF Award to a Loan Loss Reserve made by the Recipient, where the reserve is not pledged to a third party or separate entity affiliated with the Recipient, but is used to reserve against losses from loans directly made by the Recipient.

In lieu of a legally binding written agreement, such Recipients will be able to evidence a Commitment via a Board of Director's resolution for an identified Project. The resolution will be required to be in the form and substance acceptable to the CDFI Fund in its sole discretion. The CDFI Fund has determined that providing this waiver does not adversely affect the achievement of the purposes of HERA.

Authority: Pub. L. 110-289, 12 U.S.C. 4701, 12 CFR part 1805, 12 CFR part 1807, 12 CFR part 1815, 12 U.S.C. 4502.

Mary Ann Donovan,
Director, Community Development Financial Institutions Fund.

[FR Doc. 2018-15473 Filed 7-19-18; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce

paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments on forms used by individual taxpayers: Comment Request focused on Form 1040 and Schedules 1, 2, 3, 4, 5, 6, the discontinuance of 1040A and 1040EZ and revised Form W-4. The remainder of the collection including Schedules A, B, C, C-EZ, D, E, EIC, F, H, J, R, and SE, Form 1040NR, Form 1040NR-EZ, Form 1040X, and all attachments to these forms will be addressed on the next submission of the information collection.

DATES: Comments should be received on or before September 18, 2018 to be assured of consideration.

ADDRESSES: Taxpayers may submit comments electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2018-0015 in the search field on the regulation.gov homepage to find this notice and submit comments). All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety. Direct all written comments to Laurie Brimmer, Internal Revenue Service, at (202) 317-5756, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at Internal Revenue Service, at (202) 317-5751 Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at omb.unit@irs.gov.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Burden estimates for each control number are displayed in (1) PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

Taxpayer Burden Model

The IRS uses the Individual Taxpayer Burden Model (ITBM) to estimate the burden experienced by individual

taxpayers when complying with Federal tax laws. The model was developed using a survey of tax year 2015 individual taxpayers that was fielded in 2016 and 2017. The approach to measuring burden focuses on the characteristics and activities undertaken by individual taxpayers in meeting their tax return filing obligations.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation fees, the purchase price of tax preparation software, submission fees, photocopying costs, postage, and phone calls (if not toll-free).

The methodology distinguishes among preparation method, taxpayer activities, taxpayer type, filing method, and income level. Indicators of tax law and administrative complexity, as reflected in the tax forms and instructions, are incorporated into the model.

Preparation methods reflected in the model are as follows:

- Self-prepared without software,
- Self-prepared with software, and
- Use of a paid preparer or tax professional.

Types of taxpayer activities reflected in the model are as follows:

- Recordkeeping,
- Tax planning,
- Gathering tax materials,
- Use of services (IRS and other),
- Form completion, and
- Form submission.

Taxpayer Burden Estimates

Summary level results from fiscal year 2018 using this methodology are presented below. The data shown were the best forward-looking estimates available for income tax returns filed for tax year 2017.

The burden estimates were based on tax year 2017 statutory requirements as of January 31, 2018 for taxpayers filing a tax year 2017 Form 1040, 1040A, or 1040EZ tax return. Time spent and out-of-pocket costs are presented separately. Time burden is broken out by taxpayer activity, with record keeping representing the largest component. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation and submission fees, postage and photocopying costs, and tax preparation software costs.

Reported time and cost burdens are national averages and do not necessarily reflect a "typical" case. Most taxpayers

experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. For instance, the estimated average time burden for all taxpayers filing a tax year 2017 Form 1040, 1040A, or 1040EZ is 12 hours, with an average cost of \$210 per return. This average includes all associated forms and schedules, across all preparation methods and taxpayer activities. The average burden for taxpayers filing a tax year 2017 Form 1040 is about 15 hours and \$270; the average burden for taxpayers filing a tax year 2017 Form 1040A is about 7 hours and \$90; and the average for a tax year 2017 Form 1040EZ filers is about 5 hours and \$40.

Within each of these estimates there is significant variation in taxpayer activity. For example, tax year 2017 non-business taxpayers are expected to have an average burden of about 8 hours and \$120, while tax year 2017 business taxpayers are expected to have an average burden of about 21 hours and \$410. Similarly, tax preparation fees and other out-of-pocket costs vary extensively depending on the tax situation of the taxpayer, the type of software or professional preparer used, and the geographic location.

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules 1, 2, 3, 4, 5, 6, the discontinuance of 1040A and 1040EZ and revised Form W–4.

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Current Actions:

2018 Draft Form 1040

The revised 2018 Form 1040 is in draft form and subject to change. The updated form, full set of draft instructions, and updated burden and cost estimates will be included in the 30day FRN issued by Treasury. Following the most expansive tax law changes in 30 years, Treasury asked the IRS to look at ways to improve the 1040 filing experience. In response, the IRS took a strategic look at the family of 1040 forms with a goal of simplifying the experience for taxpayers and our partners in the tax industry. The 2018 draft Form 1040 replaces the current Form 1040 as well as the Form 1040A and the Form 1040EZ. The 2018 draft Form 1040 uses a “building block” approach, which can be supplemented

with additional schedules as needed. The 2018 draft Form 1040 goes from the current 79 lines to somewhere around 23 lines. Taxpayers with straightforward tax situations would only need to file this new 1040 with no additional schedules. The changes effective in 2018 and affecting the tax returns taxpayers will file in 2019 include (but are not limited to);

The Filing Status section was simplified. The filing status is “Single” if only one name is entered; “Married filing jointly” if two are entered and no filing status box is checked.

Information for the standard deduction was moved below the name entry spaces.

The checkbox for “Full-year health care coverage” was moved to the first page.

The “Exemptions” section was renamed “Dependents.” Taxpayers will continue to list individuals for whom they claim tax benefits associated with an exemption. Only two dependents can be listed on the form itself. Just as in 2017, dependents who cannot be listed on the form must be identified in an attached statement.

The entry spaces for subtotaling exemptions were removed; a new checkbox was added for dependents who qualify for the credit for other dependents.

The signature block was moved. An entry space was added for the spouse’s identity protection PIN in lieu of the taxpayer’s daytime phone number. The “Paid Preparers” section was shortened and a third-party designee box was added. Taxpayers with third-party designees or a foreign address must attach Schedule 6.

Line 4 (IRAs, pensions and annuities) combined 2017 Form 1040, lines 15 and 16.

Line 6 is a subtotal from Schedule 1, which includes less common types of income, as well as any adjustments to income.

Line 9 was added for the qualified business income deduction under section 199A.

Line 11 is the chapter 1 tax. Taxpayers with less common situations will enter an amount from Schedule 2, which generally includes lines 44 through 47 of the 2017 Form 1040.

Line 12 is the child tax credit and/or credit for other dependents. Taxpayers with other nonrefundable credits, will enter a subtotal from Schedule 3, which generally includes lines 48 through 55 of the 2017 Form 1040.

Line 14 is a subtotal from Schedule 4, which generally includes the items from the “Other Taxes” section of the 2017 Form 1040.

Line 17 is refundable credits and some payments. The earned income credit, additional child tax credit, and American opportunity tax credit remain on the form. Taxpayers with other credits and payments will enter an amount from Schedule 5, which generally includes items from the “Payments” section of the 2017 Form 1040. Treasury’s Office of Tax Analysis projects that roughly 25% of projected 2018 individual income tax filers would be able to file the new form without any attachments (meaning any of the six new schedules or any existing forms or schedules that are retained). For context, in Tax Year 2015, 16% of 1040 series returns filed were Form 1040–EZ.

2019 Draft Form W–4

The Form W–4 was changed for 2019 as a result of PL 115–97 (Tax Reform Act of 2017), especially section 11041, which reduced the personal exemption amount to zero and modified the statute related to withholding of tax from wages. Even though most tax changes were effective for tax year 2018, PL 115–97 allowed these withholding changes to be delayed until 2019.

The Form W–4 is modified to remove the reliance on the personal exemption and discrete number of withholding allowances. The Form W–4 has separate instructions, which provide comprehensive guidance for employees and employers. For ease of use in simple situations, a summary version of the instructions has been added to the back of the 2019 W–4 form for quick reference. New lines were added to the W–4 in order to provide more accurate withholding amounts.

The Form W–4 provides more accurate withholding by addressing credits, other income, deductions and a graduated tax rate structure directly, rather than converting these items to a discrete number of withholding allowances tied to the personal exemption amount under prior law. The Form W–4 reduces complexity for employees by allowing them to directly report tax credits and adjustments to income, rather than using worksheets to convert these items to withholding allowances.

Burden Impact Evaluation

A thorough analysis of the impact of the Tax Cuts and Jobs Act (TCJA) of 2017 on the burden faced by individual taxpayers in complying with the Federal tax law is still underway but preliminary results indicate that the overall impact of the law on individuals will lower taxpayer burden. Currently, the average time to complete a tax year 2018 individual tax return is estimated

to decrease by 4% to 7% and the average out-of-pocket costs are estimated to decrease 1% to 3%. A more detailed evaluation of the impact of specific provisions will be provided soon.

The expected impact of TCJA provisions by statutory and discretionary change are provided below:

Statutory Changes—Overall, the statutory changes are expected to lead to an overall decrease in burden. There are three major changes that are expected to have a material impact on burden in the TCJA.

1. The increase in the standard deduction and the limitation on the Schedule A tax deduction, taken together, are the most substantial changes introduced in the TCJA. These changes are expected to decrease the number of Schedule A filers from 46 million to 20 million. The 26 million drop in Schedule A filings is expected to lead to a material decrease in burden.

2. The change in thresholds on the Form 6251 for alternative minimum tax is expected to lead to a significant decrease in Form 6251 filings, from 10 million to 1 million or less. This change should also lead to a material drop in burden.

3. The new Sec 199A Deduction for qualified business income is expected to increase burden for many filers who report sole proprietor and passthrough income. The deduction is also expected to increase the number of filers with sole proprietors and passthrough income which should increase burden.

Overall, the decreases in burden from the change in Schedule A and Form 6251 filings are expected to more than offset the increase burden from the Sec 199A Deduction.

IRS Discretionary Changes—The largest discretionary change in place for tax year 2018 is the redesign of the Form 1040 and the discontinuance of Forms 1040A, and 1040EZ. Modest decreases in burden are expected for some taxpayers who prepare by hand without using a paid preparer or tax software but overall, the transition from Forms 1040,

1040A, and 1040EZ to the shortened Form 1040 is not expected to have a material impact on the burden individual taxpayers face. Approximately 95% of individual taxpayers use a paid preparer or tax software to complete their tax return and almost 90% of individual taxpayers e-file. Currently, these taxpayers using assisted methods interact with either a tax software interface or a paid preparer so they have limited interaction with the tax forms themselves. There is very little expectation for their experience to change so the form redesign is not expected to have a material impact on them.

The impact of the Form 1040 redesign on the approximately 5% of individual taxpayers who complete their taxes by hand without using a paid preparer or software is not expected to have a material impact on overall filing burden. The current expectation is that some taxpayers who prepare unassisted will have marginally lower burden while others will have marginally higher burden. For example, taxpayers who previously filed a Form 1040EZ may experience slightly more burden because they need to evaluate more information than before while a segment of taxpayers who previously filed the Form 1040 and 1040A may experience slightly less burden because they need to evaluate less information than before. In addition, some filers are expected to experience a reduction in burden from the separation of the components of the Form 1040 onto the new set of schedules while some are not. Overall, the minor increases and decreases that this population experiences are expected to mostly offset and lead to an immaterial change in burden.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 157,800,000.

Total Estimated Time: 1.970 billion hours (1,970,000,000 hours).

Estimated Time per Respondent: 12.48 hours.

Total Estimated Out-of-Pocket Costs: \$32.315 billion (\$32,315,000,000).

Estimated Out-of-Pocket Cost per Respondent: \$205.

Total Estimated Monetized Burden: \$63.373 billion (\$63,373,000,000).

Estimated Monetized Burden per Respondent: \$402.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2018.

Roberto Mora-Figueroa,

Acting Section Chief, Special Services.

[FR Doc. 2018-15627 Filed 7-18-18; 11:15 am]

BILLING CODE 4830-01-P



FEDERAL REGISTER

Vol. 83

Friday,

No. 140

July 20, 2018

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249

Whistleblower Program Rules; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–83557; File No. S7–16–18]

RIN 3235–AM11

Whistleblower Program Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is proposing for public comment several amendments to the Commission’s rules implementing its whistleblower program. Section 21F of the Securities Exchange Act of 1934 (“Exchange Act”) provides, among other things, that the Commission shall pay an award—under regulations prescribed by the Commission and subject to certain limitations—to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action. On May 25, 2011, the Commission adopted a comprehensive set of rules to implement the whistleblower program. The proposed rules would make certain changes and clarifications to the existing rules, as well as several technical amendments. The Commission is also including interpretive guidance concerning the terms “unreasonable delay” and “independent analysis.”

DATES: Comments should be received on or before September 18, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7–16–18 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 S7–16–18. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post

all comments on the Commission’s internet website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also 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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT:

Emily Pasquinelli, Office of the Whistleblower, Division of Enforcement, at (202) 551–5973; Brian A. Ochs, Office of the General Counsel, at (202) 551–5067, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend 17 CFR 240.21F–3 (“Rule 21F–3”), 240.21F–4 (“Rule 21F–4”), 240.21F–6 (“Rule 21F–6”), 240.21F–8 (“Rule 21F–8”) through 240.21F–13 (“Rule 21F–13”). The Commission is also proposing to add a new rule that would be codified as 17 CFR 240.21F–18 (“Rule 21F–18”).

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List of Subjects in 17 CFR Parts 240 and 249

Text of the Proposed Amendments

I. Background

A. The Whistleblower Award Program

In July 2010, Congress amended the Exchange Act to add new Section 21F.¹ That provision, entitled “Securities Whistleblower Incentives and Protection,” established the Commission’s whistleblower program. Among other things, Section 21F directs that the Commission pay awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the securities laws that leads to the successful enforcement of an action brought by the Commission that results in a covered judicial or administrative action² and certain related actions.³

In May 2011, the Commission adopted a comprehensive set of rules to implement the whistleblower program. Those rules, which are codified at 17 CFR 240.21F–1 through 240.21F–17, provide the operative definitions, requirements, and processes related to the whistleblower program. Among other things, these rules:

- Define key terms and phrases in Section 21F that determine whether an individual’s information qualifies for an award—terms such as “original information,” “voluntary,” and “leads to successful enforcement”;
- specify the form and manner in which an individual must submit information to qualify as a whistleblower eligible for an award;
- establish the procedures for anonymous submissions;
- exclude certain individuals from eligibility, such as individuals who are, or were at the time that they acquired the original information provided to the Commission, a member, officer, or employee of a foreign government;
- explain which law-enforcement proceedings undertaken by other authorities may qualify for a related action award from the Commission;
- establish the procedures for determining awards both in Commission actions and related actions; and

- identify the criteria that the Commission will consider in setting the percentage amount of an award.

The Commission’s whistleblower program has made significant contributions to the effectiveness of the Commission’s enforcement of the federal securities laws. The Commission has received over 22,000 whistleblower tips since the inception of the program through the end of Fiscal Year 2017. Original information provided by whistleblowers has led to enforcement actions in which the Commission has obtained over \$1.4 billion in financial remedies, including more than \$740 million in disgorgement of ill-gotten gains and interest, the majority of which has been or is scheduled to be returned to harmed investors. The Commission has ordered over \$266 million in whistleblower awards to 55 individuals whose information and cooperation assisted the Commission in bringing successful enforcement actions and, in some instances, other enforcement authorities in bringing related actions against wrongdoers. That said, approximately \$112 million of that amount was paid to just four individuals in connection with two Commission enforcement actions and a related action.⁴

We recognize that individuals who step forward to provide information to the Commission may do so at great personal peril and professional sacrifice. We view the three key tenets of the program—monetary awards, confidentiality, and retaliation protections—as complementary and critical to the success of the program.

B. Overview of the Proposed Rule Changes and Other Items

After nearly seven years of experience administering the whistleblower program, we have identified various ways in which the program might benefit from additional rulemaking. We believe that the changes that we are proposing will build on the program’s success by continuing to encourage individuals to come forward and by permitting us to more efficiently process award applications, among other potential benefits.

Based on our experience to date, we propose the following substantive amendments to our rules:

- *Allowing awards based on deferred prosecution agreements (“DPAs”) and non-prosecution agreements (“NPAs”) entered into by the U.S. Department of Justice (“DOJ”) or a state attorney*

general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws: We propose an amendment that would expressly allow for the payment of awards based on money collected under these types of arrangements. Currently, our whistleblower rules do not address whether the Commission may pay an award when an eligible whistleblower voluntarily provides original information that leads to a DPA or NPA entered into by DOJ or a state attorney general in a criminal proceeding. Nor do our rules currently address whether the Commission may pay an award to an eligible whistleblower who voluntarily provides information that leads to a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws. We are proposing to amend the definition of an “action” in Rule 21F–4(d)⁵ to include, as administrative actions, these arrangements, with the money paid under such arrangements deemed to be “monetary sanctions” under Rule 21F–4(e),⁶ and, thus to expressly permit us to pay awards thereon.

- *Elimination of potential double recovery under the current definition of related action:* We propose an amendment to our rules to clarify that a law-enforcement action would not qualify as a related action if the Commission determines that there is a separate whistleblower award scheme that more appropriately applies to the enforcement action. Although neither Section 21F of the Exchange Act (nor the whistleblower program rules thereunder) expressly addresses this situation, the Commission and the Claims Review Staff in the context of processing award applications have interpreted the term “related action” under Section 21F to exclude those matters brought by one of the entities listed in Rule 21F–3(b)(1)⁷ for which there is a more directly applicable award program. The proposed rule would codify this interpretation.

- *Additional considerations for small and exceedingly large awards:* In the context of potential awards that could yield a payout of \$2 million or less to a whistleblower, the proposed rules would authorize the Commission to adjust the award percentage upward under certain circumstances (subject to the 30% statutory maximum) to an

¹ 15 U.S.C. 78u–6.

² 15 U.S.C. 78u–6(a)(1).

³ 15 U.S.C. 78u–6(a)(5).

⁴ The average (mean) of these awards was approximately \$38 million and the median award was approximately \$33 million.

⁵ 17 CFR 240.21F–4(d).

⁷ 17 CFR 240.21F–3(b)(1).

amount that the Commission determines more appropriately achieves the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers who might otherwise be concerned about the low dollar amount of a potential award. Relatedly, in the context of potential awards that could yield total collected monetary sanctions of at least \$100 million, the proposed rules would authorize the Commission to adjust the award percentage so that it would yield a payout (subject to the 10% statutory minimum) that does not exceed an amount that is reasonably necessary to reward the whistleblower and to incentivize other similarly situated whistleblowers; however, in no event would the award be adjusted below \$30 million.⁸ Currently, the whistleblower rules do not expressly permit the Commission to consider whether a relatively small or exceedingly large potential payout is appropriate to advance the program's goals of rewarding whistleblowers and incentivizing future whistleblowers. We are proposing to amend the whistleblower program rules to include these considerations as additional award criteria.

The three proposed rule changes described above are intended to serve two important and related objectives. *First*, the amendments are designed to help ensure that an eligible, meritorious whistleblower is appropriately rewarded for his or her efforts when the Commission or a related-action authority recovers monetary sanctions from wrongdoing that violates the securities laws. *Second*, the amendments would help ensure that the Investor Protection Fund (IPF) that Congress has established to pay meritorious whistleblowers is used in a manner that effectively and appropriately leverages the IPF to further the Commission's law-enforcement objectives.⁹

⁸ In determining whether a large award would provide a payout that goes beyond what would be necessary to achieve the program's goals, we anticipate that the Commission would consider, among other factors, the value of the whistleblower's information and the personal and professional sacrifices made in reporting the information.

⁹ By statute, the IPF "is established in the Treasury of the United States" and "is available to the Commission, without further appropriation or fiscal year limitation," to pay "awards to whistleblowers" under Section 21F(b). Exchange Act § 21F(g)(1), 15 U.S.C. 78-6(g)(1). The IPF may also be used to fund certain limited activities of the Inspector General and the Office of the Whistleblower. As of the end May 2018, the balance of the IPF for the first time fell below the \$300 million threshold that triggers the statutory replenishment mechanism; this occurred when the

We believe that using the IPF to compensate whistleblowers who come forward with original information that leads to a DPA or NPA entered into by DOJ or a state attorney general, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding (provided the total money required to be paid in the action, including any other proceedings that arise out of the same nucleus of operative facts, exceeds \$1,000,000) achieves both of these objectives. We similarly believe that these objectives are furthered by providing the Commission with additional discretion to determine that an action does not qualify as a related action if Congress or another authority has established a more directly applicable or relevant award program. Additionally, we believe that these two objectives are furthered by authorizing the Commission to adjust upward the award percentage in certain cases where the award would otherwise yield a payout of \$2 million or less to a whistleblower, as well as to consider whether, in the context of an award issued in connection with certain large Commission or related actions, any whistleblower award exceeds an amount that is reasonably necessary to advance the program's goals. Absent this last amendment, the Commission may find itself faced with the possibility of paying out significantly large awards that are in excess of the amounts appropriate to advance the goals of the whistleblower program. These awards could substantially diminish the IPF, requiring the Commission to direct more

Commission paid \$83 million—its largest payout to date on an enforcement action—to three individuals. For a complete description of the mechanisms that Congress established to replenish the IPF, see Section 21F(g)(3) of the Exchange Act, 15 U.S.C. 78-6(g)(3). Generally speaking, the IPF is funded in the following way: (i) Deposits of any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, unless the balance of the IPF at the time the monetary sanction is collected exceeds \$300,000,000; (ii) deposits of any monetary sanction added to a disgorgement fund or other fund under section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds \$200,000,000; and (iii) if the amounts deposited in the IPF under item (i) and (ii) above are not sufficient to satisfy a whistleblower award, the Commission must deposit money into the fund from the monetary sanctions collected in the covered action that the whistleblower's information led to (even if the money could have been directed to victims of the violation) in an amount equal to the unsatisfied portion of the award.

funds to replenish the IPF rather than making that money available to the United States Treasury, where they could be used for other important public purposes.¹⁰

Beyond the amendments discussed above, we are proposing to modify Exchange Act Rule 21F-2.¹¹ The amendments that we are proposing to this rule are in response to the Supreme Court's recent decision in *Digital Realty Trust, Inc. v. Somers*.¹² In that decision, the Court held that Section 21F(a)(6) of the Exchange Act unambiguously requires that an individual report a possible securities law violation to the Commission in order to qualify for employment retaliation protection, and that the Commission's rule interpreting the anti-retaliation protections in Section 21F(h)(1) more broadly was therefore not entitled to deference.¹³ We are proposing to modify Rule 21F-2 so that it comports with the Court's holding by, among other things, promulgating a uniform definition of "whistleblower" that would apply to all aspects of Exchange Act Section 21F. We are also proposing to provide certain related clarifications to Rule 21F-2 and to address certain other interpretive questions that have arisen in connection with the Court's holding.

In addition to the foregoing amendments, we are proposing several other amendments that are intended to clarify and enhance certain policies, practices, and procedures in implementing the program. We are proposing to revise Exchange Act Rule 21F-4(e)¹⁴ to clarify the definition of "monetary sanctions" so that it codifies the agency's current understanding and application of that term. We are also proposing to revise Exchange Act Rule 21F-9¹⁵ to provide the Commission with additional flexibility to modify the manner in which individuals may submit Form TCR (Tip, Complaint or Referral). We are similarly proposing to revise Exchange Act Rule 21F-8¹⁶ to provide the Commission with additional flexibility regarding the forms used in connection with the whistleblower program.¹⁷ Further, we are proposing an amendment to Exchange Act Rule 21F-12¹⁸ to clarify the list of materials that the Commission may rely upon in

¹⁰ Any funds used to replenish the IPF otherwise would be directed to the Treasury for use in funding other public programs.

¹¹ 17 CFR 240.21F-2.

¹² 138 S. Ct. 767 (2018).

¹³ 138 S. Ct. at 781-82.

¹⁴ 17 CFR 240.21F-4(e).

¹⁵ 17 CFR 240.21F-9.

¹⁶ 17 CFR 240.21F-8.

¹⁷ 17 CFR 249.1800 and 249.1801.

¹⁸ 17 CFR 240.21F-12.

making an award determination. We are also proposing an amendment to Rule 21F-13¹⁹ to clarify the materials that may comprise the administrative record for purposes of judicial review.

Two further changes are designed to help increase the Commission's efficiency in processing whistleblower award applications. We are proposing to add paragraph (e) to Exchange Act Rule 21F-8²⁰ to clarify the Commission's ability to bar individuals from submitting whistleblower award applications where they are found to have submitted false information in violation of Exchange Act Section 21F(i)²¹ and Rule 8(c)(7)²² thereunder, as well as to afford the Commission the ability to bar individuals who repeatedly make frivolous award claims in Commission actions. We are also proposing to add new Exchange Act Rule 21F-18 to afford the Commission with a summary disposition procedure for certain types of likely denials, such as untimely award applications and those applications that involve a tip that was not provided to the Commission in the form and manner that the Commission's rules require.

We are also proposing a technical correction to Exchange Act Rule 21F-4(c)(2)²³ to modify an erroneous internal cross-reference, as well as several technical modifications to Exchange Act Rules 21F-9, 10, 11, and 12²⁴ to accommodate certain of the substantive and procedural changes described above.

We have included two additional items beyond the proposed amendments to our rules. *First*, we are including proposed interpretive guidance to help clarify the meaning of "independent analysis" as that term is defined in Exchange Act Rule 21F-4 and utilized in the definition of "original information." *Second*, we are including a general inquiry for public comment regarding whether the Commission in a future rulemaking could establish a potential discretionary award mechanism for Commission enforcement actions that either do not qualify as covered actions, are based on publicly available information (and not "original information" as that term is defined in Exchange Act Rule 21F-4(b)(1)(i)²⁵), or where the monetary sanctions collected are *de minimis*.²⁶

II. Discussion of Proposed Amendments

The proposed amendments are set forth below.

A. Proposed Amendment to Exchange Act Rule 21F-4(d)²⁷ Defining an "action"²⁸

Section 21F of the Exchange Act authorizes us to pay whistleblower awards in relation to the "successful enforcement" of "covered judicial or administrative actions" brought by the Commission and certain "related actions" of other authorities, most notably DOJ.²⁹ Awards range between

whistleblower program. The petitions for rulemaking can be found on the Commission's website at this location: <https://www.sec.gov/rules/petitions.shtml>. Both petitions sought the same or similar amendments to the whistleblower program rules in two respects. In connection with issuing this proposing release, we have considered the two petitions and determined to proceed as follows. *First*, to the extent that the petitions requested clarification through rulemaking in connection with employment anti-retaliation protections for internal reporting, we believe that the amendments we are proposing to Exchange Act Rule 21F-2 (discussed above) appropriately address this issue following the Supreme Court's recent decision in *Digital Realty*. *Second*, to the extent the rulemaking petitions request that we add clarifying language to Exchange Act Rule 21F-17(a), 17 CFR 240.21F-17(a), we find the amendments unnecessary at this juncture because, as noted by the petitioners, "the plain language of Rule 21F-17 and existing case law compel the conclusion" that the contracts the petitioners are concerned with are already "unenforceable[.]" See Exchange Act Rule 21F-17(a), 17 CFR 240.21F-17(a) (providing that no person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement (other than agreements dealing with information covered by § 240.21F-4(b)(4)(i) and (ii) of the chapter related to the legal representation of a client) with respect to such communications.). In fact, the Commission has successfully brought nine enforcement actions for violations of Rule 21F-17. See generally SEC National Exam Program Risk Alert: Examining Whistleblower Rule Compliance at 1-2 & n. 3 (October 24, 2016), available at <https://www.sec.gov/ocie/announcement/ocie-2016-risk-alert-examining-whistleblower-rule-compliance.pdf> (summarizing Commission enforcement actions). Finally, in accordance with Rule 192 of the Commission's Rules of Practice, see 17 CFR 201.192, the Secretary of the Commission shall notify the petitioners of the action taken by the Commission following the publication of this proposing release in the **Federal Register**.

²⁷ 17 CFR 240.21F-4(d).

²⁸ The Commission anticipates that this proposed rule change, if adopted, would apply to all new DPAs, NPAs, and Commission settlement agreements covered by the proposed rule that are entered into after the effective date of the rules. The proposed rule would not apply to any such agreements entered on or before the effective date of the rules.

²⁹ 15 U.S.C. 78u-6(b)(1). A "covered judicial or administrative action" is any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding \$1 million. *Id.* 6(a)(1). A "related action" is a judicial or administrative action brought by any of several authorities designated in the statute that is based upon the

10 percent and 30 percent "of what has been collected of the monetary sanctions imposed" in the action.³⁰ Proposed Rule 21F-4(d)(3) would provide that, for purposes of making a whistleblower award, a DPA or NPA entered into by DOJ or a state attorney general in a criminal case would be deemed to be an "administrative action" and any money required to be paid thereunder would be deemed a "monetary sanction." The same result would follow for a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws. The premise of proposed Rule 21F-4(d)(3) is the same as that underlying current Rule 21F-4(d)(1)³¹: Our view that Congress did not intend for meritorious whistleblowers to be denied awards simply because of the procedural vehicle that the Commission (or the other authority) has selected to pursue an enforcement matter.³²

Moreover, we also believe that the statutory term "administrative action" is sufficiently ambiguous and broad enough to permit us to interpret the term to include DPAs and NPAs when these instruments are employed by DOJ or a state attorney general, or settlement agreements entered into by the Commission outside of the context of judicial or administrative proceedings, as an appropriate resolution to a law-enforcement investigation.³³ We find it

original information provided by a whistleblower that led to successful enforcement of a Commission covered action. *Id.* 6(a)(5).

³⁰ *Id.* 6(b)(1)(A)-(B).

³¹ 17 CFR 240.21F-4(d)(1).

³² See *Securities Whistleblower Incentives and Protections*, Exchange Act Release No. 64545, 76 FR 34300, 34327 (June 13, 2011). Recognizing that an "action" is generally considered to be a single captioned case or matter, the Commission adopted Rule 21F-4(d)(1) to clarify that it would treat two or more separate cases that arise out of the same nucleus of operative facts as a single "action" for purposes of making an award. In this way, the sanctions ordered in closely connected proceedings, even if individually under \$1 million, are aggregated for purposes of assessing whether the actions reach the \$1 million "covered action" threshold that is necessary to permit consideration of whistleblower award claims. The critical principle behind this rule is that a whistleblower should not be denied an award for his or her contributions to the closely connected cases or matters merely because the Commission (or other authority) determined not to bring these cases as one captioned law-enforcement case.

³³ In DOJ's practice, DPAs and NPAs occupy an important middle ground between declining prosecution and obtaining the conviction of a corporation in circumstances where the collateral consequences of a corporate conviction for innocent third parties would be significant. See *United States Attorneys' Manual* 9-28.200, 9-28.1100, available at <https://www.justice.gov/usam/united-states-attorneys-manual>. As one example, DPAs and NPAs

Continued

¹⁹ 17 CFR 240.21F-13.

²⁰ 17 CFR 240.21F-8.

²¹ 15 U.S.C. 78u-6(i).

²² 17 CFR 240.21F-8(c)(7).

²³ 17 CFR 240.21F-4(c)(2).

²⁴ 17 CFR 240.21F-9 through 240.21F-12.

²⁵ 17 CFR 240-21F-4(b)(1)(i).

²⁶ In July 2014, the Commission received two petitions for rulemaking relating to the

particularly telling that Congress used the term “action” in Section 21F of the Exchange Act, rather than the term “proceeding,” to describe the universe of administrative enforcement outcomes that might give rise to a whistleblower award. As used elsewhere in Section 21F, as well as in other provisions of the securities laws and the Commission’s rules thereunder, the term “proceeding” refers to various specifically identified formal processes instituted before the Commission.³⁴ Therefore, the use of the term “administrative action” in describing actions that can give rise to whistleblower awards suggests that Congress did not clearly intend to limit the scope of the Commission’s authority under Section 21F (outside of judicial actions) to only the Commission’s formal adjudicatory proceedings specified in the securities laws (or adjudicatory proceedings of designated related action authorities).

The Commission has previously exercised its interpretive authority to pay a whistleblower award with respect to a DPA entered into by DOJ on the basis that such agreements are filed in a federal court action that charges the defendant with violations of law.³⁵ However, as is further discussed below, DOJ’s practice with respect to NPAs has been *not* to commence an accompanying proceeding in either a judicial or administrative tribunal. Moreover, we have entered into settlement agreements outside of judicial or administrative proceedings. Notwithstanding this distinction in form (*i.e.*, whether an accompanying judicial or administrative proceeding was undertaken), these

have been a prominent tool in DOJ’s criminal enforcement of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. 78dd–1 *et seq.*, an area that overlaps with our own enforcement jurisdiction. In 2017, DOJ entered into six DPAs or NPAs to resolve FCPA investigations of corporate entities, securing over \$1.4 billion in monetary recoveries. *See FCPA Related Enforcement Actions: 2017*, available at <https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2017>.

³⁴ See, e.g., Exchange Act Sections 21F(h)(2)(A), 15 U.S.C. 78u–6(h)(2)(A) (disclosure of whistleblower identities to a “respondent in connection with a public proceeding instituted by the Commission”), 21B, 15 U.S.C. 78u–2 (“Civil Remedies in Administrative Proceedings”), 21C, 15 U.S.C. 78u–3 (“Cease-and-Desist Proceedings”); Securities Act of 1933 Section 8A, 15 U.S.C. 77h–1 (“Cease-and-Desist Proceedings”); Investment Advisers Act Section 203(i), 15 U.S.C. 80b–3(i) (“Money Penalties in Administrative Proceedings”); Investment Company Act Section 9(d), 15 U.S.C. 80a–9(d) (“Money Penalties in Administrative Proceedings”); see also SEC Rule of Practice 101(4), 17 CFR 201.101(4) (defining “enforcement proceeding”).

³⁵ See generally DOJ Criminal Division and SEC Enforcement Division, *A Resource Guide to the Foreign Corrupt Practices Act* at 74 (2012), available at <https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf> (“FCPA Resource Guide”) (describing function and operation of DPAs).

agreements are all similar in important respects: Typically, they reward meaningful cooperation, are premised on significant remedial and compliance commitments, and obtain monetary remedies for past violations. Based on our experience with the whistleblower program, we are of the view that the entry of each of these types of agreements should be considered the successful enforcement of an administrative action within the meaning of Section 21F, and that whistleblowers who voluntarily provide original information that leads to such enforcement should not be disadvantaged because DOJ, a state attorney general in a criminal case, or the Commission, in the exercise of enforcement discretion, may elect to proceed in a form that does not include the filing of a complaint or indictment in federal (or state) court, or the institution of an administrative proceeding.³⁶ For this reason, we are proposing Rule 21F–4(d)(3) to clarify that these agreements would be treated as “administrative actions” upon which whistleblower awards may be based (provided the total money required to be paid in the Commission action, including any other proceedings that arise out of the same nucleus of operative facts, exceed \$1,000,000).

In arriving at this preliminary interpretation, we have found several considerations to be persuasive. *First*, we believe that our rulemaking authority under the Exchange Act and our authority to define Exchange Act terms is best read as permitting us to incorporate such agreements within the definition of an “action.”³⁷ *Second*, as discussed above, we do not believe that Congress’s use of the phrase “administrative action” in Section 21F limits us to considering whistleblower awards only when investigations are resolved through formal adjudicatory administrative proceedings. This is especially so given that such an

³⁶ See *United States v. Fokker*, 818 F.3d 733, 737 (D.C. Cir. 2016) (“In certain situations, rather than choose between the opposing poles of pursuing a criminal conviction or forgoing any criminal charges altogether, the Executive may conclude that the public interest warrants the intermediate option of a deferred prosecution agreement.”).

³⁷ Section 21F(j) of the Exchange Act, 15 U.S.C. 78u–6(j), grants us “the authority to issue such rules and regulations as may be necessary or appropriate to implement” the whistleblower award program. Similarly, Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the “power to make such rules and regulations as may be necessary or appropriate to implement the provisions” of the Exchange Act. In addition, we have broad definitional authority pursuant to Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), which provides us with the “power by rules and regulations to define . . . terms used in [the Exchange Act].”

approach would appear to draw arbitrary distinctions among otherwise meritorious whistleblowers based solely on the vehicle that we, DOJ, or a state criminal law authority, in the exercise of enforcement discretion, may view as the most appropriate in a particular case. *Third*, we are cognizant of the context in which Section 21F was enacted. Congress enacted the Commission’s whistleblower program in 2010, which is the same year that the Commission initiated, as part of its enforcement cooperation program, forms of settlement agreements outside of the context of a judicial or administrative proceeding as an alternative mechanism to resolve securities law violations.³⁸ Given that Commission actions are the primary focus of the whistleblower program, it is reasonable to understand that Congress may not have focused on the implications of such agreements when enacting Section 21F of the Exchange Act.

For similar reasons, we believe that the payments required of a company under the terms of the agreements that would be covered by the proposed rule should be deemed to be “monetary sanctions” within the meaning of Section 21F of the Exchange Act.³⁹ Section 21F(b)(1) authorizes us to pay meritorious whistleblowers between 10 percent and 30 percent “of what has been collected of the monetary sanctions imposed in the action or related actions.”⁴⁰ “Monetary sanctions” are defined, in pertinent part, as money that are “ordered to be paid” as a result of a judicial or administrative action.⁴¹ Although the actions that would be covered by the proposed rule take the form of an agreement between a company and the Government, payment of disgorgement or other amounts is required of the company in order to resolve a Commission enforcement investigation or a DOJ criminal investigation without formal action by a court or agency.⁴²

³⁸ SEC Announces Initiative to Encourage Individuals and Companies to Cooperate and Assist Investigations, SEC Press Release 2010–6 (Jan. 13, 2010). To date, we have entered into 17 settlements outside of judicial or administrative proceedings requiring payment of disgorgement, prejudgment interest, and penalties totaling more than \$53 million.

³⁹ Our view on this issue would not be impacted by the revisions that we are proposing in the next section to the definition of “monetary sanctions.”

⁴⁰ 15 U.S.C. 78u–6(b)(1).

⁴¹ *Id.* (a)(4); 17 CFR 240.21F–4(e).

⁴² We believe that the agreements covered by this proposed rule impose monetary sanctions for purposes of Section 21F of the Exchange Act because they effectively compel or require monetary payments. For example, when the Commission has utilized certain agreements entered outside of

Accordingly, our view is that it is reasonable to treat the monetary components of the agreements that would be covered by the proposed rule as “monetary sanctions” that are “imposed” within the meaning of Section 21F. Proposed Rule 21F–4(d)(3) thus would clarify that any money required to be paid under a DPA or NPA will be deemed a monetary sanction.⁴³

Finally, we are proposing conforming amendments to Rule 21F–11(b)⁴⁴ to make clear that the time period for filing a claim for an agreement covered by this proposed rule would run from earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice, or, absent such publication notice, the date of the last signature necessary for the agreement.⁴⁵

Request for Comment

1. Should DPAs and NPAs entered by DOJ or a state attorney general in a criminal case be treated as administrative actions, and the

judicial or administrative proceedings, the Commission has reserved the authority under the agreement to pursue an enforcement action if the individual or company fails to pay the monetary obligations. *Enforcement Manual* 6.2.2 (Nov. 28, 2017), available at <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>. When the Commission has utilized certain other settlement forms entered outside of judicial or administrative proceedings, the staff has to date retained its ability to recommend an enforcement action to the Commission against the individual or company. *Id.* at 6.2.3. DOJ DPAs and NPAs have similar mechanisms available to effectively require an individual or company to comply with the monetary obligations specified therein or face prosecution for the violations that are the subject of the agreement. See U.S. Gov’t Accountability Off., GAO–10–110, *DOJ Has Taken Steps to Better Track Its Use of Deferred and Non-Prosecution Agreements, but Should Evaluate Effectiveness* at 11 (2009) (“As part of DPAs and NPAs, companies are generally required to comply with a set of terms for a specified duration in exchange for prosecutors deferring the decision to prosecute or deciding not to prosecute,” including “monetary payments—such as restitution to victims of crime, forfeiture of the proceeds of the crime, and monetary penalties imposed by DOJ”) (emphasis added).

⁴³ We believe the statute and our current rules already authorize payment of a related action award in connection with a settlement reached pursuant to the Financial Industry Regulatory Authority’s Acceptance, Waiver, and Consent (“AWC”) process. An AWC is a form of FINRA disciplinary proceeding in which sanctions, including fines can be imposed on a member firm or associated person. See FINRA Rule 9216, available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3926.

⁴⁴ 17 CFR 240.21F–11(b).

⁴⁵ In a rare case where a claimant could demonstrate that compliance with this proposed rule was impracticable because an agreement covered by it was not made available to the public before the passage of the claim deadline calculated under the rule, the Commission could consider exercising its authority to waive compliance with the rule. See Section 36(a) of the Exchange Act, 15 U.S.C. 78mm(a), and Exchange Act Rule 21F–8(a), 17 CFR 240.21F–8(a).

monetary payments obtained through these DPAs and NPAs treated as monetary sanctions, for purposes of making whistleblower awards? Should the same result follow for settlement agreements entered by the Commission to resolve securities law violations? Why or why not?

2. Are there other types of arrangements (e.g., the use of declination letters in cases where the subject company pays all disgorgement, forfeiture amounts and/or restitution resulting from the misconduct at issue⁴⁶) that should be included in any rule the Commission adopts? How would any such arrangements satisfy the statutory requirements that they constitute a “judicial or administrative action brought by” the Commission or a related-action authority and that they include “monetary sanctions” (i.e., “monies . . . ordered to be paid”) that are “imposed” in the action?⁴⁷

3. Are there specific standards that we should apply in determining whether other vehicles for resolving investigations should be deemed to be administrative actions upon which whistleblower awards can be based? Is it sufficient that a resolution results in a monetary payment?

4. As discussed above, we are proposing conforming amendments to Rule 21F–11(b)⁴⁸ to make clear that the time period for filing a claim for an agreement covered by this proposed rule would run from earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice, or, absent such publication notice, the date of the last signature necessary for the agreement. Please comment on whether this conforming edit fully covers all potential agreements covered by proposed Rule 21F–4(d)(3). If there are other types of arrangements that should be included, would any additional changes to this rule be necessary or appropriate?

B. Proposed Amendment to Exchange Act Rule 21F–4(e)⁴⁹ Defining “monetary sanctions”⁵⁰

We propose to amend the definition of “monetary sanctions” to provide

⁴⁶ See *United States Attorneys’ Manual* 9–47.120 available at <https://www.justice.gov/usam/usam-9-47000-foreign-corrupt-practices-act-1977#9-47.120>.

⁴⁷ See 15 U.S.C. 78u–6(a)(1), (4) and (5) and (b)(1)(A)–(B).

⁴⁸ 17 CFR 240.21F–11(b).

⁴⁹ 17 CFR 240.21F–4(e).

⁵⁰ The Commission anticipates that this proposed rule change, if adopted, would be utilized by the Commission after the effective date of the final rules in determining whether an action qualifies as a “covered action” and in calculating any

additional clarity concerning the class of payments that fall within the term’s scope. The proposed definition, which is based on the Commission’s experiences to date in administering the program, codifies the understanding of the term “monetary sanctions” that is already employed by the agency.

Under Section 21F, the determination of what qualifies as a monetary sanction is important for two reasons. *First*, a Commission action qualifies as a “covered action” for which a whistleblower award might be made only if the action “results in monetary sanctions exceeding \$1,000,000.”⁵¹ Whether a payment obligation is a “monetary sanction” is thus a threshold question for the Commission in determining whether to post a Notice of Covered Action.⁵² *Second*, to the extent that one or more whistleblowers receives an award, award payments are calculated based upon the amount that “has been collected of the monetary sanctions imposed in the action or related actions.”⁵³

Section 21F(a)(4) of the Exchange Act defines the term “monetary sanctions,” when used with respect to any judicial or administrative action, to mean: (A) Any monies, including penalties, disgorgement, and interest, ordered to be paid; and (B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.⁵⁴

Exchange Act Rule 21F–4(e) is substantively identical. Based on our experience to date in administering the program, we believe that it would be beneficial to provide additional clarity regarding the scope of the potential payments that are encompassed within subparagraph (A) of the statutory definition.⁵⁵

The language used in subparagraph (A) of Section 21F(a)(4), when read in isolation, could potentially be understood to direct that the Commission treat any order to pay money that is entered in a judicial or administrative action as a monetary sanction for purposes of the whistleblower award program. Interpreted in this way, monetary

outstanding payments to be made to meritorious whistleblowers.

⁵¹ 15 U.S.C. 78u–6(a)(1).

⁵² See Exchange Act Rule 21F–10(a), 17 CFR 240.21F–10(a).

⁵³ 15 U.S.C. 78u–6(b)(1).

⁵⁴ 15 U.S.C. 78u–6(a)(4).

⁵⁵ We are not proposing to provide any additional clarification regarding subparagraph (B) as we believe that it does not create uncertainty as to the scope of the money that it covers.

sanctions would include, for example, orders to pay discovery sanctions, receivership fees and costs, taxes, and even attorney's fees imposed under the Equal Access to Justice Act ("EAJA").⁵⁶

We believe, however, that other portions of Section 21F counsel in favor of a narrower understanding of which money "ordered to be paid" in an action should be treated as monetary sanctions for purposes of the whistleblower program. We find particularly relevant the definition of a "covered action" in Section 21F(a)(1),⁵⁷ which provides that the Commission action must "result[] in monetary sanctions exceeding \$1,000,000" in order for a whistleblower award to be considered. We believe that the phrase "results in" suggests that Congress was addressing those monetary obligations that the action secures "as relief" for the violations that are the subject of the Commission's enforcement action.⁵⁸ Similarly, we believe that the phrase "monetary sanctions imposed in the action" in Section 21F(b)(1)⁵⁹ indicates that the congressional focus was on monetary obligations that are in the nature of relief for the violations. So, for example, while in normal parlance a person might say that civil penalties were "imposed" as a result of a securities-law violation, we do not believe that one would say that a court order approving a court-appointed receiver's request for fees or costs "impos[ed]" a monetary sanction.

Finally, we find support for our proposed approach in the purpose of Section 21F to reward whistleblowers for their contributions to the "successful enforcement" of Commission actions and related actions,⁶⁰ and in the common-sense understanding that relief against wrongdoers is perhaps the essential measure of an action's success. Given this context, we believe that the term "monetary sanctions" is better understood to mean those requirements to pay money that the Commission or a related-action authority obtain "as relief" in the underlying action.

Based on the language within Section 21F, therefore, we believe that the language in subparagraph (A) of the statutory definition is better understood to encompass only those required payments in a Commission action or related action that are designed as relief

for the violations successfully resolved in the action. Accordingly, we propose to amend Exchange Act Rule 21F-4(e) to provide that the term "monetary sanctions" means: (1) A required payment that results from a Commission action or related action and which is either (i) expressly designated as disgorgement, a penalty, or interest thereon, or (ii) otherwise required as relief for the violations that are the subject of the covered action or related action; or (2) any money deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.⁶¹

We believe that paragraph (e)(1)(i) of the proposed definition should generally be straightforward to apply. This part of the rule encompasses any payment requirement that is expressly designated as disgorgement, a penalty, or interest thereon. That money paid by a wrongdoer in satisfaction of a disgorgement or penalty obligation may thereafter be used to pay costs of a receiver, trustee, or fund administrator would not change the analysis under this part of the proposed rule. Because the wrongdoer was ordered to pay such money pursuant to a disgorgement or penalty obligation, paragraph (e)(1)(i) would be satisfied.

With respect to paragraph (e)(1)(ii), only requirements to pay money as relief for the underlying violations would qualify. Thus, for example, if a court orders an asset freeze and appoints a receiver in a Commission enforcement action, and, without separately entering a disgorgement order, the court subsequently issues an order approving the receiver's plan to distribute money to injured investors, we would treat that second order as a monetary sanction under paragraph

⁶¹ Our use of the phrase "required payment" rather than "ordered" is intended to be consistent with proposed Rule 21F-4(d)(3), and recognizes that whistleblower tips may be important to successful enforcement actions that the agreements described in that proposed rule in which the Commission, DOJ, or a state attorney general in a criminal case require substantial monetary relief that is not, however, contained in a Commission order a court order, or an order issued by an administrative-law judge. See discussion of proposed Rule 21F-4(d)(3), *supra*. In our view, a payment that is required as part of such a resolution is reasonably treated as "ordered" when the agency has some mechanism to compel the payment either directly or indirectly. This could include, but does not necessarily require, the ability to obtain a court order requiring the payment. In the context of the agreements described in proposed Rule 21F-4(d)(3), the mechanism to compel the payment could include the ability either to revive an action or to bring an action if the signatory does not make the payments provided for in the agreement.

(e)(1)(ii) of the proposed rule.⁶² However, if the receiver requests approval to use frozen funds to pay creditors, taxes to a governmental authority, attorney's fees, or other costs of the receivership, such payments would not qualify "as relief" obtained because of the successful enforcement action and would not constitute monetary sanctions under paragraph (e)(1)(ii).

In proposing the amended rule language, we have also considered the legislative purpose underlying whistleblower provisions generally. In our view, these types of award programs are intended to allow a whistleblower to receive a percentage of the monetary relief that the government is able to obtain as remedies for the violations that are the subject of the action to which the whistleblower's information led. The approach outlined above would comport with this understanding of how whistleblower award programs generally operate.⁶³ We have also considered the fact that a broader approach could lead to potentially irrational results such as the Commission paying whistleblowers a share of any discovery sanctions or EAJA fees imposed on the government, even though such monetary sanctions would have no connection to the information the whistleblower provided that led to the enforcement action and that contributed to the success of that action.

Request for Comment

5. Should "monetary sanctions" be defined as those obligations to pay money that are obtained "as relief" for the violations that are charged in a Commission enforcement action or a related action? Why or why not?

6. Are there additional classes of monetary requirements or payment obligations (beyond those discussed above) that may be ordered in an action covered by the Commission's whistleblower award program that the

⁶² Where a receiver is appointed to gather assets for potential distribution to harmed investors, an award payment to a meritorious whistleblower would not need to await actual distribution of the receivership assets to the harmed investors. In our view, the statutory requirements that the monetary sanctions be both "ordered" and "collected" before a payment to a whistleblower can be made would typically be satisfied at the time a court approves the distribution to the harmed investors of assets within the receiver's control. See Exchange Act section 21F(a)(4) ("ordered") & 21F(b)(1) ("collected"), 15 U.S.C. 78u-6(a)(4), & 78u-6(b)(1).

⁶³ *Cf.* S. Rep. 111-176 at 110 (2010) ("The Whistleblower Program aims to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated securities laws and recover money for victims of financial fraud.").

⁵⁶ See 5 U.S.C. 504; 28 U.S.C. 2412.

⁵⁷ 15 U.S.C. 78u-6(a)(1).

⁵⁸ See generally Black's Law Dictionary 1541 (10th ed. 2014) (defining a "sanction" as "[a] penalty or coercive measure that results from a failure to comply with a law, rule, or order") (emphasis added).

⁵⁹ 15 U.S.C. 78u-6(b)(1)(A) and (B).

⁶⁰ See 15 U.S.C. 78u-6(b)(1).

Commission should specifically consider or address in clarifying the definition of “monetary sanctions”?

*C. Proposed Amendment to Exchange Act Rule 21F-3(b)(1)*⁶⁴ Defining “related action”⁶⁵

Under Exchange Act Section 21F(b)⁶⁶ and Rule 21F-11,⁶⁷ any whistleblower who obtains an award based on a Commission enforcement action may be eligible for an award based on monetary sanctions that are collected in a related action. Exchange Act Section 21F(a)(5)⁶⁸ and Rule 21F-3(b)(1)⁶⁹ provide that a related action is a judicial or administrative action that is both: (i) Brought by DOJ, an appropriate regulatory authority (as defined in Rule 21F-4(g)),⁷⁰ a self-regulatory organization (as defined in Rule 21F-4(h)⁷¹), or a state attorney general in a criminal case; and (ii) based on the same original information that the whistleblower voluntarily provided to the Commission and that led to the successful enforcement of the Commission action.

The proposed amendment adding paragraph (b)(4) to Rule 21F-3 would apply in situations where both the Commission’s whistleblower program and a second, separate whistleblower award scheme have potential application to the same action. During the implementation and administration of our whistleblower program, it has become increasingly apparent to us that additional, separate whistleblower award schemes might apply to an action that could otherwise qualify as a related action. In this regard we note that, since the adoption of our whistleblower program rules, two states have adopted their own whistleblower award programs in connection with state securities-law enforcement actions.⁷² We are also aware that DOJ might

pursue law-enforcement actions that potentially implicate both the Commission’s whistleblower program and the whistleblower award program that the Internal Revenue Service (“IRS”) administers.⁷³ Further, Congress in 2015 established a new motor-vehicle-safety whistleblower award program that allows employees or contractors of a motor-vehicle manufacturer, parts supplier, or dealership who report serious violations of federal vehicle-safety laws to obtain an award of 10 percent to 30 percent of any monetary sanction over \$1 million that the Federal Government recovers based on that information.⁷⁴ To date, the Commission has never paid an award on a matter where a second whistleblower program also potentially applied to the same matter, nor has the Commission ever indicated that it would do so.

Proposed paragraph (b)(4) would expressly authorize two mechanisms for the Commission to use in situations where at least one other award scheme might also apply. *First*, the first sentence of proposed paragraph (b)(4) would provide that, notwithstanding the definition of related action in Rule 21F-3(b)(1), if a judicial or administrative action is subject to a separate monetary award program established by the Federal Government, a state government, or a self-regulatory organization, the Commission will deem the action a related action only if the Commission finds (based on the unique facts and circumstances of the action) that its whistleblower program has the more direct or relevant connection to the action.⁷⁵ In analyzing this question, the Commission will consider whether Congress (or a state) has enacted a specific whistleblower program that appears to apply directly to the case at hand; if so, we will generally determine that Congress reasonably would not have intended our more general, secondary “related action” award mechanism to sweep in the case. In reaching this determination, we would look to the complaint in the action, the overall monetary sanctions recovered (*e.g.*, are they principally tied

to a different whistleblower program for which Congress provided an award mechanism), and the court’s final order to assess which award program has the closer relationship to the overall case. We might also consult the agency involved with that other case to obtain its overall assessment of whether the action is in fact one that is primarily tied to violations for which Congress (or the states) have established a more specifically applicable whistleblower program and for which our general, “related action” award mechanism should not apply. Critically, this standard would not yield a clear brightline but would turn on the particular facts and circumstances of the case at hand and the Commission would explain the grounds for its conclusion in any final order.

Second, the second sentence of proposed paragraph (b)(4) provides that even if the Commission determines to deem the action a related action, the Commission will not make an award to you for the related action if you have already been granted an award by the authority responsible for administering the other whistleblower award program; further, if you were denied an award by the other award program, you will not be permitted to readjudicate any issues before the Commission that the authority responsible for administering the other whistleblower award program resolved against you as part of the award denial.⁷⁶ The proposed rule provides that, if the Commission makes an award before an award determination is finalized by the authority responsible for administering the other award scheme, the Commission would condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award scheme.

The proposed rule also provides that, in determining whether a potential related action has a more direct or relevant connection to the Commission’s whistleblower program than another award program, the Commission would consider the nature, scope, and impact of the misconduct charged in the purported related action, and its relationship to the federal securities laws. This inquiry would include consideration of, among other things: (i) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the federal securities laws (*e.g.*, investor protection) versus other law-enforcement or

⁶⁴ 17 CFR 240.21F-3(b)(1).

⁶⁵ The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F-10(a), 17 CFR 240.21F-10(a)) posted on or after effective date of the final rules.

⁶⁶ 15 U.S.C. 78u-6(b).

⁶⁷ 17 CFR 240.21F-11.

⁶⁸ 15 U.S.C. 78u-6(a)(5).

⁶⁹ 17 CFR 240.21F-3(b)(1).

⁷⁰ 17 CFR 240.21F-4(g).

⁷¹ 17 CFR 240.21F-4(h).

⁷² In 2011, Utah established a whistleblower-award scheme to provide rewards of up to 30 percent of the money collected in state securities-law enforcement actions. Utah Code Annotated 61-1-101 *et seq.* The following year, Indiana enacted a whistleblower award scheme to provide rewards up to 10 percent of the monies collected in a state securities-law enforcement action. Indiana Code 23-19-7-1 *et seq.*

⁷³ 26 U.S.C. 7623.

⁷⁴ 49 U.S.C. 30172 (enacted by Section 24352 of the Fixing America’s Surface Transportation Act of 2015 (FAST Act), Pub. L. 114-94).

⁷⁵ Notably, the Utah whistleblower-award program (*see* note 72, *supra*) provides that a person may not receive an award thereunder if he or she “qualifies for an award as described in Section 21F of the Securities Exchange Act, 15 U.S.C. Sec. 78u-6, and regulations issued under that section.” We assume that this provision is intended to prevent a double recovery on a Utah criminal-enforcement action brought by the State’s Attorney General that could potentially be covered by both the Commission’s whistleblower program and the Utah program.

⁷⁶ This sentence of proposed paragraph (b)(4) is modeled after existing Rule 21F-3(b)(3), 17 CFR 240.21F-3(b)(3), which is discussed further below.

regulatory interests (e.g., tax collection or fraud against the Federal Government); (ii) the degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the federal securities law violations that were the subject of the Commission's enforcement action; and (iii) whether the potential related action involves state-law claims and the extent to which the state may have a whistleblower award scheme that potentially applies to that type of law-enforcement action.⁷⁷ Thus, for example, if an action by DOJ charges a scheme to avoid tax obligations and imposes monetary sanctions, we would expect that such an action would lack a more direct or relevant connection to the Commission's whistleblower program relative to the IRS's award program.⁷⁸ As a second example, where a state whistleblower award program is available to award a whistleblower whose tip leads to state criminal charges in connection with a fraudulent securities offering, we anticipate that the Commission would not view such an action as a related action under the test in proposed paragraph (b)(4). In this circumstance, the state program would be the more direct or relevant program and the appropriate avenue for the whistleblower to seek an award.

In proposing paragraph (b)(4), we acknowledge that, on its face, Exchange Act Section 21F does not exclude from the definition of related actions those judicial or administrative actions that have a less direct or relevant connection to our whistleblower program than another whistleblower scheme. We nonetheless perceive ambiguity when considering this language in the context of the overall statutory scheme. We believe that an understanding focused exclusively on the statutory definition of related action would produce a result

⁷⁷ To the extent that a state adopts a whistleblower award program relating directly to securities law violations, we would generally anticipate the Commission would find that the state award scheme should apply over the Commission's award program. However, to the extent that the particular state criminal action may implicate an award scheme that is not directed at securities-law violations (such as a state-award scheme focused on consumer protection), the Commission might conclude that our whistleblower program should not apply based on an assessment of the particular facts and circumstances of the state action.

⁷⁸ By contrast, to the extent that a DOJ enforcement action centers on insider-trading violations that are based on the same misconduct that was the subject of the Commission's covered action, and that most of the monetary sanctions arise from the insider-trading violations, the Commission would likely treat the matter as a related action notwithstanding any potential restitution ordered due to any tax violations included within the case.

that Congress neither contemplated nor intended. We believe that our rulemaking authority under the Exchange Act and our authority to define Exchange Act terms permit us to reach this interpretation.⁷⁹ We base this determination on several considerations.

First, when Congress established the Commission's whistleblower program, it set a firm ceiling on the maximum amount that should be awarded for any particular action—"not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed" in the action.⁸⁰ Indeed, it appears that in establishing federal whistleblower award programs in the modern era Congress has determined that an award of more than thirty percent on any particular action is not necessary or appropriate.⁸¹ Yet if both the Commission's whistleblower program and another whistleblower award scheme were to apply to the same action, this would create the potential for a total award exceeding the 30-percent ceiling due to a dual recovery.

Second, the purpose of the related action award component of the Commission's whistleblower program was to allow meritorious whistleblowers the opportunity to obtain additional financial awards for the ancillary recoveries that may result from the same original information that the whistleblowers gave to the Commission. In this way, the potential for a related action recovery can further enhance the

⁷⁹ Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the "power to make such rules and regulations as may be necessary or appropriate to implement the provisions" of the Exchange Act, and has long been understood to provide the Commission with broad authority to issue rules and regulations carrying the force of law. Similarly, Section 21F(j), 15 U.S.C. 78u-6(j), grants us "the authority to issue such rules and regulations as may be necessary or appropriate to implement" the whistleblower award program. In addition, we have broad definitional authority pursuant to Section 3(b) of the Exchange Act, 15 U.S.C. 78c(b), which provides us with the "power by rules and regulations to define . . . terms used in [the Exchange Act]."

⁸⁰ 15 U.S.C. 78u-6(b)(1)(B).

⁸¹ See, e.g., 7 U.S.C. 26 (providing under the CFTC's whistleblower program for awards of "not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions"); 26 U.S.C. 7623(b)(1) (providing under the IRS administered whistleblower award program for "an award . . . not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts)"); 31 U.S.C. 3730 (providing in a False Claims Action that a *qui tam* plaintiff shall receive "not more than 30 percent of the proceeds of the action or settlement"). Our preliminary analysis indicates that Congress's determination not to go above a 30-percent ceiling for awards appears to comport with a similar determination by those states that have adopted their own false claims acts and securities-law whistleblower programs.

incentives for an individual to come forward to the Commission. But neither the text of Section 21F, nor the relevant legislative history⁸² suggests that Congress considered the unusual situation in which there may be a separate whistleblower award scheme that has a more direct or relevant connection to the judicial or administrative action,⁸³ and that would therefore be providing a financial incentive to encourage individuals to report misconduct without the need for the incentive effect produced by the related-action component of the Commission's award program.

Third, we believe that permitting potential whistleblowers to recover under both our award program and a separate award scheme for the same action would produce the irrational result of encouraging multiple "bites at the apple" in adjudicating claims for the same action and potentially allowing multiple recoveries.⁸⁴ In the adopting release that accompanied the original whistleblower rules, the Commission recognized the irrational result that would flow from allowing a whistleblower to have multiple separate opportunities to adjudicate his or her contributions to a case and to potentially obtain multiple separate rewards on that same enforcement action. Further, the Commission barred this result from occurring in the specific contexts that the Commission considered at the time it adopted the whistleblower program rules. Specifically, the Commission adopted Rule 21F-3(b)(3), which provides that the Commission will not pay on a related action if the whistleblower program administered by the Commodity Futures Trading

⁸² See generally S. Rep. No. 111-176 at 110-12 (2010).

⁸³ See generally *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) ("It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum."); Anthony Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) at 183 (noting that a specifically applicable statutory provision should govern a more general provision because "the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence"); *id.* at 184 (explaining that "the general/specific canon [of statutory construction] does not mean that the existence of a contradictory specific provision voids the general provision[.]" but rather that "its application to cases covered by the specific provision is suspended").

⁸⁴ *Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1068 (D.C. Cir. 1998) ("If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity."); see also *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 68-69 (1994) (rejecting the "most natural grammatical reading" of a statute to avoid "absurd" results).

Commission (“CFTC”) has issued an award for the same action, nor will the Commission allow a whistleblower to readjudicate any issues decided against the whistleblower as part of the CFTC’s award denial. In adopting that rule, the Commission made clear its view that a whistleblower should neither have two recoveries on the same action nor multiple bites at the adjudicatory apple.⁸⁵ Relatedly, the Commission explained in the adopting release that it would for similar reasons not make an award to a whistleblower who was also a *qui tam* plaintiff under the False Claims Act.⁸⁶ Although at the time of the original rulemaking for the whistleblower program the Commission did not expressly consider the potential for multiple separate awards due to the existence of any other award schemes (such as the whistleblower program administered by the IRS), the principles underlying Rule 21F-3(b)(3) appear similarly relevant to that circumstance.

To illustrate the significance of our existing rule and the rule that we are proposing, consider a future DOJ enforcement action involving predominately tax claims that results from the same original information that a Commission whistleblower shared with both the Commission and the CFTC. In this scenario, it is entirely possible based purely on the words of the relevant statutes that the SEC and the CFTC could *each* have to pay up to 30 percent on the DOJ action, and that the IRS could have to pay an additional 30 percent; the Commission whistleblower could thus take home an amount that is equal to as much as 90 percent of the money collected for the violations in the DOJ action. In our view, this is an “obviously *unintended*” outcome that would “make[] no substantive sense,”⁸⁷ and the rule that we already have in place and the rule that we are proposing would prevent it and similar duplicative payments from multiple whistleblower programs.

In addition to the foregoing, we are also proposing two amendments to the definition of “related action” in Rule 21F-3(b)(1). *First*, the proposed amendment would add clarity to the existing requirement that, to potentially obtain an award for a related action, a whistleblower must have provided to the other entity (or the Commission must have shared with the other entity) the same original information that the

whistleblower provided to the Commission and that led to the successful enforcement of the Commission action.⁸⁸ We think that where the Commission staff determines to share the whistleblower’s information with the other entity, it is consistent with the purposes of the program to allow an award even if the whistleblower did not directly step forward to that agency.⁸⁹

This new language to the definition of “related action” merely clarifies what is already required by Exchange Act Rule 21F-11(c),⁹⁰ which provides in relevant part that a whistleblower must “demonstrate [that the whistleblower] directly (or through the Commission) voluntarily provided the governmental agency, regulatory authority or self-regulatory organization the same original information that led to the Commission’s successful covered action[.]” Further, we believe that this interpretation is consistent with the requirement in Section 21F(a)(5) of the Exchange Act⁹¹ that a related action must be “based upon the original information provided by a whistleblower.” To be “based upon” the whistleblower’s original information, in our view, the same information that the whistleblower provided to the Commission must have been provided to the other authority and that information must have itself directly contributed to the other authority’s investigative or litigation efforts leading to the success of that authority’s enforcement action. In practice, this can occur either because the whistleblower provided the original information to the other authority, or because the Commission through its information sharing mechanisms provided the original information to the other authority, and in either case the authority utilized that information directly in its own investigation and/or its resulting enforcement action.

We note that, under our existing interpretation of the “based upon” language in Section 21F(a)(5) and the clarifying rule that we are proposing, the other authority’s enforcement action would not be a related action in circumstances where the other authority’s enforcement action was in some manner “based upon” the results or findings of the Commission’s

enforcement action without the other authority ever actually receiving and utilizing the whistleblower’s original information. Rather, in this situation the whistleblower’s original information could, at best, be described as a derivative factor potentially contributing to the success of the other authority’s action, and we deem this too attenuated a causal connection to meet the “based upon” standard, which in our view requires actual reliance on the whistleblower’s original information by the other entity.⁹² Indeed, in these circumstances any claim for an award would fail under Rule 21F-3(b)(2), which unambiguously requires that the success of a related action be based upon “the same original information that the whistleblower gave to the Commission” as a predicate to the Commission authorizing a related action award.⁹³

Second, we are making a technical modification to the definition of “related action” in Rule 21F-3(b)(1) that would make clear that the existing clause “based on” the same original information that the whistleblower voluntarily provided to the Commission, and that “led the Commission to obtain monetary sanctions totaling more than \$1,000,000,” applies to all related actions and not just criminal actions brought by a state attorney general. This technical modification would conform the definition in the rule to the substantive requirements of the statutory definition as set forth in Section 21F(a)(6) of the Exchange Act.⁹⁴

Request for Comment

7. Is the proposed “direct or relevant” standard appropriate for assessing whether an action should qualify as a

⁹² The “based upon” language in Exchange Act section 21F(a)(5), 15 U.S.C. 78u-6(a)(5) is separate and distinct from the requirement that the whistleblower’s original information must have “led to” the success of the other entity’s action, *see* Exchange Act section 21F(b)(1), 15 U.S.C. 78u-6(b)(1); *see also* Exchange Act Rule 21F-4(c), 17 CFR 240.21F-4(c). Even if a whistleblower satisfies the “based upon” standard because his information was directly provided to the other entity by the whistleblower or the Commission, and used in some fashion by that entity, this does not mean the whistleblower’s information necessarily “led to” the success of that action.

⁹³ 17 CFR 240.21F-3(b)(2). Rule 21F-3(b)(2) contemplates that “the Commission may seek confirmation of the relevant facts regarding the whistleblower’s assistance from the authority that brought the related action,” and we will deny a related action award where sufficient and reliable information cannot be obtained from the other authority. 76 FR 34300, 34305/1. These requirements would be rendered null if the “based upon” requirement could be satisfied without the other authority actually receiving and utilizing the whistleblower’s original information.

⁹⁴ 15 U.S.C. 78u-6(a)(6).

⁸⁵ 76 FR 34300, 34305/3.

⁸⁶ *Id.* n.52 (“[W]e do not believe Congress intended Section 21F of the Exchange Act to permit additional recovery for the same action above what it specified in the False Claims Act.”).

⁸⁷ Scalia & Garner, *supra* note 33, at 235, 239 (emphasis in original).

⁸⁸ *See* Rules 21F-3(b)(2), 17 CFR 240.21F-3(b)(2), and 21F-4(c)(1)-(3), 17 CFR 240.21F-4(c)(1)-(3).

⁸⁹ Section 21F provides express authority for the Commission to share information that may identify a whistleblower with other authorities that may, in turn, bring related actions. *See* 15 U.S.C. 78u-6(a)(5) and (h)(2)(D)(i).

⁹⁰ 17 CFR 240.21F-11(c).

⁹¹ 15 U.S.C. 78u-6(a)(5).

related action? Are there alternative formulations that should be adopted instead?

8. Instead of adopting the proposed rule, which would authorize the Commission on a case-by-case basis to consider whether an action should qualify as a related action, should the Commission adopt a categorical exclusion from the definition of related action for any judicial or administrative action that may have an alternative applicable award scheme?

9. As part of this rulemaking, we are considering whether to repeal Exchange Act Rule 21F-3(b)(3), 17 CFR 240.21F-3(b)(3),⁹⁵ so that proposed Rule 21F-3(b)(4) would also apply to potential related actions that might produce a double recovery with the CFTC's whistleblower program. Existing Rule 21F-3(b)(3) applies somewhat differently than our proposed Rule 21F-3(b)(4), as it does not provide the Commission express authority to determine whether a potential related action is more closely connected with the SEC's whistleblower program or the CFTC's whistleblower program. Should we repeal existing Exchange Act Rule 21F-3(b)(3) so that proposed Rule 21F-3(b)(4) would apply instead to afford a uniform treatment for all potential related actions for which multiple whistleblower programs might apply? Please explain.

D. Proposed Amendment to Exchange Act Rule 21F-6 Regarding Awards to a Single Whistleblower Below \$2 Million or in Cases Yielding at Least \$100 Million in Collected Monetary Sanctions⁹⁶ and Guidance on the Meaning of "Unreasonable Delay" Under Rule 21F-6.

Rule 21F-6⁹⁷ establishes the analytical framework that the Commission follows both in setting the appropriate percentage amount of an award in connection with a particular Commission or related action and in

⁹⁵ Exchange Act Rule 21F-3(b)(3) provides that the Commission will not make an award to an individual for a related action if the individual has already been granted an award by the CFTC for the same action pursuant to its whistleblower program under Section 23 of the Commodity Exchange Act (7 U.S.C. 26). Similarly, if the CFTC has previously denied an award to an individual in a related action, the individual will be precluded from relitigating any issues before the Commission that the CFTC resolved against the individual as part of an award.

⁹⁶ The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (see Exchange Act Rule 21F-10(a), 17 CFR 240.21F-10(a)) posted on or after effective date of the final rules.

⁹⁷ 17 CFR 240.21F-6.

determining an individual percentage award for each whistleblower where the Commission makes awards to more than one whistleblower in connection with the same action. In the adopting release accompanying the promulgation of the whistleblower program rules, the Commission explained that Rule 21F-6 "provides general principles without mandating a particular result" and "the determination of the appropriate percentage of a whistleblower award will involve a highly individualized review of the facts and circumstances surrounding each award using the analytical framework set forth" in the rule.⁹⁸

Rule 21F-6 identifies four criteria that may increase an award percentage and three criteria that may decrease a whistleblower's award percentage. As provided in Rule 21F-6(a), the criteria that may increase an award percentage are: (1) Significance of the information provided by the whistleblower; (2) assistance provided by the whistleblower; (3) law-enforcement interest in making a whistleblower award; and (4) participation by the whistleblower in internal compliance systems. As provided in Rule 21F-6(b), the criteria that may decrease an award percentage are: (1) Culpability of the whistleblower; (2) unreasonable reporting delay by the whistleblower; and (3) interference with internal compliance and reporting systems by the whistleblower.

Proposed paragraph (c) would add to Rule 21F-6's existing analytical framework by providing a mechanism for the Commission to adjust upwards any awards that would potentially be below \$2 million to a single whistleblower. Specifically, proposed Rule 21F-6(c) would provide that, if the resulting award after applying the award factors specified in paragraphs (a) and (b) would yield a potential payout to a single whistleblower below \$2 million (or any such greater amount that the Commission may periodically establish through publication of an order in the **Federal Register**), the Commission may adjust the award upward so that the likely total award payout to the whistleblower reflects a dollar amount that the Commission determines is appropriate to achieve the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers who might otherwise be concerned about the low dollar amount of a potential award; provided that in no event shall this provision be utilized to raise a potential award payout (as assessed by the

⁹⁸ 76 FR 34300, 34331/2.

Commission at the time it makes the award determination) above \$2 million (or by such other amount as the Commission may designate by order) or will the total amount awarded to all whistleblowers in the aggregate be greater than 30 percent.

We believe that proposed paragraph (c) could provide an important new tool for the Commission to ensure that even in cases where the collected monetary sanctions may be relatively small (and award amounts correspondingly modest), whistleblowers could receive an appropriate award for their efforts in coming forward to the Commission. We also anticipate that, where the proposed rule is triggered, there would be a presumption in favor of some award enhancement, though the precise amount of the enhancement may vary from case to case depending on the unique facts and circumstances at issue. In this way, we believe proposed paragraph (c) could provide an important additional incentive for potential whistleblowers to come forward.⁹⁹

We note that the new authority proposed in paragraph (c) would come with important limitations. Specifically, the Commission will not adjust an award upward under the proposed provision if any of the negative award factors that are identified in Exchange Act Rule 21F-6(b)¹⁰⁰—and which are specified above—were found to be present with respect to the whistleblower's award claim, or if the

⁹⁹ We believe that proposed paragraph (c) would in many respects work similar to proposed paragraph (d), as discussed further below; this would include, for example, how we would determine whether the \$2 million threshold is met in cases involving joint whistleblowers. To the extent that either proposed paragraph (c) or proposed paragraph (d) is triggered by a potential award, it would open up discretion for the Commission to assess the award factors in Exchange Act Rules 21F-6(a)-(b), 17 CFR 240.21F-6(a)-(b), in terms of dollar amounts, not merely in terms of award percentages. This would give the Commission, for example, the authority to boost a 20 percent award upwards based on a reassessment of the positive factors relative to the actual dollar amounts at issue in the particular award. Thus, even if the whistleblower might otherwise receive a 20 percent award on a small case (for example, one with collections of \$100,000), the Commission could reassess the whistleblower's contributions in dollar terms and determine to enhance the award upwards (potentially up to the 30 percent maximum, which in the particular example would yield a payout of \$30,000). The Commission could do so if it determines that this enhancement in dollar terms would better acknowledge the whistleblower's contribution and better help incentivize similarly situated future whistleblowers. Further, in assessing whether the \$2 million threshold has been, or likely will be satisfied, the Commission will consider collectively the total award amounts from all the Commission and related actions that were the result of the whistleblower's original information.

¹⁰⁰ 17 CFR 240.21F-6(d).

award claim triggers Exchange Act Rule 21F-16 (concerning awards to whistleblowers who engage in culpable conduct).¹⁰¹ Thus, for example, if a whistleblower whose award claim might otherwise be eligible for an enhancement under this provision were found by the Commission to have unreasonably delayed reporting to the Commission under Exchange Act Rule 21F-6(b)(2), then the Commission could not increase his or her award under this provision.

In addition, we are proposing a new paragraph (d) that would add to Rule 21F-6's existing analytical framework by providing a mechanism for the Commission to conduct an enhanced review of awards in situations where a whistleblower has provided information that led to the success of one or more covered or related actions that, collectively, result in at least \$100 million in collected monetary sanctions. As we explain below, under proposed paragraph (d), the Commission, first, would consider the dollar amount of an award at given percentage levels in determining whether and how to adjust the award based on the positive and negative factors in paragraphs (a) and (b) of this section; and second, the Commission could determine that an exceedingly large potential payout resulting from the assessment under paragraphs (a) and (b) was not reasonably necessary to fulfill the purposes of the program and thus exercise its discretion to reduce the award to an appropriate amount. The Commission's ability to reduce an award under this provision would be subject to two significant limitations. *First*, in no event could the Commission reduce the total payout for any award(s) resulting from the whistleblower's original information below \$30 million. *Second*, the Commission could not reduce the award for any specific action such that the total amount paid to all whistleblowers for that action would go below the 10 percent minimum statutory floor of collected monetary sanctions in that action.¹⁰²

An important principle underlying proposed paragraph (d) is that, as the

dollar value of an award amount grows exceedingly large, there is a significant potential for a diminishing marginal benefit to the program in terms of compensating the whistleblower and incentivizing future whistleblowers. In these situations, we believe that it is in the public interest that we scrutinize the dollar impact of these awards more carefully in considering award enhancements and reductions under the existing award criteria of paragraphs (a) and (b) of this section and, further, where appropriate, adjust an award downward so that the dollar amount of the payout is more in line with the program's goals of rewarding whistleblowers and incentivizing future whistleblowers from a cost-benefit perspective (again, subject to the \$30 million floor for any whistleblower subject to a reduction under this provision and the 10 percent statutory minimum referenced above).

As an illustration of a potential situation to which proposed paragraph (d) might be utilized, consider the settlements that the Commission and DOJ entered with Siemens AG in 2008. The total monetary sanctions collected in these two actions was \$800 million (the Commission received \$350 million in disgorgement of profits¹⁰³ and DOJ received \$450 million in criminal penalties¹⁰⁴). Suppose that these two actions occurred today and that these actions were based on original information voluntarily provided to the Commission by an eligible whistleblower. In such a situation, the Commission would be required to pay an award to that whistleblower of between \$80 million (a 10 percent award) and \$240 million (a 30 percent award) for the two actions. Critically, under the existing framework of Rule 21F-6—without proposed paragraph (d)—the Commission in setting the appropriate amount of an award would be unable to consider the extraordinarily large dollar amounts that would be associated with any assessments and adjustments made when applying the existing award factors of Rule 21F-6; the Commission would also lack the authority to adjust the award amount downward if it found that amount unnecessarily large for purposes of achieving the whistleblower

program's goals. So if the hypothetical meritorious whistleblower were an individual who did everything right in connection with his or her whistleblowing (that is, he or she were the model whistleblower), the Commission would almost certainly be obligated to pay this individual an award at or near the maximum \$240 million level under the existing rules. What paragraph (d) would do, as we explain below, is to afford the Commission the discretion to determine whether such an extraordinarily large payout is actually necessary to further the whistleblower program's goals of rewarding whistleblowers and incentivizing future whistleblowers, and if not, proposed paragraph (d) would afford the Commission the ability to adjust the actual payout to an award amount that is closer to the \$80 million minimum that would be required to be paid pursuant to Section 21F(b). We believe that adopting paragraph (d) to afford us a discretionary mechanism to make such common-sense adjustments to extraordinarily large awards to ensure that they do not exceed an amount that is appropriate to achieve the goals and interests of the program is, to put it simply, good public policy.

Turning to the text of proposed paragraph (d), this new provision would do two important things that should help us ensure that any large awards are in fact aligned with the program's goals and not unnecessarily large to achieve the program's goals. *First*, proposed paragraph (d)(1) would permit the Commission to consider the potential dollar amount of the payout to a whistleblower resulting from his or her original information (in any Commission actions or related actions, collectively) when applying each of the existing award criteria; when the potential amount of an award payout could be in the range of 10 to 30 percent of at least \$100 million, we believe it is reasonable and appropriate to consider the adjustments that we make for each award factor in dollar terms rather than to apply exclusively a percentage assessment that does not take into account what those percentage adjustments would translate to in actual dollars paid to the whistleblower.¹⁰⁵

¹⁰⁵ The statutory framework that Section 21F establishes appears to permit—and at a minimum does not expressly prohibit—the Commission from considering the dollar amount of a potential award. Indeed, the language in Section 21F refers to the “amount of the award,” which appears to afford the Commission discretion to set the awards based on a consideration of the appropriate dollar amount that should be paid (provided that this dollar amount is between 10 percent and 30 percent of the collected monetary sanctions). Notwithstanding the

Continued

¹⁰¹ 17 CFR 240.21F-16.

¹⁰² For example, if the collected amount is \$150 million, the Commission could exercise its discretion to reduce a potential payout of 25% (\$37.5 million), but the Commission could not reduce the award below \$30 million. In another example, if the collected amount is \$400 million, the Commission could exercise its discretion to reduce a potential payout of 25% (\$100 million), but the Commission could not reduce the award below 10% (\$40 million). Finally, if the collected amount is \$150 million and the potential payout is 18% (\$27 million), then the Commission could not reduce that award because it already is below the \$30 million floor.

¹⁰³ See SEC Litigation Release No. 200829 (dated Dec. 15, 2008) (discussing the settlement reached *SEC v. Siemens Aktiengesellschaft*, Civ. Action No. 08-CV-02167 (D.D.C.)).

¹⁰⁴ See DOJ Press Release entitled “Siemens AG and Three Subsidiaries Plead Guilty to FCPA Violations and Agree to Pay \$450 Million in Combined Criminal Fines” (dated Dec. 15, 2008) (available at: www.justice.gov/archive/opa/pr/2008/December/08-crm-1105.html).

This would allow us to consider the relative (or marginal) value of the actual dollar amounts associated with any enhancements that we are considering under the positive award factors. We think that this is particularly important where the percentage enhancements are corresponding with particularly large dollar enhancements because, to the extent that individuals are motivated to come forward based on a potential award, it is the total dollar payout that would be relevant to them. Allowing us to assess each enhancement or reduction in dollar terms should permit us to more realistically and concretely assess the appropriate amount that is reasonably necessary to recognize a whistleblower's contributions in cases involving large potential awards.

Second, proposed paragraph (d)(2) would permit the Commission to adjust the award downward if, after consideration of the existing award factors in paragraphs (a) and (b) of this section, the Commission finds that the potential award amount (from any Commission actions and related actions, collectively) exceeds what is reasonably necessary to reward the whistleblower and to incentivize similarly situated whistleblowers.¹⁰⁶ Importantly, proposed paragraph (d)(2) would *not* mandate that the Commission make a downward adjustment. Further, proposed paragraph (d)(2) would make clear that any adjustment to a whistleblower's award under that paragraph shall not yield a potential award payout (as assessed by the Commission at the time that it makes the award determination) below \$30 million, nor may any downward adjustment result in the total amount awarded to all the meritorious whistleblowers, collectively, for each covered or related action constituting less than 10 percent of the monetary sanctions collected in that action.

Critically, the \$30 million reference in proposed rule (d)(2) would *not* be a ceiling on awards, and we do not intend that it would be applied as such. Rather, \$30 million for a potential payout is the floor below which we would not lower

statutory language, the Commission's existing rules do not expressly authorize the Commission to consider the dollar amount of a potential award when setting the award percentage. Proposed paragraph (d) would make it clear that the Commission may consider the dollar amount of a potential award when setting the award percentage where at least \$100 million in monetary sanctions has been collected.

¹⁰⁶Notably, this authority to make a downward adjustment would be available only if the resulting payout after applying the existing award factors would be at least \$30 million (or such greater alternative amount that the Commission may periodically establish through publication of an order in the **Federal Register**).

any award that is subject to a reduction under the proposed rule. Further, the proposed amendment would be triggered *only* in situations where a whistleblower (including two or more individuals who acted together as a joint whistleblower) provides information that leads to the success of one or more covered actions and related actions that results in at least \$100 million in collected monetary sanctions.¹⁰⁷ In the nearly seven years of experience that we have had in implementing and administering the whistleblower program, we have issued final orders granting 50 whistleblower awards to 55 individuals (including, as explained above, individuals who acted as joint whistleblowers).¹⁰⁸ To date, only two Commission covered actions and related actions have crossed the threshold of collecting at least \$100 million in monetary sanctions and for which the payout exceeded our proposed \$30 million floor.¹⁰⁹ Those two actions

¹⁰⁷In assessing whether the \$100 million threshold has been crossed to invoke proposed paragraph (d), we preliminarily anticipate considering not just the likely payout in any Commission covered actions that resulted from the whistleblower's information, but also any potential payout that might result from any related actions that resulted from the whistleblower's information. Thus, for example, if a Commission covered action and a related action brought by the Department of Justice, and a related action brought by an appropriate regulatory authority, collectively, resulted in the collection of at least \$100 million in monetary sanctions based on a whistleblower's original information, then proposed paragraph (d) would be triggered. We would then decide whether one or more of the awards should be adjusted downward to yield a total payout that complies with the terms of the proposed rule. Further, we note that in the context of a joint whistleblower, for purposes of applying the proposed rule, we would treat them collectively as one whistleblower in applying proposed paragraph (d), including in assessing whether the \$100 million threshold is satisfied; however, in determining whether and to what extent to make a downward adjustment, we would expect to consider the need to appropriately incentivize individuals even when acting jointly to come forward and report to the Commission.

¹⁰⁸These totals are through April 2018 and treat as single awards several cases where whistleblowers' original information led to multiple covered actions that were processed together in one award Order recognizing the total contributions of the whistleblower. Similarly, consistent with the approach proposed above governing cases where we grant an award for both a Commission enforcement action and a related action by another agency based on the same information provided by the whistleblower (see 17 CFR 240.21F-3(b)), we consider covered-action awards together with their corresponding related action awards as single whistleblower awards.

¹⁰⁹One of the awards that exceeded \$30 million was issued in September 2014 for more than \$30 million in a Commission action and related actions. See *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34-73174 (Sept. 22, 2014), available at <https://www.sec.gov/rules/other/2014/34-73174.pdf>. Two other awards were issued in March 2018 for \$49 and \$33 million, respectively, to three individuals (two of whom were acting as joint whistleblowers) in a single

taken alone involved the payment of \$112 million to four individuals.

We believe that the \$100 million collected-monetary-sanctions threshold reflects the appropriate level at or above which it would be reasonable for the Commission to consider whether the likely award payout from the collected monetary sanctions will exceed an amount that is appropriate to achieve the program's goals. For matters involving collected sanctions at or above the \$100 million threshold, we think the potential for a whistleblower award to exceed the amount necessary to achieve the program's goals exists and that awards based on \$100 million or more are sufficiently large to warrant heightened scrutiny under the rule that we are proposing. Our proposed approach in triggering proposed paragraph (d) based on the amount of monetary sanctions collected is not unlike the approach that the DOJ utilizes (and which some courts also utilize) in the context of the False Claims Act ("FCA") when determining the appropriate amount of an award to a relator. Specifically, DOJ has developed a series of guidelines to determine the appropriate size of an award, and one consideration that may lead to a downward adjustment is whether the "FCA recovery was relatively large."¹¹⁰

We similarly believe that the \$30 million floor is appropriate. In our view, there is a potential that as the payout to a whistleblower grows beyond the \$30 million floor, the marginal benefit of each additional dollar paid may decrease to such an extent that, in terms of furthering the program's overall goals, the payout may be more than is reasonably necessary. In our judgment \$30 million represents a reasonable line at which to draw the floor.¹¹¹ In this

covered action. See *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34-82897 (March 19, 2018), available at <https://www.sec.gov/rules/other/2018/34-82897.pdf>.

¹¹⁰See Claire M. Sylvia, *The False Claims Act: Fraud Against the Government* section 8.4 (updated June 2018) (citing DOJ Relator's Guidelines, reprinted in 11 *False Claims Act and Qui Tam Q. Rev.* 17 (Oct. 1997)); see also *U.S. ex rel. Simmons v. Samsung Electronics Am., Inc.*, 116 F. Supp. 3d 575, 580-81 (quoting and applying the DOJ award guidelines).

¹¹¹See, e.g., *WorldCom, Inc. v. FCC*, 238 F.3d 449, 462 (D.C. Cir. 2001) (citation omitted) (explaining that "[a]n agency has 'wide discretion' in making line-drawing decisions and '[t]he relevant question is whether the agency's numbers are within a zone of reasonableness'"); see also, e.g., *National Shooting Sports Foundation, Inc. v. Jones*, 716 F.3d 200, 214, (D.C. Cir. 2013) (citation omitted) ("An agency 'is not required to identify the optimal threshold with pinpoint precision. It is only required to identify the standard and explain its relationship to the underlying regulatory concerns.'").

regard, we note that utilizing 2016 data on net worth, an individual who received *just the \$30 million floor*—even allowing for a reduction due to taxes—would find himself or herself in the range of the the top 99.5 percentile to 99.9 percentile of the U.S. population by net worth.¹¹² Further, the analysis conducted in Part VII(B)(5) demonstrates for us that even this sum (again, allowing for a reduction due to taxes) if modestly invested should produce a reasonable lifetime income stream for most potential whistleblowers. We thus believe it is appropriate and reasonable to afford the agency a mechanism to more closely scrutinize awards that exceed this floor to determine whether and to what extent they are necessary to reward the whistleblower or incentivize similarly situated whistleblowers.

While we believe that the \$30 million floor should reflect an amount that in most cases would be an extremely attractive inducement for company insiders across many industries to come forward to report securities-law violations, we recognize that future experience in the years ahead could suggest that some adjustment is appropriate.¹¹³ Accordingly, to the extent that our experience with the program in future years may suggest that an adjustment to the floor is appropriate, we propose to establish a mechanism by which the Commission may publicly notice an order announcing such an increase by publishing it in the **Federal Register**.

In considering the appropriateness of the \$30 million floor below which we could not make a downward departure for any payouts stemming from a whistleblower's original information, we also note that the monetary incentive may often be an important reason a whistleblower comes forward, but it is typically not the only reason in our experience to date. In this regard, we note that the monetary incentive is one

component in a package of reporting incentives made available under Section 21F, which includes employment retaliation protections and confidentiality requirements (including, critically, the ability of whistleblowers to remain anonymous through the course of an investigation and resulting enforcement action).¹¹⁴ Indeed, our experience to date has been that approximately one-half of the whistleblowers who have received awards for information regarding their current or former employers took advantage of the opportunity to submit their tips to the Commission anonymously; the ability to report anonymously is an additional attractive feature of our program that helps to encourage company insiders and others to come forward by lessening their fear of potential exposure.

In advancing proposed paragraph (d), we are mindful of our own responsibility to investors and the general public to ensure that the Investor Protection Fund (IPF) that Congress established to fund awards is used efficiently and effectively to achieve the program's objectives.¹¹⁵ We recognize that the Commission has obtained significant monetary judgments against parties in enforcement actions in recent years. Several individual matters involved orders in excess of \$300 million in monetary sanctions in FY–2016 and FY–2017.¹¹⁶ If there were an eligible whistleblower in one of these matters, and assuming the Commission collected the amounts ordered, an exceedingly large whistleblower award, beyond what we believe was intended when the program was established, could result. Multiple such awards would, in turn, cause the funds in the IPF to be diminished. As of the end May 2018, the balance of the IPF for the first time fell below the \$300 million threshold that triggers the statutory replenishment mechanism; this occurred when the Commission paid \$83 million—its largest payout to date on an enforcement action—to three individuals.¹¹⁷

Whenever the reserve in the IPF falls below \$300 million, Section 21F(g)(3) requires the Commission to replenish the IPF.¹¹⁸ These funds otherwise would be directed to the Treasury, where they could be made available for use in funding other valuable public programs.

In light of the foregoing, we believe that, where a whistleblower's original information leads to Commission or related actions that, collectively, involve at least \$100 million in collected monetary sanctions, it is consistent with the interests of investors and the broader public interest that the Commission have a mechanism to ensure that the payout does not exceed an amount beyond what is reasonably necessary to achieve the program's goals and, to the extent that it is, to adjust the award percentage so that it better aligns with those goals. In our view, proposed paragraph (d) would provide such a mechanism if adopted.

We generally anticipate that the Commission's application of proposed paragraph (d) would be based on the unique facts and circumstances of each award matter. We believe that in determining whether a payout exceeds what is appropriate to achieve the program's objectives, the Commission would carefully assess the potential payout in relation to both any unusually detrimental circumstances that impact the whistleblower and the level of financial incentive that may be necessary to encourage future similarly situated whistleblowers to come forward. Facts that would be relevant to determining whether the large payout may be appropriate given the specific whistleblower's circumstances include, for example, whether the whistleblower made an extraordinary and highly unusual sacrifice by coming forward (such as placing himself or herself in legal jeopardy to bring the Commission information that it would otherwise not have been able to obtain or demonstrably suffering career-ending consequences commensurate with the potential large award). In a situation involving two or more individuals acting as a joint whistleblower, we would consider the need to appropriately incentivize individuals even when acting jointly to come forward and report to the Commission.

end of fiscal year 2017, the IPF had approximately \$322 million in it. Thus, from the end of 2010 until the end of fiscal year 2017, approximately \$130 million in awards were paid out. The \$83 million awards that were just paid for a single enforcement action were approximately equal to 64% of the sum of all of the other awards that the Commission had paid up through fiscal year 2017.

¹¹⁸ See 15 U.S.C. 78u–6(g)(3).

¹¹² In 2016, approximately 0.5 percent of the U.S. population had a net worth of \$16.12 million while 0.1 percent of the U.S. population had a net worth of \$43.1 million. See <https://dqyjdj.com/net-worth-brackets-wealth-brackets-one-percent/>.

¹¹³ The economic analysis, *infra* Part VII, discusses various potential annual incomes that a meritorious whistleblower might obtain from investing a \$30 million award payout in various types of annuities. We note that, to the extent that certain whistleblowers may experience significant harmful consequences, such as large financial sacrifices or career-ending ramifications, as a result of their whistleblowing activities, the proposed rule (should it be triggered by the potential payout) would allow the Commission the flexibility to consider these particular facts and circumstances to determine an appropriate award level. Proposed paragraph (d) would allow the Commission similar flexibility in situations involving multiple individuals acting as a joint whistleblower.

¹¹⁴ See 15 U.S.C. 78u–6(d) (anonymity); *id.* 78u–6(h)(1) (employment retaliation protection); *id.* 78u–6(h)(2) (confidentiality protections); see also 17 CFR 240.21F–9(c) and 240.21F–10(c).

¹¹⁵ See Exchange Act section 21F(g), 15 U.S.C. 78u–6(g).

¹¹⁶ See, e.g., SEC Division of Enforcement Annual Report for 2017 (Nov. 15, 2017), available at <https://www.sec.gov/files/enforcement-annual-report-2017.pdf>.

¹¹⁷ At the end of 2010, the IPF had just under \$452 million in it, with no awards having yet been made. See Annual Report on the Dodd-Frank Whistleblower Program, Fiscal Year 2011, at 8 (available at: <https://www.sec.gov/files/whistleblower-annual-report-2011.pdf>), and by the

Facts that would be relevant to determining whether the large payout is necessary and appropriate to encourage future similarly situated whistleblowers to come forward include the industry in which knowledgeable whistleblowers might work, the type of position held by that whistleblower,¹¹⁹ and the compensation levels within that industry,¹²⁰ and whether potential whistleblowers may be located overseas and the likely compensation levels in those countries (to the extent available).¹²¹

In making any downward adjustment to a large award, the Commission would retain discretion to determine the appropriate award amount and proposed paragraph (d) is not intended to mandate any specific reduction or one-size-fits-all result. Nonetheless, we anticipate that in those cases where proposed paragraph (d) is triggered and the Commission determines that a downward adjustment is warranted, the extent to which the Commission exercises its authority to decrease such awards would vary along a sliding scale that corresponds with the overall size of the potential award in dollar terms. For example, we generally anticipate that the nature and magnitude of any decrease applied to an award in the \$35–40 million range would typically be less than the magnitude of the decrease applied to an award in the \$100–\$150 million range. In our view, this sliding-scale approach would make sense because the larger the dollar amount of a payout away from the \$30 million floor, the greater the likelihood of diminishing marginal benefits to the program from each additional dollar paid to the whistleblower. In no event, however, would the Commission decrease an award below the \$30

¹¹⁹ According to the Office of the Whistleblower, of the 55 individuals who have received awards, approximately 10 percent were high-ranking corporate executives at companies of varying sizes. Each whistleblower award determination is based on the facts and circumstances of the case, including the monetary sanctions collected. Based on this subset of prior cases, a large majority of these executives received awards that were under \$5 million.

¹²⁰ We would generally contemplate using publicly available data on compensation levels in making this determination. Award applicants could submit information as part of their award application to the extent that they are concerned that the proposed rule might be implicated by their application.

¹²¹ The existence of any of these facts would not foreclose the Commission from finding that any large payout that exceeded the \$30 million floor in proposed rule 21F-6(d) was nonetheless not reasonably necessary to achieve the program's goals and to thus reduce the award to an appropriate amount. Conversely, the absence of special circumstances or extraordinary sacrifices does not mean that the Commission would in all cases determine to reduce the amount of the award.

million floor (or whatever future floor the Commission might establish by order) using the authority afforded to the Commission pursuant to the proposed rule.

We preliminarily contemplate that proposed paragraph (d) would be applied in any instance where the Commission determines to process two or more separate covered actions together in the same final order, provided that both actions involve the same information submitted by the whistleblower. We would similarly expect that the Commission could apply this rule if, after having made an award to a whistleblower, the Commission subsequently processes an award application for that whistleblower (either in connection with a second covered action or a related action) and the subsequent award application is based on the same general information from the whistleblower as the earlier award determination.

We do not believe that the proposed rule conflicts with the statutory directive in Section 21F(c)(1)(B)(ii)¹²² that “[i]n determining the amount of an award,” the Commission “shall not take into consideration the balance of the [IPF].” This statutory provision prevents the Commission from adjusting an individual award based on the availability of money in the IPF. Critically, proposed paragraph (d) would not permit the Commission to consider the balance of the IPF when determining whether an award should be reduced. Rather, as noted above, paragraph (d) would only authorize the Commission to consider whether a potential award payout exceeds an amount that is reasonably necessary to achieve the program's goals. In this way, proposed paragraph (d) would provide a mechanism for the Commission to ensure that it is granting awards in an efficient and effective manner that serves the “twin goals of protecting investors and increasing public confidence in the markets”¹²³ and our adoption of this proposed rule would be within our authority to adopt “additional relevant [award] factors.”¹²⁴ To make this clear, we are adding a provision to proposed paragraph (d) stating that the Commission shall not take into account the balance of the IPF in determining whether to make a downward adjustment under the proposed paragraph or in making any

¹²² 15 U.S.C. 78u-6(c)(1)(B)(ii).

¹²³ 76 FR 34300, 34356/2.

¹²⁴ Exchange Act section 21F(c)(1)(B)(iv); 15 U.S.C. 78u-6(c)(1)(B)(iv).

other award determinations under Exchange Act Rule 21F-6.

Finally, the proposed rule would provide certain standards for the Commission to consider in determining whether to issue an order that adjusts the \$2 million award threshold, the \$100 million threshold, and the \$30 million award(s) floor under proposed paragraphs (c) or (d), respectively. Specifically, the proposed rule would state that in issuing such an order “the Commission shall consider (among other factors that it deems relevant) whether the adjustment is necessary or appropriate to encourage whistleblowers to come forward and the potential impact the adjustments might have on the Investor Protection Fund.”

* * * * *

Guidance regarding the meaning of “unreasonable delay” in existing Rule 21F-6(b)(2) and proposed Rule 21F-6(c). In proposing the foregoing modifications to the criteria that govern award determinations, we believe it is appropriate to provide guidance on our approach regarding “unreasonable delay” as relates to an award determinations. We believe that any delay in reporting to the Commission beyond 180 days is presumptively unreasonable. In light of the Supreme Court's recent decisions in *Kokesh v. SEC*¹²⁵ and *Gabelli v. SEC*,¹²⁶ delay on the part of a whistleblower can have a debilitating impact on the Commission's ability to make a full recovery of ill-gotten gains and to obtain civil penalties and, in this way, delay may impair our ability to return funds to investors who have been harmed by the wrongdoing. Further, although this 180-day presumption is not expressly codified in either Exchange Rule 21F-6(b)(2),¹²⁷ which deals with “unreasonable delays,” or the rule that we are proposing, we would typically expect to treat any delay exceeding this period as unreasonable for purposes of both rules going forward. That said, in assessing unreasonable delay under both the existing rule and the proposed rule, we would still consider any highly unusual facts and circumstances of a particular award application in assessing unreasonable delay, such that the general presumption of “unreasonable delay” might be overcome in certain rare instances. Finally, we caution that

¹²⁵ 137 S. Ct. 1635 (2017) (providing that the Commission must bring any enforcement action seeking to obtain disgorgement within five years of the date the violation occurred).

¹²⁶ 568 U.S. 442 (2013) (providing that the Commission must bring any enforcement action seeking to obtain civil penalties within five years of the date the violation occurred).

¹²⁷ 17 CFR 240.21F-6(b)(2).

shorter periods of delay (*i.e.*, less than 180 days) may also readily qualify as unreasonable depending on the particular facts and circumstances at issue, including, for example, whether the violations were ongoing, whether investors continued to experience harm or the whistleblower continued to profit from the wrongdoing during the period of the whistleblower's delay or whether the delay had a discernable impact on the monetary sanctions that were ordered in the enforcement action. Put simply, a whistleblower who delays reporting to the Commission should expect that his or her "reward" for reporting might well be negatively impacted.

Request for Comment

10. With respect to proposed paragraph (c), is it appropriate to consider increasing smaller awards and would doing so help to further incentivize insiders and others to come forward with tips? If so, is the \$2 million ceiling for invoking the rule appropriate or is it either too high or too low? Please explain.

11. With respect to proposed paragraph (c), should the enhancement authority be unavailable in the situation where a whistleblower's award was reduced under Rule 21F-6(b) or Rule 21F-16? Please explain.

12. Would the proposed amendments to paragraph (d) of Rule 21F-6 appropriately balance the Commission's various programmatic interests, in particular encouraging company insiders and others to come forward while also ensuring that awards are not unnecessarily large beyond an amount that is sufficient to compensate whistleblowers and achieve the Commission's law-enforcement interests? If not, is there an alternative formulation of the proposed rule that the Commission should adopt to guard against payouts that are in excess of amounts that are reasonably necessary to further the Commission's goals?

13. With respect to proposed paragraph (d), are the \$100 million collected sanctions threshold and the \$30 million floor appropriate? Is there another threshold or floor that the Commission should adopt? If so, please explain what should be the appropriate threshold or floor.

14. In considering whether to make a downward adjustment to a potential award under proposed paragraph (d), is it reasonable for the Commission to consider the likely amount of the award in relation to the whistleblower program's goals of rewarding meritorious whistleblowers and

sufficiently incentivizing future similarly situated whistleblowers?

a. In the release, we explain that facts that would be relevant to determining whether the large payout may be appropriate given the specific whistleblower's circumstances include, for example, whether the whistleblower made an extraordinary and highly unusual sacrifice by coming forward (such as placing himself or herself in legal jeopardy to bring the Commission information that it would otherwise not have been able to obtain or demonstrably suffering career-ending consequences commensurate with the potential large award). Are there other (or additional) considerations that the Commission should assess in making that determination?

b. Also in the release, we explain that facts that would be relevant to determining whether the large payout is needed and appropriate to encourage future similarly situated whistleblowers to come forward include the industry in which knowledgeable whistleblowers might work, the type of position held by that whistleblower, and the compensation levels within that industry, and whether potential whistleblowers may be located overseas and the likely compensation levels in those countries (to the extent available). Are there other (or additional) considerations that the Commission should assess in making that determination?

15. In the context of two or more individuals acting together as a whistleblower, should the \$30 million floor in proposed paragraph (d) apply where the aggregate award to both individuals exceeds \$30 million or where the award to each individual would potentially exceed \$30 million? Please explain the reasons for your views.

16. In determining whether the \$100 million threshold has been met for application for the proposed rule, should the Commission consider not just the likely payout in any Commission covered action that results from the original information that the whistleblower provided to the Commission, but also any potential payout that might result from any related actions? Why or why not?

17. As discussed above, the Commission could apply proposed paragraph (d) if, after having made an award to a whistleblower, the Commission subsequently processes an award application for that whistleblower (either in connection with a second covered action or a related action) and the subsequent award application is based on the "same

general information" from the whistleblower as the earlier award determination. Is there a different standard that the Commission should apply for invoking the rule in these situations? In particular, should the proposed rule be applicable in either a narrower or a broader set of circumstances where information provided by a whistleblower results in multiple actions? Please explain the reasons for your view.

18. Proposed paragraph (d) would permit the Commission to consider the potential dollar amount of the award when applying each of the existing award criteria in Exchange Act Rule 21F-6(a) and 6(b), provided that the Commission determined that the likely total payout to the whistleblower resulting from the original information that he or she provided was \$100 million or greater. As explained above, this would allow the Commission to consider each award factor in dollar terms rather than to apply exclusively a percentage assessment that does not take into account what those percentage adjustments would translate to in actual dollars paid to the whistleblower.

a. Should the Commission consider the dollar value of an award that involves the collection of at least \$100 million in monetary sanctions in determining the size of the award? Why or why not?

b. As part of this rulemaking, should we expand this approach so that it would cover all awards considered under Exchange Act Rule 21F-6, even those below the \$100 million threshold? Would such a revision to the award determination approach under Exchange Act Rule 21F-6 allow us to better assess each enhancement or reduction in dollar terms (as well as percentage terms) so that we could more realistically and concretely assess the impact of each award factor on the overall award to ensure that we are appropriately rewarding the whistleblower and incentivizing future whistleblowers? Why or why not?

19. With respect to the interpretive guidance concerning "unreasonable delay," is the 180-day rebuttable presumption of unreasonable delay appropriate? Does establishing such a presumption help to put individuals on notice that they should come forward without an inappropriate delay? Please explain.

E. Proposed Amendment to Exchange Act Rule 21F-2¹²⁸ Addressing Whistleblower Status and Certain Threshold Criteria Related to Award Eligibility, Heightened Confidentiality From Identity Disclosure, and Employment Anti-Retaliation Protection¹²⁹

As adopted by the Commission in 2011, Rule 21F-2(a)¹³⁰ describes the qualifications to be a whistleblower for purposes of the award program and heightened confidentiality protections, and Rule 21F-2(b)¹³¹ provides a separate, broader definition of the term that is applicable to the employment anti-retaliation provisions in Section 21F(h)(1) of the Exchange Act.¹³² Specifically, unlike Rule 21F-2(a), Rule 21F-2(b) defines a whistleblower not by reference to the statutory definition of the term in Exchange Act Section 21F(a)(6)¹³³—*i.e.*, as one who reports to the Commission—but instead by reference to the protected activities described in Section 21F(h)(1)(A)(i)–(iii), including the internal reporting described in clause (iii) of that provision.¹³⁴ The Supreme Court recently held in *Digital Realty Trust, Inc. v. Somers*,¹³⁵ however, that a whistleblower under Section 21F of the Exchange Act must report a possible securities law violation to the Commission in order to qualify for employment retaliation protection under Section 21F(h)(1), and that the Commission’s rule interpreting the term more broadly in connection with Section 21F’s retaliation protections was therefore not entitled to deference.¹³⁶ The Court reasoned that Dodd-Frank’s definition of “whistleblower,” codified in Section 21F(a)(6), requires such a report to the Commission as a prerequisite for anti-retaliation protection, and that this definition is “clear and conclusive.”¹³⁷ The Court also determined that strict application of the definition’s reporting requirement

in the employment anti-retaliation context is consistent with Congress’s core objective of “‘motiv[at]ing people who know of securities law violations to tell the SEC.’”¹³⁸

Accordingly, we believe that it is appropriate to amend Rule 21F-2 to conform to the Supreme Court’s construction of Section 21F. Proposed Rule 21F-2(a) would provide a uniform definition for whistleblower status to apply for all purposes under Section 21F—award eligibility, confidentiality protections, and anti-retaliation protections—consistent with the Supreme Court’s application of the whistleblower definition in Section 21F(a)(6), which defines the term “whistleblower” as any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.¹³⁹

Proposed Rule 21F-2(a) would track this whistleblower definition by conferring whistleblower status only on (i) an individual (ii) who provides the Commission with information “in writing” and only if (iii) “the information relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.” We address these three points in turn.

First, proposed Rule 21F-2(a)(2) would provide whistleblower status to individuals and not to legal entities (such as corporations). This proposed provision would carry forward the similar language in existing Rule 21F-2(a)(1) without substantive change. We believe this position follows from the use of the term “individual” in the whistleblower definition in Section 21F(a)(6) and is consistent with the focus in Section 21F(h)(1)(A) on retaliation by employers in the terms and conditions of employment.

Second, proposed Rule 21F-2(a)(1) would afford whistleblower status only to an individual who provides the Commission with information “in writing.” As the Supreme Court recognized,¹⁴⁰ the whistleblower definition in Section 21F(a)(6) gives the Commission express authority to establish the required “manner” of

reporting by rule or regulation. In the awards eligibility and confidentiality contexts, our whistleblower rules (specifically, Rule 21F-2(a)(2)¹⁴¹ and Rule 21F-9(a)¹⁴²) already require that information be provided to the Commission in writing either through the online portal at www.sec.gov or by mailing or faxing a Form TCR (Tip, Complaint or Referral) to the Commission’s Office of the Whistleblower. We now believe it is appropriate to exercise our discretion to require that an individual provide information “in writing” to the Commission to qualify as a “whistleblower,” not only in the awards and confidentiality context but also in the anti-retaliation context.¹⁴³ Our experience to date in the awards context suggests that requiring that information be provided in writing presents, at most, a minimal burden to individuals who want to blow the whistle to the Commission while facilitating the staff’s ability to track its use of the information. Moreover, if we recognized additional manners of reporting for anti-retaliation purposes (such as placing a telephone call), the Commission’s staff could be ensnared by disputes in private anti-retaliation lawsuits over what information was provided to whom on what dates. Requiring that any reporting be done in writing obviates these difficulties.¹⁴⁴

Third, proposed Rule 21F-2(a)(1) would afford whistleblower status only to an individual who provides the Commission with information that “relates to a possible violation of the

¹⁴¹ 17 CFR 240.21F-2(a).

¹⁴² 17 CFR 240.21F-9(a).

¹⁴³ We believe that Section 21F(a)(6) and *Digital Realty* do not require a uniform “manner” of providing information for all purposes under Section 21F, and that we have discretion whether to specify different manners for the awards, confidentiality, and retaliation contexts. But we believe that specifying a uniform “manner” of providing information—that is, in writing—for all three contexts is appropriate for the reasons that follow in the discussion above. See also 15 U.S.C. 78u-6(c)(2)(D) (“No award under subsection (b) shall be made . . . to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.”).

¹⁴⁴ We believe it appropriate not to enumerate the activities in Section 21F(h)(1)(A)(ii) (specifically, “initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission”) as additional manners of providing information to the Commission under Section 21F(a)(6). See *Digital Realty*, 138 S. Ct. at 781 (“Nothing in today’s opinion prevents the agency from enumerating additional means of SEC reporting—including through testimony protected by clause (ii)” of Section 21F(h)(1)(A)). Given clause (ii)’s cross-reference to “such information” provided under clause (i), we believe that clause (ii) is best read as extending employment retaliation protections to acts of continued cooperation by a person who has already provided information to the Commission.

¹²⁸ 17 CFR 240.21F-2.

¹²⁹ The Commission anticipates that this proposed rule change, if adopted, would apply as follows: With respect to employment retaliation claims, the proposed rule would apply only to employment-retaliation violations occurring after the effective date of the rules; with respect to award eligibility and confidentiality protections, the proposed rule would apply only to information about a potential securities law violation that is submitted for the first time by an individual after the effective date of the rules.

¹³⁰ 17 CFR 240.21F-2(a).

¹³¹ 17 CFR 240.21F-2(b).

¹³² 15 U.S.C. 78u-6(h)(1).

¹³³ 15 U.S.C. 78u-6(a)(6).

¹³⁴ 15 U.S.C. 78u-6(h)(1)(A)(i)–(iii).

¹³⁵ 138 S. Ct. 767 (2018).

¹³⁶ *Digital Realty*, 138 S. Ct. at 781–82.

¹³⁷ *Id.*

¹³⁸ *Id.* at 777 (quoting S. Rep. No. 111–176, at 38 (2010)).

¹³⁹ 15 U.S.C. 78u-6(a)(6).

¹⁴⁰ *Digital Realty*, 138 S. Ct. at 781 (“[T]he statute expressly delegates authority to the SEC to establish the ‘manner’ in which information may be provided to the Commission by a whistleblower.”) (citing Section 21F(a)(6)).

federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.” Much of this language carries over from existing Rule 21F–2¹⁴⁵ and simply reflects the extent to which that provision already tracked the whistleblower definition in Section 21F(a)(6). At the same time, we are mindful of the whistleblower definition’s focus on “information relating to a violation of the securities laws”¹⁴⁶ and of the Supreme Court’s admonition that Section 21F, as enacted by Dodd-Frank, is “a law concerned only with encouraging the reporting of ‘securities law violations,’” as opposed to other types of misconduct.¹⁴⁷ Consistent with that statutory language and purpose, we believe it is appropriate to clarify what is implicit in the phrase “securities laws”—namely, that whistleblower status (and thus Section 21F’s employment retaliation protection) extends only to reports of possible violations of federal law, not state law, and that it extends broadly to reports of possible violations of any law, rule, or regulation subject to the jurisdiction of the Commission.¹⁴⁸ Although Section 3(a)(47) of the Exchange Act defines the phrase “securities laws” more narrowly as encompassing only certain statutes,¹⁴⁹ by its terms that definition only applies “unless the context otherwise requires.”¹⁵⁰ We believe that the context of Section 21F requires departing from that definition, given the textual clues that Congress designed Section 21F to encompass whistleblowing with respect to the full sweep of federal securities statutes, rules, and regulations,¹⁵¹ given

Congress’s core objective of “‘motiv[at]ing people who know of securities law violations to tell the SEC,’”¹⁵² and given the many securities regulations whose reported violations would fail to trigger award eligibility and anti-retaliation protection if “securities laws” were more narrowly defined.¹⁵³

Additionally, proposed Rule 21F–2(a) would confer whistleblower status “as of the time that” an individual meets all three of the above conditions. We believe that this language would clarify that whistleblower status is conferred only prospectively and not retrospectively once all three conditions to achieve whistleblower status are met.

Proposed Rule 21F–2(b), (c), and (d) would specify how the whistleblower status conferred by subsection (a) operates across the various contexts of awards eligibility, confidentiality protections, and anti-retaliation protections, respectively. Much like current Rule 21F–2(a), proposed Rule 21F–2(b) would specify that, to be eligible for an award in a Commission action based on information provided to the Commission, a person “must comply with the procedures and the conditions described in Rules 21F–4, 21F–8, and 21F–9 (respectively, sections 240.21F–4, 240.21F–8, and 240.21F–9 of this chapter).”¹⁵⁴ Proposed Rule 21F–

2(b) reiterates, “You should carefully review those rules before you submit any information that you may later wish to rely upon to claim an award.” We believe that this proposed language will adequately alert individuals who intend to claim an award that they must comply with the cross-referenced rules, especially proposed Rule 21F–9(a) and (b), which require the submission of information to the Commission either on Form TCR or through *www.sec.gov*, accompanied by a declaration sworn under penalty of perjury that the information submitted is true and correct.¹⁵⁵ In our experience to date in the awards context, compliance with existing Rule 21F–9(a) has proven to be beneficial for enabling the Commission to determine, in a precise and reliable manner, which persons submitted which information on which dates.

Proposed Rule 21F–2(c) would specify that, to qualify for confidentiality protections afforded by Section 21F(h)(2) of the Exchange Act¹⁵⁶ based on information provided to the Commission, a person “must comply with the procedures and the conditions described in” Rule 21F–9(a)—that is, must submit information using the Commission’s online portal or Form TCR.¹⁵⁷ We believe it is appropriate to adopt this provision both to codify the current practice of the Commission’s staff and to clarify for future whistleblowers the conditions for receiving confidentiality protections. Further, requiring whistleblowers to adhere to the procedures specified in Rule 21F–9(a) helps the staff to appreciate quickly and clearly which whistleblowers are seeking the heightened confidentiality protections provided by Section 21F(h)(2) of the Exchange Act when, among other things, sharing the whistleblowers’ information with other governmental agencies.¹⁵⁸

¹⁵² *Digital Realty*, 138 S. Ct. at 777 (quoting S. Rep. No. 111–176, at 38).

¹⁵³ See *American Bankers Assn v. SEC*, 804 F.2d 739, 753 (D.C. Cir. 1986) (“We read the context clause [in Section 3 of the Exchange Act] as meaning only that if in the case of a frequently occurring statutory term, its immediate context suggests that a literal application of the statutory definition would produce absurd consequences or run counter to the obvious thrust of the section, the agency may appropriately modify the definition.”) (emphasis added).

¹⁵⁴ We note that, under the Commission’s existing rules, in order to make an award in connection with a related action brought by one of the regulatory or law-enforcement entities listed in Rule 21F–3(b)(1) (17 CFR 240.21F–3(b)(1)), we must determine that the same original information that the whistleblower gave to the Commission also led to the successful enforcement of the related action under the same criteria that govern awards made in connection with Commission actions (see Rule 21F–3(b)(2), 17 CFR 240.21F–3(b)(2)). This means that a whistleblower must comply with the other procedures and conditions described in Rules 21F–4 and 21F–8 (17 CFR 240.21F–4 and 240.21F–8) for a related action in the same manner and to the same degree as is required for the Commission action to which the other entity’s action is related. For example, under Rule 21F–4(c) (17 CFR 240.21F–4(c)) the whistleblower must provide the same original information that he or she provided to the Commission directly to the other regulatory or law-enforcement entity and that the information the whistleblower gave to the other entity must lead to successful enforcement of that entity’s action using the same criteria described in Rule 21F–4(c)(1)–(3) (17 CFR 240.21F–4(c)(1)–(3)) for Commission enforcement actions. However, we are proposing to modify this requirement through our amendments

to Exchange Act Rule 21F–3 (17 CFR 24.21F–3) to also permit an award in situations where the Commission itself shares the whistleblower’s information with the other agency.

¹⁵⁵ We believe that additional express authority in this regard is conferred by Section 21F(c)(2)(D) of the Exchange Act. See 15 U.S.C. 78u–6(c)(2)(D) (“No award under subsection (b) shall be made . . . to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.”).

¹⁵⁶ 15 U.S.C. 78u–6(h)(2).

¹⁵⁷ 17 CFR 240.21F–9(a).

¹⁵⁸ We are proposing to make a conforming amendment to Exchange Act Rule 21F–7(a) (17 CFR 240.21F–7(a)) to acknowledge the proposed requirement that a whistleblower must submit information according to the procedures specified in Exchange Act Rule 21F–9(a) (17 CFR 240.21F–9(a)) in order to qualify for the heightened confidentiality protections provided for in Exchange Act 21F(h)(2), 15 U.S.C. 78u–(h)(2).

¹⁴⁵ 17 CFR 240.21F–2(a)(1).

¹⁴⁶ 15 U.S.C. 78u–6(a)(6) (emphasis added).

¹⁴⁷ *Digital Realty*, 138 S. Ct. at 781 (quoting S. Rep. No. 111–176, at 38).

¹⁴⁸ As proposed, Rule 21F–2 would not repeat the parenthetical “(including any law, rule, or regulation subject to the jurisdiction of the Commission)” when the phrase “federal securities laws” reappears later in the rule. This would be strictly for concision and ease of reading, and not to imply any difference of meaning.

¹⁴⁹ Section 3(a)(47) of the Exchange Act states that the term “securities laws” means the Securities Act of 1933 (15 U.S.C. 78a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Sarbanes-Oxley Act of 2002, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b *et seq.*), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*).

15 U.S.C. 78c(a)(47).

¹⁵⁰ 15 U.S.C. 78c(a).

¹⁵¹ See, e.g., Section 21F(h)(1)(A)(iii) (protecting “disclosures that are required or protected under . . . any other law, rule, or regulation subject to the jurisdiction of the Commission”).

Proposed Rule 21F–2(d) would revise existing Rule 21F–2(b) to define the scope of anti-retaliation protections in a way that mirrors the Supreme Court’s authoritative reading of Section 21F. As the Court explained in *Digital Realty*, the whistleblower definition in Section 21F(a)(6) “first describes *who* is eligible for protection—namely, a whistleblower who provides pertinent information ‘to the Commission,’ ”¹⁵⁹ while “[t]he three clauses of [Section 21F(h)(1)(A)] then describe what *conduct*, when engaged in by a whistleblower, is shielded from employment discrimination.”¹⁶⁰ Consistent with that reading, proposed Rule 21F–2(d) would explain both who is eligible for protection as a whistleblower and also what conduct by such a person is protected from employment retaliation, by requiring a person to satisfy several criteria listed in paragraph (d)(1).

In explaining who is eligible for employment retaliation protection, proposed Rule 21F–2(d)(1)(i) would first require that a person “qualify as a whistleblower under subsection (a) before experiencing the retaliation” for which redress is sought. We believe that this proposed rule implements the most natural reading of Section 21F(h)(1)(A), which prohibits retaliation “against[] a *whistleblower*” (emphasis added)¹⁶¹ and also follows from the Supreme Court’s focus in *Digital Realty* on whether the plaintiff had reported to the Commission before the alleged retaliation.¹⁶² In addition, proposed Rule 21F–2(d)(1)(ii) would carry forward the requirement in existing Rule 21F–2(b)(1)(i)¹⁶³ that the person “reasonably believe” that the information provided relates to a possible securities law violation.

In explaining what conduct is protected from retaliation, Rule 21F–2(d)(1)(iii) requires that a person must perform a “lawful act” that both is performed in connection with any of the activities described in Section 21F(h)(1)(A)(i)–(iii)¹⁶⁴ and “relate[s] to the subject matter of” the person’s submission to the Commission under proposed Rule 21F–2(a).¹⁶⁵ We believe

that extending protection to all such lawful acts is most consistent with the text of Section 21F(h)(1)(A), which prohibits retaliation not simply for the activities described in Section 21F(h)(1)(A)(i)–(iii) but for “any lawful act done by the whistleblower” in performing those activities. Given the breadth of Congress’s language, we preliminarily anticipate that anti-retaliation protection under proposed Rule 21F–2(d)(1)(iii) will properly encompass actions that are preparatory to the conduct described in Section 21F(h)(1)(A)(i)–(iii), such as printing and completing a Form TCR and depositing the completed form in a mailbox. We also preliminarily anticipate that protected conduct under proposed Rule 21F–2(d)(1)(iii) will not be limited strictly to reports to the Commission, since that limitation would render clauses (ii) and (iii) of Section 21F(h)(1)(A) superfluous, given clause (i)’s express coverage of Commission reports.¹⁶⁶

At the same time, proposed Rule 21F–2(d)(1)(iii) would limit anti-retaliation protection to lawful acts that “relate to the subject matter” of the person’s submission to the Commission under proposed Rule 21F–2(a). Given the silence of Section 21F and the Supreme Court’s reluctance to address whether any subject-matter connection should be required,¹⁶⁷ we believe it appropriate to clarify that, to receive protection, a lawful act must relate to the subject matter of the submission to the Commission.¹⁶⁸

otherwise to offer guidance as to its meaning. We note that the term does appear in a number of federal employment anti-retaliation statutes, but it does not appear that any of these statutes define the term. See, e.g., Marcella Auerbachian and Michael W. Paddock, *Legal Ethics: Lines in the Sand—The Intersection of Bringing and Defending a Qui Tam False Claims Act Case*, 20141006 AHLA Seminar Papers 19 (Oct. 6, 2014) (available on Westlaw) (“The FCA does not define ‘lawful acts’”).

¹⁵⁹ We are aware of one circuit decision suggesting in dicta, before the *Digital Realty* decision, that anti-retaliation protection under Section 21F(h)(1) should be limited exclusively to reports to the Commission. See *Martensen v. Chicago Stock Exch.*, 882 F.3d 744, 746 (7th Cir. 2018). We preliminarily believe that, in this respect, *Martensen* is inconsistent with the Supreme Court’s subsequent decision in *Digital Realty*. See 138 S. Ct. at 779 (“With the statutory definition incorporated, clause (iii) protects a whistleblower who reports misconduct *both* to the SEC and to another entity, but suffers retaliation because of the latter, non-SEC, disclosure.”).

¹⁶⁰ See *Digital Realty*, 138 S. Ct. at 780–81.

¹⁶¹ We preliminarily believe that this clarification helps avoid the incongruous result that a person could qualify just once as a whistleblower and then receive lifetime protection for any non-Commission reports described in clause (iii) with respect to distinct securities law violations that occur years later. Given the Supreme Court’s instruction that Congress’s core objective was to encourage reports to the Commission, 138 S. Ct. at 777, it makes more

Proposed Rule 21F–2(d)(2) would address a timing issue under Section 21F’s anti-retaliation provisions by clarifying that a person does not need to qualify as a whistleblower under Rule 21F–2(a) before performing the lawful act described in Rule 21F–2(d)(1)(iii), in order to be eligible for anti-retaliation protection. In other words, whether conduct is protected from retaliation would not depend on whether the person performing that conduct reported to the Commission beforehand or afterward (in order to qualify as a whistleblower). Section 21F is silent on this issue, and we believe that this clarification will help maintain appropriate incentives for persons to make the internal reports described in Section 21F(h)(1)(A)(iii) before or at the same time as reporting to the Commission. Proposed Rule 21F–2(d)(2) would reiterate, however, that a person must qualify as a whistleblower under proposed Rule 21F–2(a) before experiencing retaliation. Thus, for example, an individual who experiences repeated retaliation for a prior lawful act, and who first reports to the Commission while the retaliation is still ongoing, would be protected with respect to any retaliation experienced after the Commission report but not for any retaliation experienced before the Commission report.

Proposed Rule 21F–2(d)(3) would carry forward existing Rule 21F–2(b)(1)(iii)¹⁶⁹ without substantive change. That provision states that the anti-retaliation protections apply regardless of whether a person satisfies the procedures and conditions to qualify for an award described in Rules 21F–4, 21F–8, and 21F–9 (such as, for example, submitting the information to the Commission using the electronic TCR portal on the Commission’s website or completing the required declaration as to the accuracy of the information submitted in the whistleblower’s tip).

Proposed Rule 21F–2(d)(4) would carry forward existing Rule 21F–2(b)(2)¹⁷⁰ without substantive change. That provision states that the retaliation prohibition in Section 21F(h)(1)¹⁷¹ and the rules thereunder shall be enforceable in an action or proceeding brought by the Commission.

To illustrate how we anticipate proposed Rule 21F–2 would operate in practice, consider the following hypothetical scenario: An employee at a

sense that such a person needs to return to the Commission to report the later violations in order to receive protection.

¹⁶⁹ 17 CFR 240.21F–2(b)(1)(iii).

¹⁷⁰ 17 CFR 240.21F–2(b)(2).

¹⁷¹ 15 U.S.C. 78u–6(h)(1).

¹⁵⁹ 138 S. Ct. at 777 (quoting Section 21F(a)(6), 15 U.S.C. 78u–6(a)(6)).

¹⁶⁰ *Id.* (citing Section 21F(h)(1)(A)(i)–(iii), 15 U.S.C. 78u–6(h)(1)(A)(i)–(iii)).

¹⁶¹ 15 U.S.C. 78u–6(h)(1)(A).

¹⁶² See 138 S. Ct. at 778 (“Somers did not provide information ‘to the Commission’ before his termination, § 78u–6(a)(6), so he did not qualify as a ‘whistleblower’ at the time of the alleged retaliation. He is therefore ineligible to seek relief under § 78u–6(h).”).

¹⁶³ 17 CFR 240.21F–2(b)(1)(i).

¹⁶⁴ 15 U.S.C. 78u–6(h)(1)(A)(i)–(iii).

¹⁶⁵ We are not proposing to define the term “lawful act” under Section 21F(h)(1)(A) or

publicly traded issuer overhears a conversation by colleagues discussing a scheme to create an artificial boost for reported sales. The employee investigates and discovers that sales invoices are being generated without any corresponding movement of inventory, and then reports the possible misconduct to the issuer's chief compliance officer. But a week passes without any action being taken on the report. If the Commission then receives an email from that employee in which the employee reports the same possible misconduct, and in sending the email the employee reasonably believed that the report relates to a possible securities laws violation, then the employee would qualify as a whistleblower under Rule 21F-2(a) and would be eligible for anti-retaliation protections under Rule 21F-2(d)(1)(i)-(ii) as of the time the employee provides the information to the Commission. Assuming that the employee's internal report was within the scope Section 806(a) of Sarbanes-Oxley, that internal report itself would be a protected "lawful act" under Rule 21F-2(d)(1)(iii). The fact that the employee made the internal report before the Commission report would not make a difference for anti-retaliation protections under Rule 21F-2(d)(2). That said, if the employee wanted to be eligible for an award under Rule 21F-2(b) and to qualify for confidentiality protections under Rule 21F-2(c), he or she would need to make his or her first report of that information to the Commission using Form TCR or through the online portal at www.sec.gov, as required by Rule 21F-9(a), and not through an email to the Commission. To qualify for an award, the employee would additionally need to comply with the procedures and the conditions described in Rules 21F-4, 21F-8, and 21F-9.

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20. Is it reasonable to require that an individual provide information to the Commission "in writing" to qualify as a whistleblower? Is this approach either too restrictive or too broad? Are there situations in which only some other form of communication would be possible or preferred? Please explain.

21. Should our whistleblower rules enumerate any other "manner" of providing information to the Commission for purposes of anti-retaliation protection? For example, should our rules enumerate testifying under oath in an investigation or judicial or administrative action of the Commission as an additional "manner"

of providing information to the Commission?¹⁷²

22. Does the proposed rule reasonably require that the lawful acts done by the whistleblower must relate to the subject matter of the whistleblower's submission to the Commission in order for the employment retaliation protections to apply? Should a different standard apply? Why or why not?

23. Does the proposed rule appropriately address the timing of an individual's report to the Commission relative to the protected conduct and to any retaliation?

24. In determining the amount of an award, the Commission considers participation in internal compliance systems. Given the change in anti-retaliation protections, should the Commission still use this criteria in determining the size of whistleblower awards? Why or why not?

25. Would it be necessary or appropriate to specify additional types of misconduct that fall within the prohibition in Section 21F(h)(1)(A) against "any other manner [of] discriminat[ion] against[] a whistleblower"? For example, should our rules clarify that if an employer rejects a prospective employee, or a past employer attempts to cause such rejection, because that individual had engaged in activity protected under Rule 21F-2, this would be a form of retaliation covered by Section 21F(h)(1)(A)?¹⁷³

¹⁷² See *Digital Realty*, 138 S. Ct. at 781 ("Nothing in today's opinion prevents the agency from enumerating additional means of SEC reporting—including through testimony protected by clause (ii)" of Section 21F(h)(1)(A)).

¹⁷³ The Supreme Court has held that a former employer's retaliatory negative reference was actionable under Title VII. See, e.g., *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997). Other federal anti-retaliation statutes have been held to cover such conduct, which is often referred to as "blacklisting." See Black's Law Dictionary (10th ed. 2014) (defining "blacklist" as "[t]o put the name of (a person) on a list of those who are disfavored and are therefore to be avoided or punished," and giving as an example, "the firm blacklisted the former employee"). The Department of Labor's regulations implementing Section 806 of the Sarbanes-Oxley Act of 2002 expressly prohibit "blacklisting" of an employee, 29 CFR 1980.102(a), and define an "employee" as "an individual presently or formerly working for a covered person, an individual applying to work for a covered person, or an individual whose employment could be affected by a covered person." *Id.* § 1980.101(g). In relevant part, Section 806 of the Sarbanes-Oxley Act is similar to Section 21F(h), providing that no covered entity or person may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment, and, under Section 21F(h)(1)(A), that no employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment.

*F. Proposed Amendment to Rule 21F-8 To Add New Paragraph (d) To Provide the Commission With Additional Flexibility Regarding the Forms Used in Connection With the Whistleblower Program (and Corresponding Amendments to Rule 21F-10, Rule 21F-11, and Rule 21F-12)*¹⁷⁴

Currently an applicant seeking to submit information to the Commission in order to qualify as a whistleblower (for purposes of the award and confidentiality components of the whistleblower program) must submit this information by using one of two methods: (1) By providing the information through an online portal on the Commission's website, or (2) by submitting the paper Form TCR that was adopted by the Commission as part of the original whistleblower rulemaking in 2011.¹⁷⁵ Periodically the Commission has determined that it would be beneficial to modify the online portal. However, this has resulted in discrepancies forming over time between the information collected through the online portal and that elicited by Form TCR.

To provide the Commission with the ability to make timely corresponding adjustments to the Form TCR when the Commission determines to modify the online portal, the Commission proposes to modify Exchange Act Rule 21F-8¹⁷⁶ by adding a new paragraph (d)(1) providing that the Commission will periodically designate on the Commission's web page a Form TCR

Both statutes broadly prohibit "any . . . manner" of discrimination in the terms or conditions of employment. See also *Wanamaker v. Columbian Rope Co.*, 108 F.3d 462, 466 (2d Cir. 1997) (noting that former employees can state a claim for retaliation under the Age Discrimination in Employment Act for "blacklist[ing]"); *Boscarello v. Audio Video Sys., Inc.*, 784 F. Supp. 2d 577, 582 (E.D. Va. 2011) (former contractor stated a retaliation claim under the Fair Labor Standards Act against former employer by alleging blacklisting).

¹⁷⁴ The Commission anticipates that proposed Rule 21F-8(d)(1), if adopted, would apply only in connection with submissions of information that are made by an individual after the effective date of the proposed rules. Further, the Commission preliminarily anticipates that proposed Rule 21F-8(d)(2), if adopted, would apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (see Exchange Act Rule 21F-10(a), 17 CFR 240.21F-10(a)) posted on or after effective date of the final rules.

¹⁷⁵ See Exchange Act Rule 21F-9(a), 17 CFR 240-21F-9(a). Under the proposed amendments to Exchange Act Rule 21F-2, 17 CFR 240.21F-2, these procedures will remain necessary in order for a whistleblower to be eligible for an award and to obtain the confidentiality protections afforded by Exchange Act Section 21F(h)(2), 15 U.S.C. 78u-6(h)(2), even though an individual's status as a "whistleblower" would no longer turn on compliance with these procedures.

¹⁷⁶ 17 CFR 240.21F-8.

(Tip, Complaint, or Referral) that individuals seeking to be eligible for an award through the process identified in § 240.21F-9(a)(2) shall use.

In addition to the paper Form TCR, the Commission also adopted a paper Form WB-APP when it adopted the existing rules for the whistleblower program. Individuals seeking awards must make their award request using Form WB-APP. Like Form TCR, Form WB-APP can only be modified by amending the Code of Federal Regulations. However, we believe that it may be beneficial to provide the Commission with greater administrative flexibility to modify the form. Providing the Commission with the ability to modify the form's informational requirements in a timely fashion should also help promote the program's overall efficiency. Accordingly, the Commission proposes to modify Exchange Act Rule 21F-8 by adding a new paragraph (d)(2) providing the Commission will also periodically designate on the Commission's web page a Form WB-APP for use by individuals seeking to apply for an award in connection with a Commission covered judicial or administrative action (15 U.S.C. 21F(a)(1)), or a related action (§ 240.21F-3(b)(1) of the chapter).

In proposing this additional flexibility, we note that both Form TCR and Form WB-APP elicit information used by the Commission to administer its whistleblower award program and are not public disclosure documents. Moreover, we anticipate that the forms designated on the Commission's website for use in the whistleblower program would be substantially similar to those currently referenced in the Code of Federal Regulations.

In accordance with the changes discussed above, the following corresponding amendments would be made. *First*, the Form TCR¹⁷⁷ that the Commission adopted when it promulgated its whistleblower rules in 2011 would be repealed and the parenthetical Code of Federal Regulation citations to that form in Exchange Act Rule 21F-9(c)¹⁷⁸ and Rule 21F-12(a)(2)¹⁷⁹ would be removed. *Second*, the existing Form WB-APP currently referenced in the Code of Federal Regulations would be repealed and Rule 21F-10,¹⁸⁰ Rule 21F-11,¹⁸¹ and Rule 21F-12¹⁸² would be amended by removing the parenthetical

references found throughout those rules to the Code of Federal Regulation citation to the current Form WB-APP.

Request for Comment

26. Are there any additional considerations or limitations that the Commission should consider in connection with the proposed rule change? For example, should we provide that any revisions to paper Form TCR or Form WB-APP shall not take effect for a 30-day period after posting on the Commission website?

*G. Proposed Amendment to Rule 21F-8 To Add New Paragraph (e) To Clarify and Enhance the Commission's Authority To Address Claimants Who Submit False Information to the Commission or Who Abuse the Award Application Process*¹⁸³

In our experience implementing the whistleblower award program to date, a small number of claimants have imposed an undue burden on the award determination process by submitting dozens and in some cases over a hundred award applications that lack any colorable connection between the tip that they provided and the Commission enforcement actions for which they are seeking awards. Processing these frivolous award applications uses staff resources that could otherwise be devoted to potentially meritorious award applications. Beyond the diversion of staff resources, we have found that, by utilizing the procedural opportunities to object to an award, these repeat applicants can significantly delay the processing of meritorious award applications and the eventual payment of awards.

To prevent these repeat submitters from continuing to abuse the award application process to the detriment of potentially meritorious applicants, we believe that it would be appropriate to adopt a rule that would permit the Commission to permanently bar any applicant from seeking an award after the Commission determines that the applicant has abused the process by submitting three frivolous award applications.¹⁸⁴ Specifically, under our

¹⁸³ The Commission anticipates these proposed rule changes would apply only to whistleblower submissions that are made after the effective date of the proposed rules.

¹⁸⁴ We are relying on our broad rulemaking authority to propose the amendments in this section. As noted earlier, Section 21F(j) of the Exchange Act, 15 U.S.C. 78u-6(j) grants us "the authority to issue such rules and regulations as may be necessary or appropriate to implement" the whistleblower award program. Similarly, Section 23(a)(1) of the Exchange Act, 15 U.S.C. 78w(a)(1), expressly provides the Commission the "power to

proposal, if an applicant submits three or more award applications for Commission actions that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission action, the Commission may permanently bar the applicant from submitting any additional award applications (either for Commission actions or related actions) and the Commission would not consider any other award applications that the claimant has submitted or may seek to submit in the future.¹⁸⁵

The proposed rule would expressly provide, however, that the Office of the Whistleblower shall as an initial matter (*i.e.*, before any preliminary determination or preliminary summary disposition would be issued) advise any claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous or lacking a colorable connection between the tip and the action for which the individual has sought an award. If the applicant withdraws the application at that time, it would not be considered by the Commission in determining whether to exercise its authority to impose a bar for three or more frivolous applications or applications lacking a colorable connection between the tip and the Commission action for which the award was sought.

In addition, the proposed rule would codify the Commission's current practice with respect to applicants who violate Rule 21F-8(c)(7).¹⁸⁶ That rule provides that an applicant shall be ineligible for an award if, in the whistleblower's submission, his or her other dealings with the Commission, or his or her dealings with another authority in connection with a related action, he or she knowingly and willfully make any false, fictitious, or fraudulent statement or representation, or use any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or

make such rules and regulations as may be necessary or appropriate to implement the provisions" of the Exchange Act, and has long been understood to provide the Commission with broad authority to issue rules and regulations carrying the force of law.

¹⁸⁵ Under the proposed rule, the Commission would *not* consider any applications made for related actions in assessing whether an applicant has submitted three or more award applications that are frivolous or lack any colorable connection between the tip and the enforcement action. The Commission would assess only applications submitted for Commission actions.

¹⁸⁶ 17 CFR 240.21F-8(c)(7).

¹⁷⁷ 17 CFR 249.1800.

¹⁷⁸ 17 CFR 21F-9(c).

¹⁷⁹ 17 CFR 21F-12(a)(2).

¹⁸⁰ 17 CFR 21F-10.

¹⁸¹ 17 CFR 21F-11.

¹⁸² 17 CFR 21F-12.

another authority.¹⁸⁷ The Commission has issued two final orders that have permanently barred the applicants from submitting any further whistleblower award applications based on violations of Rule 21F–8(c)(7). The proposed rule would clarify and codify the Commission’s authority to bar applicants by providing that if the Commission finds that a claimant has violated paragraph (c)(7) of Rule 21F–8, the Commission may permanently bar the applicant from making any future award applications, and shall decline to process any other award applications that the claimant has already submitted.

In our view, it is appropriate to assess whether an applicant who engages in egregious behavior vis-à-vis the Commission in violation of Rule 21F–8(c)(7) should be permanently ineligible from obtaining an award. Such egregious conduct can result in the unnecessary and wasteful diversion of staff resources and in extreme cases it may expose investors and the public to potential harm (particularly where the misconduct concerns ongoing Commission law-enforcement actions).¹⁸⁸ Moreover, we believe that this proposed rule could discourage individuals from engaging in the egregious conduct prohibited by Rule 21F–8(c)(7), particularly when they are submitting their award applications, because they should recognize that it may not only lead to a denial of their current award claim but may also permanently disqualify them from obtaining a whistleblower award.

Under the proposed rule, the Commission would consider a permanent bar in the context of processing an award application. We expect that the preliminary determination or preliminary disposition addressing the award application would include a recommendation that the applicant be permanently barred; this should serve to place the applicant on notice that a bar is being considered and afford the applicant an opportunity to advance any arguments in connection with a

¹⁸⁷ See Exchange Act section 21F(i), 15 U.S.C. 78u–6(i).

¹⁸⁸ Importantly, the proposed rule would apply to false, fictitious, or fraudulent representations, statements, or documents beyond those made in connection with an award determination. For example, if the Commission finds that an individual knowingly or willfully made a false representation in testimony to the Commission in one matter, the Commission could bar that individual in connection with a whistleblower award submitted by that individual for an entirely separate matter. In this way, we believe that the proposed rule would provide an important additional incentive for individuals to behave truthfully and honestly with the Commission in all aspects of their dealings with the agency.

potential bar before the Commission issues a final order.¹⁸⁹

Request for Comment

27. Is it appropriate for OWB to advise a claimant of the Office’s assessment that the claimant’s award application for a Commission action is frivolous, and to offer the claimant the opportunity to withdraw his or her award application(s), such that the application(s) would not be considered by the Commission in determining whether to impose a bar?

28. Is it appropriate for the Commission to adopt a rule that would permanently bar any applicant after he or she has been found by either the Commission to have submitted at least three frivolous award applications? Should the number of frivolous award applications be fewer or greater before a bar would be imposed?

29. Are there any additional procedures, considerations, or limitations that the Commission should consider in connection with the proposed rule change?

*H. Proposed Amendments to Rule 21F–9 To Provide Additional Flexibility and Clarity Regarding Form TCR (and Corresponding Technical Amendments to Rule 21F–10, Rule 21F–11, and Rule 21F–12)*¹⁹⁰

As noted above, Exchange Act Rule 21F–9(a)¹⁹¹ currently provides that to qualify as a whistleblower an individual may submit information about a possible securities law violation by one of two methods: “(1) Online, through the Commission’s website located at *www.sec.gov*,” or “(2) [b]y mailing or faxing a Form TCR (Tip, Complaint or Referral) (17 CFR 249.1800) to the SEC Office of the Whistleblower, 100 F Street NE, Washington, DC 20549–5631, Fax (703) 813–9322.” We propose to amend this rule to conform to the proposed amendments to Exchange Act Rule 21F–2 and to clarify that online submissions must be made through the Commission’s online TCR portal. Similarly, we propose to revise the rule text to provide the Commission additional discretion in designating where paper Form TCRs may be sent

¹⁸⁹ We do not intend to foreclose the potential that the Commission could impose such a bar in the context of a formal adjudicatory proceeding to which the individual was a respondent if the Enforcement Division made such a request and the parties litigated it before the Commission.

¹⁹⁰ The Commission anticipates these proposed rule changes, if adopted, would apply only in connection with submissions of information that are made by an individual to qualify as a whistleblower after the effective date of the proposed rules.

¹⁹¹ 17 CFR 240.21F–9(a).

and how whistleblowers may submit information to the Commission to qualify for an award or confidentiality protections.

The revised language in Rule 21F–9(a) would provide that to submit information in a manner that satisfies § 240.21F–2(b) and (c) of the chapter, an individual must submit his or her information to the Commission by either of these methods: (1) Online, through the Commission’s website located at *www.sec.gov*, using the Commission’s electronic TCR portal (Tip, Complaint or Referral); (2) by mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number identified on the SEC’s web page for making such submissions; or (3) by any other such method that the Commission may expressly designate on its website as a mechanism that satisfies § 240.21F–2(b) and (c).¹⁹² We believe that the clarifications and flexibility afforded by the proposed revisions should help to make the whistleblower program more user-friendly for potential whistleblowers.¹⁹³ New paragraph (b)(3) would, among other things, afford the Commission discretion to identify alternative mechanisms for submitting information in instances where, for example, the Commission’s on-line portal may be unavailable due to a maintenance or replacement.¹⁹⁴

We are also proposing to add new paragraph (e) to Exchange Act Rule 21F–9 to clarify that the first time an individual provides information to the Commission that the individual will rely upon as a basis for claiming an award, the individual must provide that

¹⁹² For purposes of the Exchange Act Rule 21F–12(a)(2), which provides that a “whistleblower’s Form TCR” may be included within the administrative record upon which the Commission relies in considering a whistleblower award application, the reference to Form TCR in this rule refers to both the online submission made through the Commission’s electronic TCR portal and the paper Form TCR.

¹⁹³ The changes that we are proposing to Exchange Act Rule 21F–2, 17 CFR 240.21F–2—specifically the unified definition of “whistleblower” that would apply in the award, employment anti-retaliation, and confidentiality contexts—as well as the amendments that we are proposing to Exchange Act Rule 9(a), 17 CFR 240.21F–9(a), would render inapplicable on a going-forward basis the formal interpretation that the Commission issued in 2015 regarding the meaning of Exchange Act Rule 21F–9. See 80 FR 47829, 47830/1, 2015 WL 4710732 (Aug. 10, 2015) (“Rule 21F–9(a) . . . specify[ies] the reporting procedures that must be followed by an individual who seeks to qualify as a whistleblower under Rule 21F–2(a). . . .”).

¹⁹⁴ We are making a conforming amendment to Exchange Act Rule 21F–9(b), 17 CFR 240–21F–9(b), to make clear that if a whistleblower provides information pursuant to a method permitted by proposed section 9(b)(3), the whistleblower must also complete the declaration required by Exchange Act Rule 21F–9(b).

information in accordance with the procedures specified in Rules 21F-9(a) and (b). If an individual fails to do so, the individual will—subject to the limited exception discussed below—be barred from subsequently resubmitting the same information to the Commission in accordance with Rules 21F-9(a) and (b) and seeking to obtain an award based on that information, even if the individual has previously qualified as a whistleblower under the proposed amendment to Rule 21F-2(a) by submitting the information in some other written form.¹⁹⁵ To date, this has been the approach that the Commission has followed in making award determinations.¹⁹⁶ We believe that the proposed rule language would provide additional clarity to potential whistleblowers to further alert them to the importance of following the procedures specified in Rules 21F-9(a) and (b).¹⁹⁷ In proposing this

¹⁹⁵ To illustrate the intersection of proposed amended Rule 21F-2(a) and proposed Rule 21F-9(e): An individual who provides the Commission with information about a possible violation of the federal securities laws in writing will qualify as a whistleblower and obtain the retaliation protections provided under Section 21F(h)(1) of the Exchange Act, 15 U.S.C. 78u-6(h)(1). However, to be eligible for an award as to that information, the individual must make the initial submission of that information in accordance with the procedures set forth in Rules 21F-9(a) and (b); *i.e.*, the individual must submit the information on Form TCR or through the Commission's online TCR portal and must execute the required declaration. The individual may remain award-eligible for any new information that is submitted in accordance with the Rule 21F-9 procedures, but not for the information that was previously submitted without following those procedures.

¹⁹⁶ In a few instances, the Commission has allowed individuals to perfect a defective submission provided that the individual did so promptly and before any significant investigative steps had occurred with respect to the submission. Any opportunity to perfect a defective submission would, under the proposed rule, be governed by the limited exception provided therein (which is generally consistent with the opportunities the Commission has to date provided in allowing individuals to perfect their submissions).

¹⁹⁷ If the proposed amendments in this release are adopted, Exchange Act 21F-9(a) would be revised to provide that to submit information in a manner that satisfies § 240.21F-2(b) and (c) of the chapter an individual must submit his or her information to the Commission by any of these methods: (1) Online, through the Commission's website located at www.sec.gov, using the Commission's electronic TCR portal (Tip, Complaint or Referral); (2) Mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number designated on the SEC's web page for making such submissions; or (3) By any other such method that the Commission may expressly designate on its website as a mechanism that satisfies § 240.21F-2(b) and (c). Based on the proposed modifications to Exchange Act Rule 21F-9(b), it would provide that, further, to be eligible for an award, the individual must declare under penalty of perjury at the time he or she submits the information pursuant to paragraph (a)(1), (2), or (3) of the section that the information is true and correct to the best of his or her knowledge and belief.

amendment, we observe that compliance with the procedures in Rules 21F-9(a) and (b) advances many programmatic purposes. These include allowing the Commission to promptly determine whether an individual who submits information is subject to heightened whistleblower confidentiality protections; helping the staff efficiently process the information and other documentation provided by the individual and assess its potential credibility; and assisting the Commission in eventually evaluating the individual's potential entitlement to an award.

Proposed paragraph (e) would also incorporate a limited exception that would permit the Commission, in its sole discretion, to make an award to a whistleblower who failed to comply with the procedural requirements of Rules 21F-9(a) and (b) when the individual first provided information to the Commission. The limited exception permitted by paragraph (e) would provide that notwithstanding the foregoing, the Commission, in its sole discretion, may waive an individual's non-compliance with paragraphs (a) and (b) of Rule 21F-9 if the Commission determines that the administrative record clearly and convincingly demonstrates that the individual would otherwise qualify for an award and the individual demonstrates that he or she complied with the requirements of paragraphs (a) and (b) within 30 days of the first communication with the staff about the information that the individual provided.¹⁹⁸ There may be some situations where an individual will have provided information to the Commission about a potential securities law violation but may have failed to perfect his or her submission in accordance with the procedures required to be a whistleblower eligible for an award. For example, an individual may learn about a potential securities law violation that is about to occur and may telephonically inform

¹⁹⁸ By requiring that the Commission must find that the administrative record "clearly and convincingly" demonstrates that the individual would (but for the untimely compliance with the requirements of Exchange Act Rules 21F-9(a) and (b)) qualify for an award, we mean to make this discretionary mechanism available only in those cases where there can be no serious doubt about the individual's contribution to the successful action and the individual's compliance with the award criteria and eligibility conditions. Otherwise, in determining whether to employ its discretion, the Commission would have to potentially expend considerable staff time and effort carefully developing an administrative record and analyzing whether the applicant would have been a meritorious whistleblower, and only then turn to decide whether to exercise its discretion to waive what is otherwise a threshold procedural requirement.

the staff in an effort to permit the Commission to take action before the violation occurs. Similarly, the Office of the Whistleblower periodically receives letters from individuals seeking to report securities law violations and the Office will generally provide deficiency notices to these individuals to the extent that it appears that these individuals want to become whistleblowers eligible for an award.¹⁹⁹ We believe that, to the extent that the information that any such individual might provide could be the basis for the Commission bringing a successful enforcement action, the Commission should have within its discretion the ability to make an award provided that the individual complies with Rules 21F-9(a) and (b) within 30 days of receiving a deficiency letter (or having any other communication with the staff concerning the information that the individual provided).²⁰⁰

Request for Comment

30. Does proposed Rule 21F-9(a) provide additional clarity and flexibility that may help make the submission of information by potential whistleblowers more user-friendly? Are there any additional factors that the Commission should assess in connection with the proposed rule amendments?

31. Please comment on the limited exception provided for in proposed Rule 9(e) appropriate. Should the exception be adopted? If so, should it be narrowed or broadened? Should the 30-day time period be extended or reduced?

¹⁹⁹ Individuals do not have an entitlement to a deficiency letter and their failure to receive one will not be deemed a basis to excuse their failure to comply with the terms of Exchange Act Rule 21F-2. It is each individual's own responsibility to comply with the requirements of the Commission's rules with respect to submitting information to qualify for an award.

²⁰⁰ We believe that using a 30-day time period is sufficient here. We note that in connection with judicial proceedings 30-day filing deadlines are not uncommon—indeed, Congress itself provided only a 30-day window for unsuccessful whistleblowers to challenge a Commission final order denying their award application, *see* Exchange Act section 21F(f), 15 U.S.C. 78u-6(f)—and that our proposed Rule 21F-18, discussed *infra*, affords a 30-day time period for applicants to respond to preliminary summary dispositions that would be issued under that proposed rule.

I. Proposed Amendment to Rule 21F-12 Regarding the Materials That May Form the Basis of the Commission's Award Determination²⁰¹

Rule 21F-12²⁰² lists the materials that the Commission and the Claims Review Staff ("CRS") may rely upon to make a whistleblower award determination. We are proposing to make two clarifying amendments to that rule.

First, Rule 21F-12(a)(3)²⁰³ currently permits the Commission and the CRS to rely upon the whistleblower's Form WB-APP, including attachments, and "any other filings or submissions from the whistleblower in support of the award application." Based on this provision's silence as to the timeliness of such "other filings or submissions," some whistleblower award claimants have submitted hundreds of pages of supplemental information on an ongoing basis even after expiration of the respective time periods for responding to a Notice of Covered Action or a Preliminary Determination, resulting in significant administrative burdens on the Office of the Whistleblower and potential delays to the whistleblower claims process. We believe that expressly excluding untimely supplemental submissions from consideration by the Commission and the CRS would incentivize applicants to make thorough submissions in the first instance when responding to the Notice of Covered Action and the CRS's Preliminary Determination (or a Preliminary Summary Disposition issued by the Office of the Whistleblower under Proposed Rule 21F-18, discussed *infra*), which should reduce these administrative burdens and the potential for delays to the claims process.

Accordingly, we propose amending Rule 21F-12(a)(3) to clarify that the Commission and the CRS (and the Office of the Whistleblower when processing a claim pursuant to proposed Rule 21F-18) may rely upon materials *timely* submitted by the whistleblower in response either to the Notice of Covered Action, to a request from the Office of the Whistleblower or the Commission, or to the Preliminary Determination. The deadline for filing a claim for a whistleblower award is ninety (90) days after the relevant

Notice of Covered Action under Rule 21F-10(a) & (b)²⁰⁴ and Rule 21F-11(a) & (b).²⁰⁵ Consistent with Rule 21F-8(b),²⁰⁶ the Commission may specify a deadline when it requests additional information from the whistleblower in support of an award application. The time frame for responding to the Preliminary Determination is expressly established by Rule 21F-10(e)²⁰⁷ and Rule 21F-11(e).²⁰⁸ Under our proposal, materials submitted outside those respective time frames would not be considered absent extraordinary circumstances excusing the delay.²⁰⁹

Second, we propose amending Rule 21F-12(a)(6),²¹⁰ which currently provides in pertinent part that the Commission and the Claims Review Staff in making an award determination may consider any "documents or materials including sworn declarations from third-parties that are received or obtained by the Office of the Whistleblower to assist the Commission resolve the claimant's award application, including information related to the claimant's eligibility." We propose to modify this provision to clarify that it applies only to materials submitted by third parties, because some claimants have misinterpreted it as also encompassing materials submitted by the claimants themselves. Moreover, in light of the modification that we are proposing to Rule 21F-12(a)(3) to require that a claimant make a "timely" submission in response to a Preliminary Determination, we believe that it is important to clarify that Rule 21F-12(a)(6) does not apply to information provided by whistleblowers.

Request for Comment

32. Does the proposed amendment as to timeliness provide an appropriate safeguard against abusive supplemental filings by whistleblower award claimants?

33. Do the proposed amendments provide sufficient clarity? Is there alternative language that might provide greater clarity about the materials that the Commission and the CRS may rely upon in making an award determination?

J. Proposed Amendment to Rule 21F-13 Regarding the Administrative Record on Appeal²¹¹

Rule 21F-13²¹² describes the availability of judicial review and the record on appeal of a whistleblower award determination by the Commission. Rule 21F-13(b) provides that the record on appeal will consist of the Preliminary Determination (or a Preliminary Summary Disposition issued under proposed Rule 21F-18, discussed *infra*), the Final Order of the Commission, "and any other items from those set forth in Rule 21F-12(a) of this chapter that either the claimant or the Commission identifies for inclusion in the record."²¹³ That provision thus ensures that the record on appeal will include the materials described in Rule 21F-12(a) that were the basis for the Commission's award determination.

Some claimants have interpreted Rule 21F-13(b) as permitting them to designate materials for inclusion in the record on appeal that technically meet the descriptions in Rule 21F-12(a) but that were never actually before the Commission in issuing the Final Order. However, that interpretation creates significant tension with the basic principle of administrative law that, on appeal, "the court's review is limited to the administrative record before the agency at the time of its decision."²¹⁴ That interpretation also would inappropriately expand the record on appeal beyond the limits in Rule 16 of the Federal Rules of Appellate Procedure.²¹⁵

As amended, Rule 21F-13(b) would eliminate the designation of items for inclusion in the record on appeal and instead would define the record on appeal in a manner that conforms more closely to Rule 16 of the Federal Rules of Appellate Procedure. Materials designated or submitted by a whistleblower for the first time after the Commission issues its Final Order

²¹¹ The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F-10(a), 17 CFR 240.21F-10(a)) posted on or after effective date of the final rules.

²¹² 17 CFR 240.21F-13.

²¹³ 17 CFR 240.21F-13(b).

²¹⁴ *EarthReports, Inc. v. FERC*, 828 F.3d 949, 959 (D.C. Cir. 2016).

²¹⁵ Rule 16(a) states,

The record on review or enforcement of an agency order consists of:

- (1) The order involved;
- (2) any findings or report on which it is based; and
- (3) the pleadings, evidence, and other parts of the proceedings before the agency.

Fed. R. App. P. 16(a)(1)-(3) (emphases added).

²⁰¹ The Commission anticipates this proposed rule change, if adopted, would apply only to covered-action and related-action award applications that are connected to a Notice of Covered Action (*see* Exchange Act Rule 21F-10(a), 17 CFR 240.21F-10(a)) posted on or after effective date of the final rules.

²⁰² 17 CFR 240.21F-12.

²⁰³ 17 CFR 240.21F-12(a)(3).

²⁰⁴ 17 CFR 240.21F-10(a) & (b).

²⁰⁵ 17 CFR 240.21F-11(a) & (b).

²⁰⁶ 17 CFR 240.21F-8(b).

²⁰⁷ 17 CFR 240.21F-10(e).

²⁰⁸ 17 CFR 240.21F-11(e).

²⁰⁹ *See* Exchange Act Rule 21F-8(a), 17 CFR 240.21F-8(a).

²¹⁰ 17 CFR 240.21F-12(a)(6).

would not be deemed part of the administrative record.

Under amended Rule 21F–13(b), the record on appeal therefore would include the Final Order of the Commission, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order. In the interest of clarity, Rule 21F–13(b) would specify that this includes, but is not limited to, the materials that are part of the claims process described in Rules 21F–10 and 21F–11 and proposed Rule 21F–18: The Notice of Covered Action, whistleblower award applications filed by the claimant, the Preliminary Determination (or Preliminary Summary Disposition), materials that were considered by the Claims Review Staff in issuing the Preliminary Determination (or by the Office of the Whistleblower in issuing a Preliminary Summary Disposition), and materials that were timely submitted by the claimant in response to the Preliminary Determination (or the Preliminary Summary Disposition). Additional materials not specifically listed in the parenthetical in proposed Rule 21F–13(b) might become part of the claims process and therefore part of the record if, for example, the Office of the Whistleblower obtains materials from a third party and provides them to the Commission for its consideration in resolving a whistleblower award application. See Rule 21F–12(a)(6).

In addition, we are proposing to amend the second sentence of Rule 21F–13(b) to clarify that the record on appeal would not include any pre-decisional or internal deliberative process materials that are prepared exclusively to assist *either* the Commission *or* the CRS. That provision currently references only the Commission. This change would clarify the Commission's current practice in order to give greater clarity to claimants pursuing appeals.

We also propose adding a third sentence to Rule 21F–13(b) providing that, when more than one claimant applies for an award under a single Notice of Covered Action, the Commission may exclude from the record on appeal any materials that exclusively concern any claimant other than the claimant who brought the appeal, as necessary to comply with the confidentiality protections in Section 21F(h)(2)(A) of the Exchange Act.²¹⁶ This sentence would codify the Commission's current practice in order

to give greater clarity to claimants pursuing appeals.

Request for Comment

34. We seek comments about whether the proposed language sufficiently conforms to Rule 16 of the Federal Rules of Appellate Procedure and whether alternative language would provide greater conformity or clarity.

K. Proposed Rule 21F–18 Establishing a Summary Disposition Process²¹⁷

Over the course of the years that the Commission has implemented the whistleblower award program, it has become apparent to us that a significant number of award applications may be denied on relatively straightforward grounds because they do not implicate novel or important legal or policy questions. These grounds for denial include, among other things, the fact that the individual did not comply with the form-and-manner requirements as specified in Rule 21F–9 for submitting information to be eligible for an award, or that the information was not used by the staff responsible for investigating, preparing and litigating the covered action and thus the individual's information did not "lead to" the success of the covered action.

In an effort to provide a more timely resolution of relatively straightforward denials, we are proposing a summary disposition process. This process would be in lieu of the claims adjudication processes that are specified in Rule 21F–10 and Rule 21F–11.²¹⁸ The principal difference between the proposed summary disposition process and the existing processes specified in Rule 21F–10 and 21F–11 is that for a claim designated for summary disposition the CRS would not be involved in reviewing the record, issuing a Preliminary Determination, considering any written response filed by the claimant, or issuing the Proposed Final Determination; these functions would be assumed by the Office of the Whistleblower in an effort to streamline the Commission's consideration of denials that are relatively straightforward.

The proposed summary disposition process incorporates two other modifications that should help expedite the processing of denials. *First*, the 30-day period for replying to a Preliminary

Summary Disposition would be shorter than the 60-day period for replying to a Preliminary Determination provided for by Rule 21F–10(e)(2)²¹⁹ and 21F–11(e)(2).²²⁰ We believe that this shorter period should be sufficient for a claimant to reply and that it is appropriate given that the matters subject to summary disposition should be relatively straightforward. *Second*, under the proposed summary disposition process, a claimant would not have the opportunity to receive the full administrative record upon which a Preliminary Denial would have been based. Instead, the Office of the Whistleblower would (to the extent appropriate given the nature of the denial) provide the claimant with a staff declaration that contains the pertinent facts upon which the Preliminary Summary Disposition is based. Given the relatively straightforward nature of the matters that would generally be eligible for summary disposition, we believe that this modification from the record-review process specified in Rules 21F–10 and 21F–11 should still afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Denial. This should eliminate the delay that can arise when a claimant does not expeditiously request the record, thereby helping to further expedite the summary adjudication process.

The proposed summary disposition process would be available for any non-meritorious award application that falls within any of the following five categories: (1) Untimely award application;²²¹ (2) noncompliance with the requirements of Rule 21F–9,²²² which concerns the manner for submitting a tip to be eligible for an

²¹⁹ 17 CFR 240.21F–10(e)(2) (providing that if an individual decides to contest the Preliminary Determination, he or she must submit his or her written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1) of the section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review.).

²²⁰ 17 CFR 240.21F–11(e)(2). We believe that 30-day response period is sufficient and have considered the fact that judicial proceedings often rely on this same time period for filing responsive materials. See, e.g., Fed. R. of App. P. 31(a)(1) (establishing a default 30-day time period for an appellee or respondent to file a response brief to the appellant or petitioner's opening brief). See also Rule 450(a) of the SEC's Rules of Practice (providing that in adjudicatory proceedings pending before the Commission "[o]pposition briefs shall be filed within 30 days after the date opening briefs are due").

²²¹ The time periods for submitting an award application are specified in Rule 21F–10(b) and Rule 21F–11(b). See 17 CFR 240.21F–10(b) & 240.21F–11(b).

²²² 17 CFR 240.21F–9.

²¹⁷ The Commission anticipates that proposed Rule 21F–18, if adopted, would apply to any whistleblower award application for which the Commission has not yet issued a Preliminary Determination as of the effective date of the proposed rules, as well as to any future award applications that might be filed.

²¹⁸ 17 CFR 240.21F–10; 17 CFR 240.21F–11.

²¹⁶ 15 U.S.C. 78u–6(h)(2)(A).

award; (3) claimant's information was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with the claimant; (4) noncompliance with Rule 21F-8(b),²²³ which requires an applicant to submit supplemental information that the Commission may require²²⁴ and to enter into a confidentiality agreement; and (5) failure to specify in the award application the submission that the claimant made pursuant to Rule 21F-9(a)²²⁵ upon which the claim to an award is based. In addition, the proposed rule would provide that other defective or non-meritorious award applications could be subject to the summary disposition process under appropriate circumstances.

Under the proposed summary disposition process, the Office of the Whistleblower would issue a Preliminary Summary Disposition denying an application. This Preliminary Summary Disposition would be in lieu of the Preliminary Determination that the Claims Review Staff would issue under Rule 21F-10 or Rule 21F-11. A claimant would then have a 30-day period to reply with a written response explaining the grounds for contesting the denial. Failure to file a timely written response would constitute a failure to exhaust the administrative process and the Preliminary Summary Disposition would automatically become the final order with respect to that applicant's award claim. If an applicant does file a timely response, the Office of the Whistleblower would consider the full record, including the applicant's response (and any materials the applicant timely submitted therewith), and prepare a Proposed Final Summary Disposition to be provided to the Commission.²²⁶ Similar to the

procedure under Rule 21F-10 and 21F-11, the Commission would have thirty (30) days to consider the Proposed Final Summary Disposition; if no Commissioner requests that the full Commission consider the Proposed Final Summary Disposition within the 30-day period, it would become the final order of the Commission. If a Commissioner does request full Commission consideration, the Commission would consider the matter and issue a final order. The Office of the Whistleblower would then notify the claimant of the final order.

If the Commission has received more than one award application for a particular matter, the Office of the Whistleblower could use the summary disposition process for any of those award applications that qualify, even if other of the applications are subjected to the regular consideration processes specified in Rules 21F-10 and 21F-11. Even in the multiple whistleblower context, we believe that there could be efficiencies in summarily considering and disposing of applications that constitute reasonably straightforward denials. For example, this could free up staff resources to concentrate on the meritorious claims or the more difficult determinations. Relatedly, to the extent that a claim is denied under the summary disposition process while other claims may remain pending under the Rule 21F-10 or Rule 21F-11 process, this should allow the summarily denied claimant an earlier ability to exhaust his opportunities for judicial review.²²⁷ This, in turn, may potentially permit the Commission to more promptly pay any meritorious whistleblower on any award that may eventually result from the final order issued under the Rule 21F-10 or Rule 21F-11 process.²²⁸

Finally, the proposed rule would clarify that Rule 21F-12,²²⁹ which governs the items that may be considered when the Commission entertains an award application under Rule 21F-10 or Rule 21F-11, applies in the context of summary dispositions. Specifically, the proposed rule would

state that “[i]n considering an award determination pursuant to this rule, the Office of the Whistleblower and the Commission may rely upon the items specified in [Rule 21F-12(a)]. Further, [Rule 21F-12(b)] applies to summary dispositions.”

Request for Comment

35. We seek comments about the proposed summary disposition process, including whether the categories of award applications that would be eligible for summary disposition are appropriate, whether the proposal would afford claimants sufficient process, and whether there are any specific modifications that we should consider making to the proposed process.

L. Technical Amendment to Rule 21F-4(c)(2)²³⁰

We propose to amend Rule 21F-4(c)(2)²³¹ concerning the definition of information that led to a successful enforcement action because it contains an erroneous cross-reference. The reference is intended to be to Rule 21F-4(b)(5) regarding the definition of original source. The rule currently refers to paragraph (b)(4) of the section.

III. Proposed Interpretive Guidance Regarding the Meaning and Application of “independent analysis” as Defined in Exchange Act Rule 21F-4(b)(3)²³²

Two core requirements of the whistleblower award program are: (1) That the whistleblower must have provided “original information” to the Commission; and (2) that such information must have “led to” the successful enforcement of an action. Congress defined “original information” in relevant part as information that is derived from *either* a whistleblower’s “independent knowledge” *or* the whistleblower’s independent “analysis.” This guidance addresses the potential availability of a whistleblower award in cases where information provided by a whistleblower is not based on the whistleblower’s

²²³ 17 CFR 240.21F-8(b).

²²⁴ The authority to require additional information of an applicant is delegated to the Office of the Whistleblower. See 17 CFR 240.21F-10(d).

²²⁵ 17 CFR 240.21F-9(a).

²²⁶ Although the CRS has to date approved all proposed final orders involving a challenge to a preliminary determination, we do not believe the absence of the CRS’s role at the comparable stage of the proposed summary disposition process should have a meaningful impact given the relatively straight-forward nature of the claims that would be processed under the proposed rule. Further, as a matter of agency internal procedure, all proposed final orders are reviewed by the Office of the General Counsel and we anticipate that this review would occur in connection with all Proposed Summary Dispositions issued under this proposed rule, further reducing any potential negative impact from the elimination of the CRS’s role.

²²⁷ We note that, the Commission has consistently interpreted Rules 10 and 11 to require that all claims processed under those rules should be addressed in one omnibus final order. The summary disposition process that we are proposing would, we believe, permit a more expeditious adjudication of any relatively straightforward denials that might otherwise have been folded into a final order under Rule 10 or 11.

²²⁸ Pursuant to Rule 21F-14(c)(2), 17 CFR 240.21F-14(c)(2), the Commission cannot pay an award to any meritorious whistleblower in a particular matter until the completion of the appeals process for all whistleblower award claims has been exhausted.

²²⁹ 17 CFR 240.21F-12.

²³⁰ The Commission anticipates this proposed rule change, if adopted, would apply to all new whistleblower award applications filed after the effective date of the amended final rules, as well as all whistleblower award applications that are pending and have not yet been the subject of a final order of the Commission by the effective date.

²³¹ 17 CFR 240.21F-4(c)(2).

²³² 17 CFR 240.21F-4(b)(3). Although we are proposing this interpretive guidance for public comment, the Commission may determine to rely on the principles articulated therein for any whistleblower claims that are currently pending because we believe that this guidance clarifies the existing rules that define and apply the term “independent analysis.”

“independent knowledge” but, instead, is premised on information derived from the whistleblower’s “independent analysis” of publicly available information. Such cases implicate both the scope of the independent analysis prong of the “original information” requirement and what is necessary for independent analysis to “lead to” the successful enforcement of an action.

In formulating our views on how a whistleblower may satisfy the requirement of “original information” through the alternative of “independent analysis,” we have considered Congress’s and the Commission’s determinations to substantially restrict any role for publicly available information in potential whistleblower awards. When the Commission in 2011 adopted the rules implementing the whistleblower program, it explained that paying awards for publicly available information was not consistent with Congress’s purpose in establishing the program. Specifically, the Commission stated that “Congress primarily intended our program ‘to motivate those with inside knowledge to come forward and assist the Government to identify and prosecute persons who have violated the securities laws[.]’”²³³ The Commission further acknowledged that Congress sought to make awards available in cases where “highly-probative, expert analysis of data . . . suggest[s] an important new avenue of inquiry, or otherwise materially advance[s] an existing investigation.”²³⁴ But critically, the Commission made clear that, in its view, Congress did not intend to base awards “on information that is available to the general public.”²³⁵

Independent Analysis Standard. Consistent with these understandings of congressional intent and consistent with the Commission’s views when it adopted the definition of “original information” in the original whistleblower rulemaking, we are proposing the following standard: In order to qualify as “independent analysis,” a whistleblower’s submission must provide evaluation, assessment, or insight beyond what would be reasonably apparent to the Commission from publicly available information. In assessing whether this requirement is met, the Commission would determine based on its own review of the relevant facts during the award adjudication process whether the violations could

have been inferred from the facts available in public sources. While we recognize that this standard does not constitute a bright line, we believe that it should provide a solid foundation for the Commission to apply when assessing awards involving potential independent analysis.

The Independent Analysis Must “Lead to” the Success of the Enforcement Action. Even when this standard is met, however, a whistleblower’s independent analysis must still have “led to” a successful covered enforcement action. This standard requires an assessment of whether the whistleblower’s analysis—as distinct from the publicly available information on which the analysis was based—either (1) was a principal motivating factor in the staff’s decision to open its investigation, or (2) made a substantial and important contribution to the success of an existing investigation.

In the sections that follow, we explain the relevant background and reasoning for the standards that we have set forth above.

A. Background: “Original Information” and Publicly Available Information

In formulating this guidance, we have considered the *qui tam* provisions of the False Claims Act,²³⁶ the federal government’s principal bounty statute and an important forerunner of the Commission’s whistleblower award authority.²³⁷ The False Claims Act requires that *qui tam* relators must provide their own, independent information—and not publicly available information—in order to avoid the so-called “public disclosure bar.”²³⁸ Specifically, in its present form (and excluding one exception that is not relevant here²³⁹), the public disclosure bar requires a court to dismiss a *qui tam* action “if substantially the same allegations or transactions as alleged in

the action or claim were publicly disclosed” in certain designated sources.²⁴⁰

In Section 21F, Congress similarly limited awards to “original information”—defining the term to require a whistleblower’s own, independent information rather than publicly available information.²⁴¹ While not taking precisely the same approach as in the False Claims Act, Congress nonetheless required that “original information” for purposes of the Commission’s award program must not be exclusively derived from the news media or certain other public sources.²⁴² Further, Congress affirmatively required that “original information” be derived from a whistleblower’s “independent knowledge or analysis.”²⁴³ The Senate report issued in connection with Dodd-

²⁴⁰ Not all public sources of information implicate the public disclosure bar. The sources specified in the statute are a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or the news media. There is a limited exception for situations where the *qui tam* relator was an original source of the information. 31 U.S.C. 3730(e)(4)(A).

²⁴¹ Although the term “original information” does not appear in the False Claims Act, courts have used the term to differentiate a *qui tam* relator’s own, independent information upon which an award may be based from information that is available in the designated public sources. See, e.g., *United States ex rel. Colquitt v. Abbott Labs*, 858 F.3d 365, 374–75 (5th Cir. 2017); *United States v. Walker*, 438 F. A’ppx 885, 888 (11th Cir. 2011); *United States ex rel. JDJ and Associates LLP v. Natixis*, 2017 U.S. Dist. Lexis 164106, *33 (S.D.N.Y. 2017). In *United States ex rel. Marcus v. Hess*, 317 U.S. 537 (1943), a seminal False Claims Act case that prompted Congress to enact a forerunner of the public disclosure bar, the Court permitted a *qui tam* suit to proceed where the same defendants had been criminally indicted for the same conduct alleged in the *qui tam* action. In dissent, Justice Jackson termed it a “misuse of the statute” to permit an action where the averments in the complaint substantially copied the indictment and it was not shown that the petitioner “had any original information, that he added anything by investigations of his own. . . .” 317 U.S. at 558 (Jackson, J., dissenting). “Original information” as a term to describe information upon which an award may be based has been a part of various federal bounty statutes for more than 100 years. See, e.g., *United States v. Simons*, 7 F. 709 (E.D. Mich. 1881) (discussing statute that permitted awards for “original information concerning any fraud upon the customs revenue”).

²⁴² 15 U.S.C. 78u–6(a)(3)(C). These other sources are allegations made in a judicial or administrative hearing, or in a governmental report, hearing, audit, or investigation (unless the whistleblower is a source of the information). Further, we note that both the False Claims Act and the Internal Revenue Service whistleblower statute permit discretionary awards of up to 10% in the event that the government proceeds with a case based principally on public disclosures. See 31 U.S.C. 3730(d)(1); 26 U.S.C. 7623(b)(2)(A). Congress did not include any similar discretionary award authority in Section 21F.

²⁴³ 15 U.S.C. 78u–6(a)(3)(A).

²³⁶ 31 U.S.C. 3730.

²³⁷ See *Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 34–63237, 75 FR 70488, 70491 n.14 (Nov. 3, 2010) (noting that cases interpreting the *qui tam* provisions of the False Claims Act can provide helpful guidance in the interpretation of Section 21F, though not necessarily controlling or authoritative in all circumstances).

²³⁸ See *Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 294 (2010) (explaining that, through the public disclosure bar, Congress sought “the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own”) (quoting, *United States ex rel. Springfield Terminal Railway v. Quinn*, 14 F.3d 645, 649 (D.C. Cir. 1994)).

²³⁹ 31 U.S.C. 3730(4)(A).

²³³ 76 FR 34300, 34311/3.

²³⁴ *Id.* at 34312/3.

²³⁵ *Id.* at 34311/3. We note that although publicly available information may not serve as the basis for an award, the provision of such information to the Commission can be an important public service.

Frank, which enacted Section 21F,²⁴⁴ explained Congress's expectation that in order to obtain an award a whistleblower would be required to provide the "critical components" of information that supported an enforcement action beyond any information about the matter that was publicly available.²⁴⁵

In promulgating rules to implement the whistleblower program, the Commission further restricted any role for publicly available information in a potential whistleblower award. While Congress had defined "original information" as that which is derived from a whistleblower's "independent knowledge" or "independent analysis," Congress did not define either of these terms. The Commission's definitional rules, however, effectively preclude awards merely for the submission of publicly available information.

First, the Commission excluded publicly available information as a source of a whistleblower's "independent knowledge," which the Commission defined as "factual information in [the whistleblower's possession] that is not derived from publicly available sources."²⁴⁶ At the adopting stage for the whistleblower rules, the Commission considered comments that were critical of this blanket exclusion and that recommended some allowance for particular kinds of public information.²⁴⁷ The Commission rejected such an approach and chose to adopt the broad exclusion of any publicly available information that had been proposed.²⁴⁸ Moreover, the Commission interpreted "publicly available sources" expansively to include not only sources that are widely

disseminated (such as corporate press releases and filings, media reports, and information on the internet), but also sources that, though not widely disseminated, are generally available to the public (such as court filings and documents obtained through Freedom of Information Act requests).²⁴⁹

Second, in defining the term "independent analysis," the Commission permitted a whistleblower to employ publicly available information, but required that the whistleblower produce insights that are non-public, providing that *independent analysis* means an individual's own analysis, whether done alone or in combination with others and *analysis* means an individual's examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.²⁵⁰

Significantly, the Commission considered—and rejected—a suggestion that the proposed definition of "independent analysis" be revised to permit an award to a whistleblower whose tip brings publicly available information to the staff's attention:

We believe that "independent analysis" requires that the whistleblower do more than merely point the staff to disparate publicly available information that the whistleblower has assembled, whether or not the staff was previously "aware of" the information. "Independent analysis" requires that the whistleblower bring to the public information some additional evaluation, assessment, or insight.²⁵¹

In setting forth the standard for "independent analysis" in this guidance, we are particularly mindful that the appropriate standard should be sufficiently demanding that it would not undermine the clear exclusion of public information from the definition of "independent knowledge." Any other approach would, in our view, undermine the overall framework that was established by the Commission in 2011 when it adopted the definitions of "independent knowledge" and "independent analysis."

B. "Independent Analysis"

As noted, the Commission defined "analysis" as the whistleblower's "examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public."²⁵² Thus, if a whistleblower submits publicly

available information in a TCR and alleges a fraud or other securities violations on the basis of that information, the Commission must determine whether the whistleblower's "examination and evaluation" of the publicly available information "reveal[ed]" the possible violations.

To "reveal" means to make something known that was previously secret or hidden, or to open something up to view.²⁵³ Accordingly, to be considered "analysis," the whistleblower's submission must include some insight—beyond the existence of the publicly available information—that is revelatory; that is, the whistleblower's evaluation of the publicly available information should do the work of making known and opening up to view for the Commission the possible securities violations.

As a principal illustration of how to apply our rule on "independent analysis," we look to the model that Congress had before it at the time it enacted the whistleblower program: the work of Harry Markopolos in his efforts to expose Bernard Madoff's Ponzi scheme.²⁵⁴ Among other things, Markopolos brought to bear his expertise as a certified fraud examiner and his knowledge of the options markets to demonstrate that Madoff's purported investment strategy could not have produced his claimed investment returns.²⁵⁵ For example, in a 2000 submission, beginning from the premise that Madoff purported to manage between \$3 billion and \$7 billion in assets pursuant to his "split-strike conversion" strategy, Markopolos explained that the strategy as described

²⁵³ See Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/reveal>; Oxford English Dictionary, available at <https://en.oxforddictionaries.com/definition/reveal>; Cambridge Dictionary, available at <http://dictionary.cambridge.org/us/dictionary/english/reveal>; Black's Law Dictionary (10th ed. 2014) (citing "to reveal" as one definition of "disclose"); see also 15 U.S.C. 78u-6(h)(2)(A) (prohibiting the Commission or staff from disclosing information "which could reasonably be expected to reveal the identity of a whistleblower. . . .") (emphasis added).

²⁵⁴ See S. Rep. No. 111-176 at 110 (2010) (citing to Markopolos's testimony).

²⁵⁵ Markopolos also submitted a large amount of information that likely would have satisfied the "independent knowledge" prong of "original information" under Rule 21F-4(b)(2), 17 CFR 240.21F-4(b)(2). For example, he described his own firm's inability to duplicate Madoff's returns using the same strategy and provided information about Madoff's claims and purported operations that he obtained from speaking with third parties who invested with Madoff. See *Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme*, Report No. OIG-509 (Aug. 31, 2009) ("OIG Report"), Exh. 137, available at https://www.sec.gov/news/studies/2009/oig-509/oig-509_exhibits.htm.

²⁴⁴ Public Law 111-203, section 922(a), 124 Stat. 1376, 1841 (July 21, 2010).

²⁴⁵ See S. Rep. No. 111-176 at 111 (2010). The Senate Report stated: "'Original information' is defined as information that is derived from the independent analysis or knowledge of the whistleblower, and is not derived from an allegation in court or government reports, and is not exclusively from news media. In circumstances when bits and pieces of the whistleblower's information were known to the media prior to the emergence of the whistleblower, and that for the purposes of the SEC enforcement the critical components of the information was supplied by the whistleblower, the intent of the Committee is to require the SEC to reward such person(s) in accordance with the degree of assistance that was provided."

²⁴⁶ 17 CFR 240.21F-4(b)(2) (emphasis added).

²⁴⁷ For example, one commenter suggested that the Commission should exclude only information from sources such as news media and governmental reports that are specifically set forth in the statute. See *Securities Whistleblower Incentives and Protections*, Release No. 34-64545, 76 FR 34300, 34311/3 (June 13, 2011) (citing comment letter from Taxpayers Against Fraud).

²⁴⁸ *Id.*

²⁴⁹ 76 FR 34300, 34311/1.

²⁵⁰ 17 CFR 240.21F-4(b)(3).

²⁵¹ 76 FR 34300, 34305, 34312/3.

²⁵² 17 CFR 240.21F-4(b)(3).

in public materials “would require lots of options trading and lots of options in open interest”²⁵⁶ for hedging purposes. Based upon his calculations of the total value of call option open interest on the Chicago Board Option Exchange and of OEX put option open interest, Markopolos revealed that “hedging cannot be taking place as described. . . . [I]f only \$3 billion are allocated to this strategy then there still aren’t enough options in open interest for this type of hedging to occur, since Madoff would be at least 1/3 of the open interest and we know that is not the case.”²⁵⁷ Similarly, in a 2005 submission, Markopolos offered a specific mathematical illustration of how he believed the income and protection parts of Madoff’s strategy would be expected to function under real-world market conditions, arguing that the income that might be expected from stock dividends and the sale of equity call options offset by the cost of purchasing put options, made Madoff’s claimed returns “way too good to be true.”²⁵⁸ In the same submission, Markopolos also calculated that Madoff would have had to account for more than 100% of the total OEX put option open interest in order to hedge his stock holdings as depicted in certain marketing literature.²⁵⁹

Markopolos’s submissions included information that would qualify as “independent analysis” (as defined in our whistleblower rules (and explained further in this guidance) if submitted today. Markopolos’s information was “highly-probative,”²⁶⁰ going beyond the publicly available information itself to “reveal” that Madoff’s claimed returns were unachievable under real market conditions. We anticipate that we may find a requisite level of “analysis” in analogous cases where an individual with a high level of specialized training or expertise reviews publicly available information and illuminates for the Commission possible violations that are obscured because of the technical nature of the source material.²⁶¹

Importantly, this is not to suggest that “independent analysis” is limited to persons with technical expertise or other specialized training. In each case, the touchstone is whether the whistleblower’s submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations.

While “independent analysis” is evident in Markopolos’s tips, other submissions that utilize publicly available information may not be so clear. However, we believe that case law interpreting the False Claims Act’s public disclosure bar generally suggests a helpful framework for distinguishing tips in which the whistleblower’s “independent analysis” of publicly available information reveals important information about possible violations beyond the public sources themselves. The public disclosure bar precludes recovery when “substantially the same allegations or transactions” as alleged by the *qui tam* relator were previously disclosed publicly in one of the designated sources. The D.C. Circuit and other federal courts of appeals have held that fraudulent transactions are publicly disclosed—and a *qui tam* suit thus barred—when essential facts that are sufficient to give rise to an inference of fraud are in the public domain.²⁶² This rule bars *qui tam* suits when publicly disclosed information provides “the government . . . [with] enough information ‘to investigate the case and to make a decision whether to prosecute’ or . . . ‘could at least have alerted law-enforcement authorities to the likelihood of wrongdoing.’”²⁶³ Conversely, where a *qui tam* relator “supplie[s] the missing link between the public information and the alleged fraud,” and thereby “‘bridge[s] the gap by [his] own efforts and experience,’ the public disclosure bar does not apply.”²⁶⁴ In this way, *qui tam* awards are reserved for relators who

“‘contributed significant independent information’ about a possible fraud.”²⁶⁵

Relying in part on the False Claims Act framework to assist us in formulating a proposed standard for interpreting Exchange Act Rule 21F–4(b)(3), we believe the following is appropriate: A whistleblower’s examination and evaluation of publicly available information does not constitute “analysis” if the facts disclosed in the public materials on which the whistleblower relies and in other publicly available information are sufficient to raise an inference of the possible violations alleged in the whistleblower’s tip. This is because, where the violations that the whistleblower alleges can be inferred by the Commission from the face of public materials, those violations are not “reveal[ed]” to the Commission by the whistleblower’s tip or any purported analysis that the whistleblower has submitted. Rather, in order for a whistleblower to be credited with providing “independent analysis,” the whistleblower’s examination and evaluation should contribute “significant independent information” that “bridges the gap” between the publicly available information and the possible securities violations.

As noted, “significant independent information” that “bridges the gap” in revealing violations may be found in the application of technical expertise, but this is not required.²⁶⁶ However, we have received tips in which a whistleblower merely offers observations drawn from publicly available information. In these cases, the whistleblower typically directs the staff to publicly available information and states that the information itself suggests a fraud or other violations. Examples would be where the whistleblower points to common hallmarks of fraud on the face of the public materials (*e.g.*, impossibly high, guaranteed investment returns or extravagant claims in press releases) or to public discourse (*e.g.*, discussions on a public message board) in which investors or others are alleging a fraudulent scheme. Further, it would not matter whether the individual relied on only one source (*e.g.*, a single website) to collect the publicly available information that demonstrates the

²⁶⁵ *Id.* at 933 (quoting *United States ex rel. Springfield Terminal Railway v. Quinn*, 14 F.3d 645, 653 (D.C. Cir. 1994)).

²⁶⁶ For example, non-experts may configure publicly available information in a non-obvious way that reveals patterns indicating possible violations that would not be otherwise inferable from the public information or may engage in highly probative calculations or some other meaningful exercise with the information that may demonstrate the possibility of securities violations.

²⁵⁶ OIG Report, Exh. 134.

²⁵⁷ OIG Report at 62, quoting Markopolos 2000 submission, Exh. 134.

²⁵⁸ OIG Report, Exh. 268.

²⁵⁹ OIG Report, Exh. 268.

²⁶⁰ 76 FR 34300, 34312/3.

²⁶¹ However, we caution that we expect this standard may be particularly demanding for attorneys and accountants who seek whistleblower awards based on their review of publicly available information. As the Enforcement staff is substantially comprised of experienced attorneys and accountants, an outside attorney or accountant would generally be expected to contribute insights or revelations that would not be reasonably evident to an accountant or attorney on the Enforcement staff who reviewed the same publicly available information.

²⁶² See, *e.g.*, *United States ex rel. Oliver v. Philip Morris USA Inc.*, 826 F.3d 466, 471–73 (D.C. Cir. 2016), *reh. en banc denied*, 2016 U.S. App. Lexis 17161 (D.C. Cir. 2016); *Amphastar Pharmaceuticals Inc. v. Aventis Pharma SA*, 856 F.3d 696, 703 (9th Cir. 2017); *Cause of Action v. Chicago Transit Authority*, 815 F.3d 267, 278 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 205 (2016).

²⁶³ *Phillip Morris USA*, 826 F.3d at 472; see also *United States ex rel. Solis v. Millennium Pharms., Inc.*, 885 F.3d 623, 626 (9th Cir. 2018) (“A prior disclosure and an allegation may be substantially similar when the prior public disclosure put the government ‘on notice to investigate the fraud before the relator filed his complaint.’”).

²⁶⁴ *United States ex rel. Shea v. Cellico Partnership*, 863 F.3d 923, 935 (DC Cir. 2017).

hallmarks of the fraud, or whether the individual relied on a multitude of different publicly available sources to collect the information. These tips generally would not qualify as “independent analysis” under our interpretation because the whistleblower’s essential contribution is merely that he or she directed the staff to publicly available information that gives rise to an inference of violations; the whistleblower’s tip has not “bridged the gap” between public information that does not itself provide a basis for inferring a possible violation and a conclusion that a violation may have occurred. Further, we believe that this same result would generally obtain whether the whistleblower directs the staff to a single piece of publicly available information or the whistleblower aggregates information from multiple different sources.²⁶⁷ If the violations can be inferred by the Commission from the available and/or assembled publicly available information, without more, then the whistleblower has not contributed significant independent information that reveals the violations.²⁶⁸

Thus, in each case the Commission should consider whether publicly available information (both that supplied by the whistleblower and other public sources) was sufficient to give rise to an inference of the violations alleged by the whistleblower, or whether the whistleblower’s examination and evaluation of public source material revealed new, significant, and independent information that “bridged the gap” for the staff in demonstrating the possibility of violations. Moreover, under our rules the whistleblower will be notified of any preliminary determination that his or her tip did not constitute “independent analysis,” and will have an opportunity to contest that determination in a written submission to the Commission.²⁶⁹

²⁶⁷ As noted above, we explained in the adopting release for our whistleblower rules that a whistleblower would need to do more than point us to disparate public information in order to provide “independent analysis” within the meaning of our rule. 76 FR 34300, 34305, 34312/3.

²⁶⁸ The Commission, in its adjudicatory capacity, routinely draws reasonable inferences from facts in the record. *See, e.g.*, SEC Rule of Practice 250, 17 CFR 201.250 (drawing reasonable inferences from factual allegations in deciding dispositive motions). “Drawing inferences from direct and circumstantial evidence is a routine and necessary task of any factfinder. ‘The very essence of [the factfinder’s] function is to select from among conflicting inferences and conclusions that which it considers most reasonable.’” *Siewe v. Gonzalez*, 480 F.3d 160, 166 (2d Cir. 2007) (quoting *Tennant v. Peoria and Pekin Union Railway*, 321 U.S. 29 (1944)).

²⁶⁹ *See* 17 CFR 240.21F–10(e).

C. Leads to Successful Enforcement

Assuming that a whistleblower’s submission meets the threshold requirement that it constitute “independent analysis,” for the whistleblower to be eligible for an award the “information that . . . is derived from the . . . [whistleblower’s] analysis” must also lead to a successful enforcement action. This determination turns “on an evaluation of whether the analysis is of such high quality that it either causes the staff to open an investigation, or significantly contributes to a successful enforcement action, as set forth in Rule 21F–4(c).”²⁷⁰ Further, if the staff looks to other information as well in determining to open an investigation, the Commission will only find that the independent analysis “led to” the success of the enforcement action if the Commission determines that the whistleblower’s analysis was a “principal motivating factor” in the staff’s decision to open the investigation.²⁷¹

Thus, even an otherwise compelling analysis may not satisfy the “leads to” requirement depending on the nature of other information already in the staff’s possession. For example, if the staff has already obtained testimony from insiders describing the facts of a violation, a subsequent whistleblower submission that demonstrates the possibility of the violation through independent analysis of publicly available information would not likely qualify for an award because, against the backdrop of the facts already known to the staff, the whistleblower’s analysis would not significantly contribute to the staff’s investigation.

Request for Comment

30. We seek comment on the interpretation of “independent analysis” in light of the background set forth above. Are there additional considerations that the Commission should factor into the interpretation? For example, should the interpretation address more explicitly cases in which an individual selects, compiles, and presents publicly available information in a new way for the staff? If so, how?

31. Should any aspect of the interpretation be codified in rule text? For example, should the Commission adopt rule text that would make clear that for a whistleblower to be credited with providing “original information”

²⁷⁰ 76 FR 34300, 34312/3. This would require that the whistleblower’s analysis made a substantial and important contribution to the action. *See* Whistleblower Award Proceeding 2016–9, Release No. 34–77833 (May 13, 2016).

²⁷¹ 75 FR 70488, 70497/2.

through “independent analysis,” the whistleblower’s examination and evaluation should contribute “significant independent information” that “bridges the gap” between the publicly available information and the possible securities violations?

IV. Request for Comment Regarding a Potential Discretionary Award Mechanism for Commission Actions That Do Not Qualify as Covered Actions, Involve Only a *De Minimis* Collection of Monetary Sanctions, or Are Based on Publicly Available Information

Beyond the specific rule proposals and interpretations expressly advanced above, we invite public comment on whether the Commission could at a future point propose a rule that would permit the Commission on a discretionary basis to pay awards to whistleblowers in Commission enforcement actions that do not result in an order for monetary sanctions that exceeds \$1,000,000²⁷² or enforcement actions where the whistleblower’s tip consisted of publicly available information.²⁷³ Similarly, do we have the statutory authority to propose and adopt a rule that would permit the Commission on a discretionary basis to make award payments that are not tied to the monetary payments collected where a meritorious whistleblower has received an award determination in a covered action, but the ordered monetary sanctions cannot be collected or the amount collected would result in a *de minimis* payment? Alternatively, would a legislative change be required for the Commission to establish the type of discretionary award mechanisms described in this section? Moreover, whether by rule or legislative change, would such discretion to make awards in these instances be in the public interest? Please explain the grounds for your views.

V. General Request for Public Comment

We request and encourage any interested person to submit comments

²⁷² For example, could we propose and adopt a rule that would authorize the Commission on a discretionary basis to utilize the IPF to pay awards to whistleblowers who make significant contributions in Commission Enforcement actions that do not qualify as covered actions for which we can currently pay awards?

²⁷³ These would be situations where, under the existing statute and our current rules, the information provided by the whistleblower would not qualify as information that was derived from the whistleblower’s “independent knowledge” or independent analysis.” *see* Exchange Act Rule 21F–4(b)(2) & (3), 17 CFR 240.21F–4(b)(2) & (3), and thus would not be “original information” upon which the Commission could base an award, *see* Exchange Act Rule 21F–4(b)(1)(i), 17 CFR 240.21F–4(b)(1)(i).

on any aspect of the proposed rule amendments, interpretations, or other items specified above. With respect to any comments on the economic analysis contained below, we note that such comments would be of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed therein and by alternatives to our proposals where appropriate.

Finally, other than the items specifically identified in this release, persons wishing to comment are expressly advised that the Commission is not proposing any other changes to the whistleblower program rules (*i.e.*, Exchange Act Rules 21F-1 through 21F-17), nor is the Commission otherwise reopening any of those rules for comment.

VI. Paperwork Reduction Act

A. Background

The proposed amendments would affect certain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).²⁷⁴ The Commission is submitting the proposal to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.²⁷⁵ The titles for the affected collections of information are:

“Electronic Data Base Collection System—TCR” (OMB Control No. 3235-0672); and “Form TCR” and “Form WB-APP” (OMB Control No. 3235-0686).

Currently an applicant seeking to submit information to the Commission in order to qualify as a whistleblower must submit this information by using one of two methods: (1) By providing the information through an online portal on the Commission’s website that is designed for receiving electronic submissions, or (2) by submitting the paper Form TCR that was initially adopted by the Commission as part of the original whistleblower rulemaking in 2011.²⁷⁶ In addition to the paper Form TCR, the Commission also adopted a paper Form WB-APP when it adopted the existing rules for the whistleblower program. Individuals seeking awards must make their award request using Form WB-APP. The hours and costs associated with preparing and submitting information through the online portal and affected forms constitute reporting and cost burdens imposed by each collection of information. An agency may not

conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

B. Summary of the Proposed Amendments

As described in more detail above, to provide the Commission with the ability to make timely corresponding adjustments to the paper Form TCR when it determines to modify the online portal, the Commission proposes to modify Exchange Act Rule 21F-8²⁷⁷ by adding a new paragraph (d)(1) providing that the Commission will periodically designate a Form TCR (Tip, Complaint, or Referral) that individuals seeking be eligible for an award through the process identified in § 240.21F-9(a)(2) shall use. In addition, to provide the Commission with greater administrative flexibility to modify Form WB-APP, the Commission proposes to modify Exchange Act Rule 21F-8 by adding a new paragraph (d)(2) providing that the Commission will also periodically designate a Form WB-APP for use by individuals seeking to apply for an award under either § 240.21F-10 or § 240.21F-11.

In connection with these proposed amendments, we propose to reorganize the OMB control numbers and associated burden estimates for the collections of information contained in the Commission’s online portal, Form TCR and Form WB-APP. Although the online portal and Form TCR collect substantially the same type of information—information alleging potential securities law violations—they currently have separate OMB control numbers. In addition, although Form TCR and Form WB-APP collect different types of information, the latter of which collects information from individuals applying for whistleblower awards, these collections of information are currently gathered pursuant to the same OMB control number.

Pursuant to the proposed reorganization, both the online portal and Form TCR would fall under the same OMB control number (No. 3235-0672). The title for this collection of information and the associated burden estimate would be adjusted accordingly to reflect the submission of relevant information through both the online portal and the paper Form TCR (*see* Table 2 of section VI(C)). Form WB-APP would thus have its own OMB control number (No. 3235-0686) and the collection of information would be

retitled accordingly (*see* Table 2 of section VI(C)).

C. Burden and Cost Estimates Related to the Proposed Amendments

We do not anticipate that the proposed amendments would increase the burden or cost to individuals preparing and submitting the required information through the online portal and affected forms. Although we intend to make certain modifications to Form TCR so that the information elicited by the form is consistent with the information collected through the online portal, we do not believe that these conforming modifications will increase appreciably the burden for individuals completing the form.

We estimate that the combined burden associated with both paper Form TCR and the online complaint form is 9,050 hours annually. We anticipate that the burdens imposed by the online complaint form will vary depending on the complexity of the alleged violations that are the subject of the tip and the amount of information possessed by the individual submitting the tip. We estimate that it takes a complainant, on average, 30 minutes to complete the online complaint form. Based on an estimate of 16,000 annual responses, we estimate that the annual PRA burden for the online complaint form is 8,000 hours. Although the completion time will depend on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of the allegations, we estimate that it takes a whistleblower, on average, one and one-half hours to complete and submit Form TCR. We estimate that it may take individuals more time to complete Form TCR than the online complaint form because a person will have to hand write in the required information and spend time mailing and faxing the form to the Commission. Based on the receipt of an average of approximately 700 annual Form TCR submissions for the past three fiscal years, the Commission estimates that the annual reporting burden of Form TCR is 1,050 hours.

We estimate that it takes a whistleblower, on average, one hour to complete Form WB-APP, though the completion time depends largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of his or her application for an award. Based on the receipt of an average of approximately 110 annual properly filed Form WB-APP submissions for the past

²⁷⁴ 44 U.S.C. 3501 *et seq.*

²⁷⁵ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

²⁷⁶ *See* Exchange Act Rule 21F-9, 17 CFR 240-21F-9(a).

²⁷⁷ 17 CFR 240.21F-8.

six fiscal years,²⁷⁸ the Commission estimates that the annual reporting burden of Form WB-APP is 110 hours.

We do not believe that the proposed amendments would increase the professional costs associated with preparing and submitting the affected forms. Under the whistleblower rules, an anonymous whistleblower who is seeking an award is required, and a whistleblower whose identity is known may elect, to retain counsel to represent the whistleblower in the whistleblower program. We expect that in most instances the whistleblower's counsel will complete, or assist in the completion, of some or all of the required forms on behalf of the whistleblower. However, we expect that in the vast majority of cases in which a whistleblower is represented by counsel, the whistleblower will enter into a contingency fee arrangement with counsel, providing that counsel be paid

for the representation through a fixed percentage of any recovery by the whistleblower under the program. Thus, we expect most whistleblowers will not incur any direct out of pocket expenses for attorneys' fees for the completion of the affected forms.

We expect that a very small number of whistleblowers (no more than 5%) enter into hourly fee arrangements with counsel.²⁷⁹ In those cases, a whistleblower will incur direct expenses for attorneys' fees for the completion of the required forms. To estimate those expenses,²⁸⁰ we make the following assumptions:

- (i) The Commission will continue to receive on average approximately 700 Forms TCR and 110 Forms WB-APP annually;
- (ii) Individuals will pay hourly fees to counsel for the submission of approximately 35 Forms TCR and 6 Forms WB-APP annually;²⁸¹

(iii) Counsel retained by whistleblowers pursuant to an hourly fee arrangement will charge on average \$400 per hour;²⁸² and

(iv) Counsel will bill on average: (i) Three hours to complete a Form TCR, and (ii) two hours to complete a Form WB-APP.²⁸³

For purposes of the PRA, we estimate that each year whistleblowers will incur the following total amounts of attorneys' fees in connection with completing Forms TCR and WB-APP: (i) \$42,000²⁸⁴ for the reporting burden of Form TCR; and (ii) \$4,800²⁸⁵ for the reporting burden of Form WB-APP.

The tables below summarize the burden and cost estimates associated with the online portal and affected forms both currently and after the proposed reorganization of the relevant control numbers:

TABLE 1 OF SECTION VI(C)—CURRENT BURDEN ESTIMATES

Title	OMB control No.	Burden hours	Costs
"Electronic Data Base Collection System—TCR"	3235-0672	8,000	\$0
"Form TCR" and "Form WB-APP"	3235-0686	1,160	46,800

TABLE 2 OF SECTION VI(C)—REVISED BURDEN ESTIMATES UNDER THE PROPOSED REORGANIZATION

Title	OMB control No.	Burden hours	Costs
"Tips, Complaints and Referrals (TCR)"	3235-0672	9,050	\$42,000
"Form WB-APP"	3235-0686	110	4,800

D. Mandatory Collection of Information

A whistleblower is required to complete either a hardcopy Form TCR or submit his or her information electronically through the online portal and to complete Form WB-APP to qualify for a whistleblower award.

E. Confidentiality

As explained above, the statute provides that the Commission must maintain the confidentiality of the identity of each whistleblower, subject

to certain exceptions. Section 21F(h)(2) states that, except as expressly provided the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant

or respondent in connection with a public proceeding instituted by the Commission or certain specific entities listed in paragraph (C) of Section 21F(h)(2).

Further, as discussed above, we are proposing Rule 21F-2(c) to require that an individual who is seeking this heightened confidentiality protection must submit his or her information to the Commission using the online portal or by completing a hardcopy Form TCR. If an individual fails to do so, then

²⁷⁸ This figure does not include Form WB-APP submissions which were facially deficient, subsequently withdrawn or submitted by individuals who have been barred by the Commission from participation in the whistleblower program.

²⁷⁹ This estimate is based, in part, on the Commission's belief that most whistleblowers likely will not retain counsel on an hourly basis to assist them in preparing the forms.

²⁸⁰ Individuals submitting their information in writing who are not seeking to be eligible for the Commission's whistleblower award program are not required to retain an attorney, even if they choose to submit their information anonymously, and thus

are not required to use either the Form TCR or the Form WB-APP. As such, for purposes of calculating the estimated costs of the forms, we have only included the potential costs associated with completing and submitting the Form TCR and Form WB-APP.

²⁸¹ These amounts are based on the assumption, as noted above, that no more than 5% of all whistleblowers will be represented by counsel pursuant to an hourly fee arrangement.

²⁸² The Commission uses this hourly billing rate for purposes of estimating the professional costs of other rules, and we believe it is an appropriate billing rate to use in this context, recognizing that some attorneys representing whistleblowers may

not be securities lawyers and may charge different average hourly rates.

²⁸³ The Commission expects that counsel will likely charge a whistleblower for additional time required to gather from the whistleblower or other sources relevant information needed to complete Forms TCR and WB-APP. Accordingly, we estimate that, on average, counsel will bill a whistleblower three hours for the completion of Form TCR and two hours for completion of Form WB-APP (even though we estimate that a whistleblower acting without counsel will be able to complete the Form TCR in 1.5 hours and Form WB-APP in 1 hour).

²⁸⁴ 35 × (\$400 × 3) = \$42,000.

²⁸⁵ 6 × (\$400 × 2) = \$4,800.

under our proposed rule he or she would be ineligible for the heightened confidentiality protections.

Section 21F(h)(2) also permits the Commission to share information received from whistleblowers with certain domestic and foreign regulatory and law enforcement agencies. However, the statute requires the domestic entities to maintain such information as confidential, and requires foreign entities to maintain such information in accordance with such assurances of confidentiality as the Commission deems appropriate.

In addition, Section 21F(d)(2) provides that a whistleblower may submit information to the Commission anonymously and still be eligible for an award, so long as the whistleblower is represented by counsel. However, the statute provides that a whistleblower must disclose his or her identity prior to receiving payment of an award.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7-08-17. Requests for

materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7-08-17 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

VII. Economic Analysis

The Commission is sensitive to the economic consequences of its rules, including the benefits, costs, and effects on efficiency, competition, and capital formation. Section 23(a)(2)²⁸⁶ of the Securities Exchange Act of 1934 requires the Commission, in promulgating rules under the Exchange Act, to consider the impact that any rule may have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Further, Section 3(f) of the Exchange Act²⁸⁷ requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The economic analysis in this part focuses on the proposed amendments to Rule 21F-2, Rule 21F-4(d)(3), Rule 21F-6, Rule 21F-3(b)(4), Rule 21F-8, newly proposed Exchange Act Rule 21F-18, and the proposed interpretive guidance. As discussed above, the proposed amendments to Rule 21F-2 are in response to the Supreme Court's recent decision in *Digital Realty Trust, Inc. v. Somers*,²⁸⁸ proposed Rule 21F-4(d)(3) would allow awards based on non-prosecution agreements or deferred prosecution agreements entered into by the DOJ or state attorneys general, and settlement agreements entered into by the Commission; proposed Rule 21F-3(b)(4) would eliminate potential double recovery under the current definition of related action; proposed amendments to Rule 21F-6 would allow additional considerations for small and large awards; proposed Rule 21F-8(e) would

provide authority to bar applicants from future award applications in certain limited situations; proposed Rule 21F-18 would provide a streamlined award consideration process for certain limited categories of non-meritorious applications; and the proposed interpretive guidance would help clarify the meaning of "independent analysis" as that term is defined in Exchange Act Rule 21F-4 and utilized in the definition of "original information." The other proposed amendments in this release are either procedural, technical in nature or codify existing practice, and therefore we do not expect them to significantly impact efficiency, competition, and capital formation.

Many of the benefits and costs discussed below are difficult to quantify. For example, although the analysis that follows details the specific ways in which we expect the proposed rules to affect whistleblower incentives, we lack the data necessary to estimate the magnitudes of these effects separately or in the aggregate. Similarly, we do not know the precise cost—in terms of awards paid out of the IPF—of defining a non-prosecution agreement or deferred prosecution agreement entered into by the DOJ or a state attorney general or a settlement agreement entered into by the Commission as an "administrative action" and any money required to be paid thereunder as a "monetary sanction." Moreover, we do not know the funds that might be conserved in the IPF by the avoidance of double recoveries for the same action and the avoidance of large awards that are not reasonably necessary to achieve the goals of the whistleblower program. Therefore, while we have attempted to quantify economic impacts where possible, much of the discussion of economic effects is qualitative in nature.

A. Economic Baseline

To examine the potential economic effects of the amendments, we employ as a baseline the comprehensive set of rules that the Commission adopted in May 2011 to implement the whistleblower program. The baseline also includes: The Supreme Court's recent decision in *Digital Realty Trust, Inc. v. Somers*; a description of whistleblower programs administered by other regulatory authorities; and a discussion of the IPF (including its replenishment mechanism), summary statistics that describe the distribution of awards paid by the whistleblower program under the 2011 rules, and estimates of wages and salaries obtained from a number of surveys.

²⁸⁶ 15 U.S.C. 78w(a)(2).

²⁸⁷ 15 U.S.C. 78c(f).

²⁸⁸ 138 S. Ct. 767 (2018).

1. Whistleblower Programs

In this section, we discuss a non-exhaustive list of the various federal and state whistleblower programs that are currently administered by other agencies or authorities and which might be implicated by the proposed rules.²⁸⁹

The CFTC administers its own whistleblower award program under section 23 of the Commodity Exchange Act.²⁹⁰ Both the SEC and CFTC programs were established by the Dodd-Frank Act and are substantially identical in their substantive terms.²⁹¹

As discussed above, since the adoption of our whistleblower program rules, two states have adopted their own whistleblower award programs in connection with state securities-law enforcement actions. In 2011, Utah established a whistleblower-award scheme to provide rewards of up to thirty percent of the money collected in state securities-law enforcement actions.²⁹² The following year, Indiana enacted a whistleblower award scheme to provide rewards up to ten percent of the money collected in a state securities-law enforcement action.²⁹³ We are also aware that DOJ might pursue law-enforcement actions that potentially implicate both the Commission's whistleblower program and the whistleblower award program that the IRS administers.²⁹⁴ Further, Congress in 2015 established a new motor-vehicle-safety whistleblower award program that allows employees or contractors of a motor-vehicle manufacturer, parts supplier, or dealership who report serious violations of federal vehicle-

safety laws to obtain awards of 10 percent to 30 percent of any monetary sanction over \$1 million that the Federal Government collects based on that information.²⁹⁵

2. Supreme Court Decision in *Digital Realty Trust, Inc. v. Somers*

The Supreme Court recently held in *Digital Realty Trust, Inc. v. Somers*,²⁹⁶ that Section 21F(h)(1) of the Exchange Act unambiguously requires that a person report a possible securities law violation to the Commission in order to qualify for employment retaliation protection, and that the Commission's rule interpreting the retaliation protections in Section 21F more broadly was therefore not entitled to deference.²⁹⁷ The Court reasoned that the definition of "whistleblower" codified in Section 21F(a)(6) requires such a report to the Commission as a prerequisite for employment retaliation protection, and that this definition is "clear and conclusive."²⁹⁸ The Court also determined that strict application of the definition's reporting requirement in the employment anti-retaliation context is consistent with Congress's core objective of "motiv[at]ing people who know of securities law violations to tell the SEC."²⁹⁹

3. IPF and Awards Issued by the SEC Whistleblower Program

In Section 21F(g) of the Exchange Act, Congress established the IPF to provide funding for the payment of whistleblower awards. The IPF has a permanent indefinite appropriation that is available without further

appropriation or fiscal year limitation for the purpose of funding awards to whistleblowers (and to fund the Office of Inspector General's Employee Suggestion Program).³⁰⁰

As of the end of Fiscal Year 2017, the balance of the IPF was approximately \$322 million.³⁰¹ Whenever the reserve in the IPF falls below \$300 million, Section 21F(g)(3) requires the Commission to replenish the IPF.³⁰² In May 2018, the balance of the IPF for the first time fell below the \$300 million threshold that triggers the statutory replenishment mechanism;³⁰³ this occurred when the Commission paid \$83 million—its largest payout to date on an enforcement action—to three individuals.

From August 2012 through April 2018, the Commission's whistleblower program issued 50 whistleblower awards to 55 individuals (including, as explained above, individuals who acted as joint whistleblowers).³⁰⁴ Table 1 of Section VII(A)(3) reports the frequency distribution of these awards by award size. Forty-two of these awards were less than \$5 million, of which thirty-one awards were less than \$2 million. Of the remaining eight awards, five were at least \$5 million but less than \$30 million.³⁰⁵ According to the Office of the Whistleblower, of the 55 individuals who have received awards, approximately 10 percent are high-ranking corporate executives at companies of varying sizes and a large majority of these executives received awards that were under \$5 million.

TABLE 1 OF SECTION VII(A)(3)—FREQUENCY DISTRIBUTION OF WHISTLEBLOWER AWARDS

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. Number is the number of awards that fall within an award size category. Percent is the number of awards in an award size category as a fraction of the total number of awards.]

Award size category	Number	Percent
Less than \$2 million	31	62
At least \$2 million but less than \$5 million	11	22

²⁸⁹ Although we discuss several federal whistleblower programs that we believe are more likely to be implicated by the proposed rules, there are other federal whistleblower programs that are not discussed but which could potentially be implicated.

²⁹⁰ 7 U.S.C. 26.

²⁹¹ See Securities Whistleblower Incentives and Protections Proposing Release, 75 FR at 70490.

²⁹² Utah Code Annotated 61–1–101 *et seq.*

²⁹³ Indiana Code 23–19–7–1 *et seq.*

²⁹⁴ 26 U.S.C. 7623.

²⁹⁵ 49 U.S.C. 30172 (enacted by Section 24352 of the Fixing America's Surface Transportation Act of 2015 (FAST Act), Pub. L. 114–94).

²⁹⁶ 138 S. Ct. 767 (2018).

²⁹⁷ *Id.* at 781–82.

²⁹⁸ *Id.*

²⁹⁹ *Id.* at 777 (quoting S. Rep. No. 111–176, at 38 (2010)).

³⁰⁰ However, the Commission is required to request and obtain an annual apportionment from the Office of Management and Budget to use these funds. See SEC Agency Financial Report for 2017 (Nov. 14, 2017), available at <https://www.sec.gov/files/sec-2017-agency-financial-report.pdf>.

³⁰¹ See Section II.D, above.

³⁰² See 15 U.S.C. 78u–6(g)(3).

³⁰³ For a description of the IPF's statutory replenishment mechanisms, see Section 21F(g)(3) of the Exchange Act, 15 U.S.C. 78u–6(g)(3).

³⁰⁴ These totals treat as single awards several cases where whistleblowers' original information led to multiple covered actions that were processed together in one award order recognizing the total contributions of the whistleblower. Similarly, consistent with the approach proposed above governing cases where we grant an award for both a Commission enforcement action and a related action by another agency based on the same

information provided by the whistleblower (see 17 CFR 240.21F–3(b)), we consider covered-action awards together with their corresponding related-action awards as single whistleblower awards.

³⁰⁵ One of the three awards that exceeded \$30 million was issued in September 2014 in a Commission action and related actions. See *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34–73174 (Sept. 22, 2014), available at <https://www.sec.gov/rules/other/2014/34-73174.pdf>. The other two awards were issued in March 2018 for \$49 and \$33 million, respectively, to three individuals (two of whom were acting as joint whistleblowers). See *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34–82897 (March 19, 2018), available at <https://www.sec.gov/rules/other/2018/34-82897.pdf>. We note that these three awards alone reduced the balance of the IPF by approximately \$112 million.

TABLE 1 OF SECTION VII(A)(3)—FREQUENCY DISTRIBUTION OF WHISTLEBLOWER AWARDS—Continued

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. Number is the number of awards that fall within an award size category. Percent is the number of awards in an award size category as a fraction of the total number of awards.]

Award size category	Number	Percent
At least \$5 million but less than \$10 million	2	4
At least \$10 million but less than \$15 million	1	2
At least \$15 million but less than \$20 million	1	2
At least \$20 million but less than \$30 million	1	2
At least \$30 million	3	6
Total	50	100

In addition to summarizing the distribution of awards to whistleblowers, we also summarize the distribution of awards by enforcement action. For each enforcement action, we identify all whistleblowers who receive an award for that enforcement action and sum up their awards to arrive at the

aggregate award for that enforcement action. Table 2 of section VII(A)(3) indicates that between August 2012 and April 2018, there were 45 enforcement actions for which the Commission issued whistleblower awards.³⁰⁶ Thirty-seven enforcement actions had awards of less than \$5 million, of which twenty-

eight awards were less than \$2 million. Of the remaining eight actions, six had aggregate awards of at least \$5 million but less than \$30 million and only two had an aggregate award that exceeded \$30 million.

TABLE 2 OF SECTION VII(A)(3)—FREQUENCY DISTRIBUTION OF AWARDS BY ENFORCEMENT ACTION

[We use awards issued to whistleblowers by the SEC Whistleblower Program from August 2012 through April 2018. For each enforcement action, we identify all whistleblowers who receive an award for that enforcement action and sum up their awards to arrive at the aggregate award for that enforcement action. We then plot the distribution of aggregate awards by enforcement action. Number is the number of aggregate awards that fall within an award size category. Percent is the number of aggregate awards in an award size category as a fraction of the total number of awards.]

Award size category	Number	Percent
Less than \$2 million	28	62
At least \$2 million but less than \$5 million	9	20
At least \$5 million but less than \$10 million	3	7
At least \$10 million but less than \$15 million	2	4
At least \$15 million but less than \$20 million	0	0
At least \$20 million but less than \$30 million	1	2
At least \$30 million	2	4
Total	45	100

4. Estimates of Current Annual Wages

Prospective whistleblowers' annual wages are potentially relevant to various aspects of the proposed rules. Table 3 of Section VII(A)(3) presents, by industry, the pre-tax annual wages per employee ("average wages") estimated by the Bureau of Labor Statistics for 2016.³⁰⁷ Average wages vary from a low of \$22,445 in the leisure and hospitality industry to a high of \$98,458 in the information industry.

These averages do not reflect the substantial degree of within-industry wage variation. For example, more

senior employees involved in financial activities likely earn higher wages than their more junior counterparts, and staff that supply significant expertise may earn more than those that do not. A survey of 2,499 firms registered with the Commission and included in the Russell 3000 Index as of May 2017 revealed median total CEO compensation at approximately \$3.8 million.³⁰⁸ A study of the 200 largest pay packages awarded to CEOs at U.S. public companies in fiscal year 2016 revealed that the median pay for this group of CEOs was \$16.9 million, while the average pay

was \$19.7 million.³⁰⁹ A 2017 report documenting survey responses from 377 financial professionals included average base salaries for senior-level financial executives of between \$133,859 and \$342,154, depending on title and whether companies are public or private.³¹⁰ Notwithstanding the foregoing, we think it is relevant to observe that although the compensation of CEOs and other senior ranking officials provides insights into the wage variation within a particular industry, in our experience a company's workforce typically consists of far more lower-

³⁰⁶ As noted, we aggregate related actions with their corresponding Commission actions for purposes of this analysis.

³⁰⁷ Wage data used for calculating the annual wages per employee are derived from the quarterly tax reports submitted to state government workforce agencies by employers, subject to state unemployment insurance laws, and from Federal agencies subject to the Unemployment Compensation for Federal Employees program. Further information is available at <https://www.bls.gov/cew/cewbultn16.htm>.

³⁰⁸ See "CEO and Executive Compensation Practices: 2017 Edition" (available at: <https://www.conference-board.org/publications/publicationdetail.cfm?publicationid=7584>).

³⁰⁹ See "Equilar 200: Ranking the Largest CEO Pay Packages" (available at <http://www.equilar.com/reports/49-equilar-200-ranking-the-largest-ceo-pay-packages-2017.html>) for a summary of the study and its findings. See "Equilar 200: The Largest CEO Pay Packages of 2016" (available at <http://www.equilar.com/reports/49-table-equilar-200-ranking-largest-ceo-pay->

[packages.html](#)) for the ranking of CEOs by their pay packages. See "How the C.E.O. Rankings Were Done" (<https://www.nytimes.com/2017/05/26/business/how-the-ceo-rankings-were-done.html>) for a discussion of the study's methodology.

³¹⁰ See "Financial Executive Compensation Report 2017" Grant Thornton, 2017 (available at: <https://www.granthornton.com/~media/content-page-files/tax/pdfs/FEI-financial-exec-comp-survey-2017/FEI-survey-results-2017.ashx>).

paying positions, relatively speaking. For example, the average base salary for securities professionals working in New York City in 2015 (the last year for which such data is available) was \$388,000 and the nominal value of the average annual bonus for that year was approximately \$146,200.

TABLE 3 OF SECTION VII(A)(3)—2016 ANNUAL WAGES PER EMPLOYEE BY INDUSTRY

[This table presents the pre-tax annual wages per employee at privately owned establishments aggregated by industry as reported by the Bureau of Labor Statistics]

Industry	Annual wages per employee (\$)
Natural resources and mining	\$56,115
Construction	58,647
Manufacturing	64,870
Trade, transportation, and utilities	44,764
Information	98,458
Financial activities	88,841
Professional and business services	69,992
Education and health services	48,058
Leisure and hospitality	22,445
Other services	35,921
Unclassified	51,837

B. Analysis of Benefits, Costs, and Economic Effects of the Proposed Rules

In this section, we discuss the potential benefits, costs, and economic effects of the proposed rules. For proposed Rule 21F–6(c), we also discuss alternatives to the approach contemplated in the proposed rule as well as reasons for rejecting those alternatives.

1. Proposed Amendments to Rule 21F–2

Most of the proposed amendments to Rule 21F–2 are either in response to the Supreme Court’s decision in *Digital Realty Trust, Inc. v. Somers*³¹¹ or do not differ substantively from current rules and practice. Two proposed amendments, however, do represent changes relative to the economic baseline, and their potential benefits, costs, and economic effects are discussed here. Proposed Rule 21F–2(a)(1) would extend employment retaliation protection only to an individual who provides the Commission with information “in writing.” Proposed Rule 21F–2(d)(1)(iii) would, among other things, limit employment retaliation protection to lawful acts that “relate to the subject matter” of the person’s submission to the Commission under proposed Rule 21F–2(a).

a. Proposed Rule 21F–2(a)(1)

Proposed Rule 21F–2(a)(1) could potentially impose a burden on those individuals who want to report potential violations to the Commission and wish to qualify as a “whistleblower” solely for employment

retaliation protection. Such individuals might decide not to report to the Commission if the reporting burden is perceived to outweigh the benefits associated with retaliation protection. Our experience to date in the awards context suggests that requiring that information be provided in writing presents, at most, a minimal burden to individuals who want to report violations to the Commission. To the extent that this experience is informative about the reporting burden in the retaliation context, such a burden would also be, at most, minimal. Accordingly, the proposed rule would likely not have an adverse impact on the whistleblowing incentives of those individuals who wish to qualify as a “whistleblower” solely for employment retaliation protection.

We have considered several alternatives to the approach contemplated in proposed Rule 21F–2(a). The first alternative is to require information to be provided to the Commission through the online portal at <http://www.sec.gov>, or mailing or faxing a Form TCR to the Office of the Whistleblower. The second alternative is to permit additional manners of reporting for anti-retaliation purposes (such as placing a telephone call).

We rejected the first alternative because it would, in our view, unnecessarily limit the means of reporting to the Commission by individuals who are merely seeking employment retaliation protection. Limiting whistleblower status to those individuals who follow the first alternative could result in the unnecessary exclusion of individuals from the benefits of Section 21F(h)(2)’s employment retaliation protections

without providing any accompanying benefit to the Commission, whistleblowers, or the public generally. Further, requiring individuals to report “in writing” could potentially impose lower costs (including time spent) on these individuals than the costs they would have borne under the first alternative.

We rejected the second alternative because of potential costs that could arise if the Commission’s staff became ensnared by disputes in private anti-retaliation lawsuits over what information was provided to whom on what dates. Requiring that any reporting be done in writing obviates these potential costs.

b. Proposed Rule 21F–2(d)(1)(iii)

Proposed Rule 21F–2(d)(1)(iii) helps avoid the result that an individual could qualify just once as a whistleblower and then receive lifetime protection for any non-Commission reports described in clause (iii) of Section 21F(h)(1)(A). For individuals who want to make non-Commission reports about potential violations to their employers and desire employment retaliation protection for such lawful acts, the proposed rule could increase the incentives of these individuals to instead report directly to the Commission. These individuals would only qualify for employment retaliation protection if they report to the Commission under the proposed rule. Reporting to the Commission “in writing” as contemplated under proposed Rule 21F–2(a) could potentially impose a burden on these individuals. In light of the analysis of proposed Rule 21F–2(a)(1) *supra*, we believe that such a reporting burden would, at most, be minimal and would

³¹¹ 138 S. Ct. 767 (2018).

likely not limit the reporting incentives afforded by proposed Rule 21F–2(d)(1)(iii).

2. Proposed Rule 21F–3(b)(4)

Proposed Rule 21F–3(b)(4) would provide that a law-enforcement action will not qualify as a related action if the Commission determines that there is a separate whistleblower award scheme that more appropriately applies to the enforcement action. Further, proposed Rule 21F–3(b)(4) would provide that the Commission will not make an award to the whistleblower for the related action if the whistleblower has already been granted an award by the authority responsible for administering the more applicable whistleblower award program. Further, under proposed Rule 21F–3(b)(4), if the whistleblower was denied an award by the other award program, the whistleblower would not be permitted to readjudicate any issues before the Commission that the authority responsible for administering the other whistleblower award program resolved as part of the award denial.

The proposed rule would prevent a whistleblower from adjudicating his or her contributions in separate forums and potentially obtaining two separate awards on the same enforcement action. While the existing rules preclude this result when an action is applicable to both the Commission's whistleblower program and the CFTC's whistleblower program,³¹² the existing rules do not expressly preclude this result when the non-SEC whistleblower program is administered by an authority other than the CFTC. Thus, the proposed rule would help the Commission avoid paying awards that are not reasonably necessary in light of the whistleblower program's goals in cases where an action is applicable to the Commission's whistleblower program and the whistleblower program of an authority other than the CFTC.

The proposed rule would likely not have an adverse impact on the incentives of individuals who may report violations that result in enforcement actions potentially implicating both the Commission's whistleblower program and the whistleblower program of another authority other than the CFTC. As discussed earlier in Section II(C), to date, the Commission has never paid an award on a matter where a second whistleblower program also potentially applied to the same matter, nor has the Commission ever indicated that it would do so. Given that the proposed rule codifies the Commission's current

practice, we believe that these potential whistleblowers would have already taken such current practice into account when deliberating on whether to report.

3. Proposed Rule 21F–4(d)(3)

Proposed Rule 21F–4(d)(3) would provide that, for purposes of making a whistleblower award, a non-prosecution agreement or deferred prosecution agreement entered into by the DOJ or a state attorney general in a criminal case, or a settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws will be deemed to be an "administrative action" and any money required to be paid thereunder will be deemed a "monetary sanction." The proposed rule will result in more awards being paid from the IPF because awards would be paid for non-prosecution and deferred prosecution agreements entered into by the U.S. Department of Justice or a state attorney general as well as settlement agreements entered into by the Commission in addition to judicial or administrative proceedings covered by the existing rules. While potentially increasing payouts from the IPF, the proposed rule should enhance the incentives for whistleblowers to come forward in a timely manner to the extent that it signals to prospective whistleblowers that a wider array of enforcement resolutions may result in awards.

4. Proposed Rule 21F–6(c)

Proposed Rule 21F–6(c) would provide a mechanism for the Commission to adjust upwards any awards that would potentially be below \$2 million to a single whistleblower. However, this new authority would come with important limitations. Specifically, the Commission will not adjust an award upward if any of the negative award factors that are identified in Exchange Act Rule 21F–6(b)³¹³ were found to be present with respect to the whistleblower's award claim, or if the award claim triggers Exchange Act Rule 21F–16 (concerning awards to whistleblowers who engage in culpable conduct).³¹⁴

The proposed rule could enhance the whistleblowing incentives of those individuals who anticipate receiving awards below \$2 million and do not expect to be subject to any of the above conditions that would preclude an application of the award enhancement mechanism. The prospect of a larger award could encourage these

individuals to report violations to the Commission. By withholding the upward adjustment if a whistleblower unreasonably delayed reporting to the Commission after learning the relevant facts, the proposed rule could increase whistleblowing incentives by encouraging individuals to report violations promptly and thereby facilitate the Commission's ability to protect investors.

The proposed rule could have a deterrent effect on potential violators because these individuals understand that they would lose the opportunity for an award enhancement if they engage in securities law violations and subsequently act as whistleblowers of those violations. Similarly, the proposed rule could have a deterrent effect on potential whistleblowers who contemplated interfering with an internal compliance and reporting system by denying award enhancements to such potential whistleblowers.

From a cost perspective, the proposed rule could potentially result in larger awards being paid from the IPF because an award that would yield a potential payout to a single whistleblower below \$2 million may be adjusted upward. As indicated in Table 1 of Section VII(A)(3), the Commission has granted 31 whistleblower awards (*i.e.*, 62% of awards) that were below \$2 million. To the extent that the distribution of past awards provides a reasonable estimate of the distribution of likely future awards, smaller awards are likely in the future, some of which could be subject to the proposed rule.

5. Proposed Rule 21F–6(d)

a. Consideration of Proposed Rule

Proposed Rule 21F–6(d) would provide a mechanism for the Commission to conduct an enhanced review of awards where the total monetary sanctions collected in the Commission or related actions would equal at least \$100 million and where the potential payout to a single whistleblower in connection with those actions would exceed \$30 million. Where these two conditions are met, the proposed rule would afford the Commission the discretion to determine if it is appropriate to adjust the award downward. The goal of any downward adjustment is to ensure that the likely total award payout to the whistleblower does not exceed an amount that the Commission determines is appropriate to achieve the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers. However, consistent with the statutory mandate, in no event

³¹² See 17 CFR 240.21F–3(b)(3).

³¹³ 17 CFR 240.21F–6(b).

³¹⁴ 17 CFR 240.21F–16.

would the total amount awarded to all whistleblowers in the aggregate be less than 10 percent of the monetary sanctions collected from the action. Further, an application of the proposed rule would not result in a reduction of an award below \$30 million. We believe that the proposed rule could foster a more efficient use of the IPF by reducing the likelihood of awards that are excessive in light of the whistleblower program's goals and the interests of investors and the broad public interest. As indicated in Table 1 of Section VII(A)(3), we have granted three whistleblower awards that exceeded \$30 million. These three awards alone reduced the balance of the IPF by approximately \$112 million. To the extent that the distribution of past awards provides a reasonable estimate of the distribution of likely future awards, large awards are likely in the future, some of which could be subject to the proposed rule. Absent the proposed rule, the Commission may find itself faced with the possibility of paying out significantly large awards that are in excess of the amounts appropriate to advance the goals of the whistleblower program, the interests of investors and the broad public interest. These awards could also substantially diminish the IPF, requiring the Commission to direct more funds to replenish the IPF rather than directing those funds to the United States Treasury where they could be used for other important public purposes.³¹⁵

As whistleblowers consider their reporting decisions, they weigh, among other things, the expected size of the award and the expected costs associated with their whistleblowing. We acknowledge that proposed paragraph 6(d) could shift the upper end of the distribution of expected awards. However, we recognize that realized awards to date are typically substantially smaller in magnitude. In addition, according to the Office of the Whistleblower, of the 55 individuals who have received awards, approximately 10 percent are high-ranking corporate executives at companies of varying sizes and a large majority of these executives received awards that were under \$5 million. This indicates to us that, as a practical matter, even those whistleblowers with the most to lose in terms of potential income have been willing to come forward for a recovery below the proposed \$30 million floor. Thus, the data available does not indicate that proposed paragraph 6(d) would

³¹⁵ See Section VII(A)(3) for a discussion of the IPF and its replenishment mechanism.

discourage whistleblowers from coming forward.

Additional factors further support the view that potential whistleblowers will not be discouraged from coming forward as a result of proposed paragraph 6(d). As discussed earlier, \$30 million would be a floor, not a ceiling on large awards. Rather, \$30 million is the point above which we would begin to consider whether the likely award is consistent with the program's objectives; we may choose not to reduce the award.

Further, the operation of proposed paragraph 6(d) would likely affect only a small subset of potential whistleblowers. As discussed in Section VII(A)(3) above, to date we have issued 50 whistleblower awards to 55 individuals (including, as explained above, individuals who acted as joint whistleblowers) and only three awards (*i.e.*, 6% of awards) have exceeded \$30 million.³¹⁶ To the extent that the distribution of past awards provides a reasonable estimate of the distribution of likely future awards, and potential whistleblowers do not systematically over- or underestimate the size of recoveries,³¹⁷ only a minority of potential whistleblowers would be potentially affected by the proposed rule.³¹⁸

Additionally, our review of the academic literature relevant to whistleblower incentives indicates that whistleblowers are often willing to report notwithstanding the absence of financial incentives. Non-monetary incentives that can motivate individuals to report include: (i) A desire to see wrongdoers punished, (ii) an interest in "doing the right thing" for the sake of investors or others who might be harmed by the wrongdoing, or (iii) a

³¹⁶ One award that exceeded \$30 million was issued in September 2014 in a Commission action and related actions. See *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34-73174 (Sept. 22, 2014), available at <https://www.sec.gov/rules/other/2014/34-73174.pdf>. The second and third awards that exceeded \$30 million were issued in March 2018 in a Commission action. See *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 34-82897 (March 19, 2018), available at <https://www.sec.gov/rules/other/2018/34-82897.pdf>.

³¹⁷ The proposed rule could affect a larger subset of potential whistleblowers if potential whistleblowers systematically overestimate the size of the recovery; conversely, the proposed rule could affect a smaller subset of potential whistleblowers if potential whistleblowers systematically underestimate the size of the recovery.

³¹⁸ We acknowledge that there are other pending awards that could exceed the \$30 million floor. We do not discuss those matters here because they have not been finalized, but we note that such awards would still constitute a relatively small proportion of the overall future potential awards that the Commission is likely to make.

desire to protect one's own self-interests.³¹⁹

Moreover, even at the \$30 million floor that we are proposing, it appears to us that a \$30 million award could yield a lump sum that, if invested in an annuity, could generate an annual return that is attractive in light of the wage and salary data presented in Section VII(A)(4).³²⁰ A number of non-mutually exclusive factors can contribute to making the lump sum smaller than the whistleblower award. *First*, to the extent that the whistleblower wishes to remain anonymous through the course of an investigation and resulting enforcement action, that whistleblower must have an attorney represent him or her in connection with a submission of information and claim for an award.³²¹ The payment of attorney fees out of the whistleblower award would likely reduce the lump sum that could be invested in an annuity. *Second*, if the whistleblower award is awarded to two or more individuals who acted together as a joint whistleblower, then the award would likely be divided among the individual whistleblowers. Such a division of the award among the individual whistleblowers would reduce the lump sum that each individual could invest in an annuity.

To illustrate the annual income that a whistleblower could potentially receive by investing the lump sum residual award that remains after accounting for the factors discussed above, we annuitize a range of possible lump sums to generate different streams of payments. Such payments could potentially replace the stream of wage payments that a whistleblower would lose by leaving his or her employer. Alternatively, if the whistleblower experiences no change in his or her employment situation, the payments could be interpreted as additional income.

In Table 4 in Section VII(B)(5)(a), we report the annual income that could be generated over twenty years by

³¹⁹ See Anthony Heyes & Sandeep Kapur, *An Economic Model of Whistleblower Policy*, 25 J. L. Econ. & Org. 164-166 (2009) (providing a short review of academic literature on sociology and psychology and listing non-monetary motives for whistleblowing); see also Aaron S. Kesselheim *et al.*, *Whistle-Blower's Experience in Fraud Litigation Against Pharmaceutical Companies*, 362 New England J. Med. 1834, 1835 (2010) (listing self-preservation, justice, integrity, altruism or public safety as primary motivations for *qui tam* lawsuits). See *Securities Whistleblower Incentives and Protections*, Exchange Act Release No. 64545, 76 FR at 34360, note 453 (June 13, 2011).

³²⁰ We note that the annual incomes presented below are pre-tax numbers, as are the wage and salary data presented in Section VII(A)(4).

³²¹ See 17 CFR 240.21F-7(b)(1).

investing a lump sum upfront payment in a twenty-year annuity.³²² To capture the potential effects associated with taxes, attorneys' fees, and award division among individuals acting as a joint whistleblower, we calculate different annual incomes by varying the upfront payment from \$5 million to \$50 million in \$5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments. As an example, investing an upfront amount

of \$20 million in the annuity at 2% per annum generates an annual income of approximately \$1.2 million.³²³ Table 4 indicates that increasing the upfront payment while holding the rate of return constant increases the annual income; in addition, increasing the rate of return while holding the upfront payment constant also increases the annual income. To illustrate the effects of lengthening the duration of income generation, we repeat the calculations assuming a lump sum investment in a

forty-year annuity (Table 5 in Section VII(B)(5)(a)), a sixty-year annuity (Table 6 in Section VII(B)(5)(a)), and a perpetuity³²⁴ (Table 7 in Section VII(B)(5)(a)). In Tables 5, 6, and 7, we continue to calculate different annual incomes by varying the upfront payment from \$5 million to \$50 million in \$5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments.³²⁵

TABLE 4 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED BY A TWENTY YEAR ANNUITY

[We assume that a lump sum upfront payment is invested in a twenty-year annuity to generate annual income over twenty years. We calculate different annual incomes by varying the upfront payment from \$5 million to \$50 million in \$5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
\$5,000,000	\$303,530	\$363,588	\$429,859	\$501,864	\$579,013
10,000,000	607,060	727,176	859,717	1,003,728	1,158,026
15,000,000	910,590	1,090,765	1,289,576	1,505,592	1,737,039
20,000,000	1,214,120	1,454,353	1,719,435	2,007,456	2,316,052
25,000,000	1,517,650	1,817,941	2,149,293	2,509,320	2,895,065
30,000,000	1,821,180	2,181,529	2,579,152	3,011,184	3,474,078
35,000,000	2,124,710	2,545,117	3,009,010	3,513,048	4,053,091
40,000,000	2,428,240	2,908,706	3,438,869	4,014,912	4,632,104
45,000,000	2,731,770	3,272,294	3,868,728	4,516,776	5,211,117
50,000,000	3,035,300	3,635,882	4,298,586	5,018,640	5,790,130

TABLE 5 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED BY A FORTY YEAR ANNUITY

[We assume that a lump sum upfront payment is invested in a forty-year annuity to generate annual income over forty years. We calculate different annual incomes by varying the upfront payment from \$5 million to \$50 million in \$5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
\$5,000,000	\$181,695	\$250,763	\$330,128	\$417,187	\$509,488
10,000,000	363,391	501,526	660,256	834,374	1,018,975
15,000,000	545,086	752,289	990,385	1,251,561	1,528,463
20,000,000	726,782	1,003,052	1,320,513	1,668,748	2,037,950
25,000,000	908,477	1,253,815	1,650,641	2,085,935	2,547,438
30,000,000	1,090,172	1,504,578	1,980,769	2,503,122	3,056,925
35,000,000	1,271,868	1,755,342	2,310,897	2,920,309	3,566,413
40,000,000	1,453,563	2,006,105	2,641,025	3,337,496	4,075,900
45,000,000	1,635,258	2,256,868	2,971,154	3,754,683	4,585,388
50,000,000	1,816,954	2,507,631	3,301,282	4,171,870	5,094,875

³²² The other assumptions used in the calculations are: A fixed income is paid at the end of every month; monthly compounding of interest; there is no residual income at the end of the annuity; the annuity has 12 x 20 = 240 monthly payments; income is pre-tax; annual income is 12 multiplied by the monthly income generated by the annuity (e.g., for an upfront payment of \$20 million and a 2% rate of return per annum, the annuity generates a monthly income of \$101,176.67. Multiplying \$101,176.67 by 12 yields the \$1,214,120 figure reported in the table.) These

assumptions notwithstanding, we note that only a portion of the fixed income generated by a purchased commercial annuity is taxable under IRS rules. See Internal Revenue Service Publication 939, General Rule for Pensions and Annuities available at <https://www.irs.gov/pub/irs-pdf/p939.pdf>.

³²³ *Id.*

³²⁴ A perpetuity is a stream of fixed, periodic payments that go on indefinitely.

³²⁵ The other assumptions used in Table 6–8 are: A fixed income is paid at the end of every month;

monthly compounding of interest; there is no residual income at the end of the annuity; the annuity has monthly payments; income is pre-tax; annual income is 12 multiplied by the monthly income generated by the annuity. These assumptions notwithstanding, we note that only a portion of the fixed income generated by a purchased commercial annuity is taxable under IRS rules. See Internal Revenue Service Publication 939, General Rule for Pensions and Annuities available at <https://www.irs.gov/pub/irs-pdf/p939.pdf>.

TABLE 6 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED BY A SIXTY YEAR ANNUITY

[We assume that a lump sum upfront payment is invested in a sixty-year annuity to generate annual income over sixty years. We calculate different annual incomes by varying the upfront payment from \$5 million to \$50 million in \$5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
5,000,000	\$143,163	\$220,042	\$308,505	\$403,373	\$501,274
10,000,000	286,326	440,083	617,011	806,746	1,002,548
15,000,000	429,489	660,125	925,516	1,210,119	1,503,821
20,000,000	572,652	880,166	1,234,022	1,613,492	2,005,095
25,000,000	715,815	1,100,208	1,542,527	2,016,865	2,506,369
30,000,000	858,978	1,320,249	1,851,033	2,420,238	3,007,643
35,000,000	1,002,141	1,540,291	2,159,538	2,823,611	3,508,917
40,000,000	1,145,304	1,760,332	2,468,044	3,226,984	4,010,191
45,000,000	1,288,466	1,980,374	2,776,549	3,630,357	4,511,464
50,000,000	1,431,629	2,200,415	3,085,055	4,033,730	5,012,738

TABLE 7 IN SECTION VII(B)(5)(a)—ANNUAL INCOME GENERATED FROM A PERPETUITY

[We assume that a lump sum upfront payment is invested in a perpetuity to generate annual income in perpetuity. We calculate different annual incomes by varying the upfront payment from \$5 million to \$50 million in \$5 million increments, and by varying the rate of return on the annuity from 2% per annum to 10% per annum in 2% increments]

Upfront payment	Rate of return				
	2%	4%	6%	8%	10%
5,000,000	\$100,000	\$200,000	\$300,000	\$400,000	\$500,000
10,000,000	200,000	400,000	600,000	800,000	1,000,000
15,000,000	300,000	600,000	900,000	1,200,000	1,500,000
20,000,000	400,000	800,000	1,200,000	1,600,000	2,000,000
25,000,000	500,000	1,000,000	1,500,000	2,000,000	2,500,000
30,000,000	600,000	1,200,000	1,800,000	2,400,000	3,000,000
35,000,000	700,000	1,400,000	2,100,000	2,800,000	3,500,000
40,000,000	800,000	1,600,000	2,400,000	3,200,000	4,000,000
45,000,000	900,000	1,800,000	2,700,000	3,600,000	4,500,000
50,000,000	1,000,000	2,000,000	3,000,000	4,000,000	5,000,000

The annuity figures in Tables 4 through 7 in Section VII(B)(5)(a) are consistent with our belief that the proposed \$30 million floor should not negatively impact the overall pecuniary incentives faced by most potential whistleblowers considering whether to come forward to the Commission to report potential misconduct.³²⁶

In addition, to the extent that the costs associated with whistleblowing include social stigma and a possible job loss for the whistleblower, the employment anti-retaliation protections and confidentiality requirements (including, critically, the ability of whistleblowers to remain anonymous) can serve to reduce the costs associated with whistleblowing to some extent.³²⁷

³²⁶ It is possible that the proposed rule could introduce uncertainty or ambiguity about the likely size of the whistleblower award, which may affect the incentives of individuals to report potential violations. See e.g., Itzhak Gilboa & David Schmeidler, Maxmin Expected Utility with Non-Unique Prior, 18 J. Mathematical Econ. 141 (1989) (proposing an axiomatic foundation of a decision rule based on maximizing expected minimum payoff of a strategy). See also *infra* note 330.

³²⁷ See 15 U.S.C. 78u-6(d) and (h); 17 CFR 240.21F-9(c).

Indeed, our experience to date has been that many company insiders have submitted their tips to the Commission anonymously.

b. Estimating Incentives To Provide Information

The Commission has sought to provide a quantitative estimate of the incentives to provide information via the whistleblower program. We acknowledge that a rigorous approach to analyzing the potential impact of the proposed changes on whistleblower incentives, would be to compare the number of whistleblower tips that resulted in successful enforcement actions before and after the establishment of the Commission's whistleblower program. Such a comparison could elucidate changes in behavior due to the whistleblower program, including potentially those due to the provision of monetary awards. However, data on whistleblower tips that led to successful enforcement actions prior to the establishment of the Commission's whistleblower program is not available, thus rendering such a comparison

infeasible. Even absent such data, the Commission has engaged in a limited comparison of a pre-2011 awards program with the current whistleblower program. Section 21A(e) of the Exchange Act, added in 1988, authorized the Commission to award a bounty to a person who provides information leading to the recovery of a civil penalty from an insider trader, from a person who tipped information to an insider traders, or from a person who directly or indirectly controlled an insider trader. Section 21A(e) also established a limit on bounties of 10% of the amount recovered.

A March 2010 report by the SEC's Office of the Inspector General documented bounty applications and awards under the Commission's bounty program since its inception in 1989.³²⁸ Between 1989 and 2010, the program had paid a total of \$159,537 to five claimants in seven insider trading cases, at the statutory limit of 10% of

³²⁸ See U.S. Securities and Exchange Commission, Office of the Inspector General, *Assessment of the SEC's Bounty Program*, March 29, 2010.

recoveries.³²⁹ In contrast, since the inception of the whistleblower program in 2011 the Commission has ordered a single whistleblower payout related to an insider trading case, and that payout was less than \$500,000.

Any comparison of the bounty program and the whistleblower program is limited by substantial differences between the bounty program and the whistleblower program in scope and process. Although the number of payments in insider trading cases has declined under the current program, the larger scope and breadth of the whistleblower program has resulted in a substantial increase in the number and magnitude of payments overall. Differences in measures of whistleblower incentives before and after the establishment of the whistleblower program likely will reflect a combination of changes to Commission processes that occurred simultaneously or very close in time, limiting our ability to identify the impact of any single change on whistleblower incentives. For example, while the 2011 rules implemented an increase in the maximum award percentage to 30% from the previous 10% maximum, they also established a 10% minimum award percentage.³³⁰ Further, the 2011 rules also increased the scope of potential claims to include actions beyond insider trading and established an Office of the Whistleblower, actions that likely served to increase the prominence of the whistleblower program relative to the bounty program that preceded it. The implementing rules also set forth an updated process for the submission and evaluation of claims following criticisms that the bounty program was opaque and difficult for whistleblowers to navigate. Further, the statutory changes to the Exchange Act that established the whistleblower program also included explicit whistleblower protections. As we acknowledge that these factors limit the degree to which we can assess the potential impact on incentives of the proposed changes to the whistleblower program based on the transition from the bounty program to the whistleblower program, the Commission welcomes comment on changes to other whistleblower programs or alternative analytical methods that would permit more

precise identification and quantification of the proposal's potential impacts.

c. Alternatives

The Commission has considered several alternatives to proposed Rule 21F-6(d). We discuss each of those alternatives below.

The first alternative is to set the floor at \$5 million, and the second alternative is to set the floor at \$50 million.

We believe that a \$5 million floor could potentially apply to awards that are not the focus of the proposed amendment. As indicated in Table 1 of Section VII(A)(3), approximately 16% of past whistleblower awards are at least \$5 million. To the extent that the distribution of past awards is a reasonable estimate of the distribution of likely future awards, this floor could result in the enhanced review of awards that are aligned with the program's goals. Because the focus of the proposed rule is on large awards that are not reasonably necessary to achieve the program's goals and that could disproportionately diminish the IPF, the \$5 million floor is not preferable to the proposed approach.

A \$50 million floor is not preferable to the proposed approach. We have not granted awards that are at least \$50 million. Even if there were some cases where the proposed rule might be triggered, our discretion to make a meaningful and appropriate downward adjustment would be substantially reduced. Thus, the \$50 million floor would likely not support the proposed rule's goal of ensuring that the likely total award payout to the whistleblower does not exceed an amount that the Commission determines is appropriate to further the goals of the whistleblower program. Because of this concern, we believe that the \$50 million floor is not preferable to the proposed approach.

6. Proposed Rule 21F-8(e)

Under proposed Rule 21F-8(e), if an applicant submits three or more award applications that the Commission finds to be frivolous or lacking a colorable connection between the tip and the Commission action, the Commission may permanently bar the applicant from submitting any additional award applications (either for Commission actions or related actions) and the Commission would not consider any other award applications that the claimant has submitted or may seek to submit in the future.

The proposed rule would expressly provide, however, that the Office of the Whistleblower shall as a preliminary matter advise any claimant of the Office's assessment that the claimant's

award application for a Commission action is frivolous or lacking a colorable connection between the tip and the action for which the applicant has sought an award. If the applicant withdraws the application at that time, it would not be considered by the Commission in determining whether to exercise its authority to impose a bar.

In addition, the proposed rule would generally codify the Commission's current practice with respect to applicants who violate Rule 21F-8(c)(7).³³¹ That rule provides that an applicant shall be ineligible for an award if, in his or her whistleblower submission, his or her other dealings with the Commission, or his or her dealings with another authority in connection with a related action, the individual knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the Commission or another authority. The Commission has issued two final orders that have permanently barred the applicants from submitting any further whistleblower award applications based on violations of Rule 21F-8(c)(7). The proposed rule would clarify and codify the Commission's authority to bar applicants by providing that if the Commission finds that a claimant has violated paragraph (c)(7) of Rule 21F-8, the Commission may permanently bar the applicant from making any future award applications, and shall decline to process any other award applications that the claimant has already submitted.

The proposed rule could increase the speed and efficiency of the award determination process.³³² By permanently barring applicants that make three or more frivolous award applications, as well as not processing any future applications from these barred applicants, the proposed rule could help free up staff resources that could then be devoted to processing potentially meritorious award applications. In the Commission's experience to date, two individuals have submitted approximately 24% of all award applications in connection with Commission covered actions. All but one of the applications submitted by

³³¹ 17 CFR 240.21F-8(c)(7).

³³² We acknowledge that this potential benefit rests, in part, on the premise that the applicants covered by the proposed rule would likely not change their behavior with respect to the overall award determination process. For example, an applicant that has been found to submit multiple frivolous award applications in the past would likely continue to do so in the future.

³²⁹ *Id.* at 5.

³³⁰ See S. Rep. No. 111-176 at 110-12 (2010) at 111 (noting the majority view that "the critical component of the Whistleblower Program is the minimum that any individual could look towards in determining whether to take the enormous risk of blowing the whistle in calling attention to fraud").

these two individuals have been found by the Office of the Whistleblower to be entirely frivolous. To the extent that the agency's historical experience is informative about the likely behavior of applicants that submit multiple frivolous award applications in the future, the proposed rule would have a meaningful impact in terms of freeing up staff resources that could then be devoted to processing potentially meritorious award applications. This redeployment of staff resources in turn could expedite the processing of potentially meritorious award applications. More broadly, staff resources that are freed up as a result of the proposed rule could be devoted to other work related to the whistleblower program including, but not limited to, the posting of Notices of Covered Actions, determining potential payouts, and manning the whistleblower hotline.³³³ Further, as discussed in Section II(F), *above*, we have found that the repeat applicants that would be covered by proposed Rule 21F-8(e)(1) can significantly delay the processing of meritorious award applications and the eventual payment of awards by utilizing the procedural opportunities to object to an award. By barring such applicants, the proposed rule could reduce the delay in processing meritorious award applications and the eventual payment of awards.

The abovementioned benefit would also potentially arise from the proposed rule's deterrent effect to the extent that the proposed rule discourages individuals from submitting frivolous award applications because they recognize that the submission of frivolous award applications may ultimately permanently disqualify them from obtaining a whistleblower award.

Overall, the proposed rule could increase the speed and efficiency of the award determination process by expediting the processing of potentially meritorious award applications, as well as the payment of awards. To the extent that faster award application processing and award payment motivate

whistleblowing, individuals are more likely to come forward and report potential violations as a result of the proposed rule.

The proposed rule could help protect investors and the public from potential harm (particularly where the misconduct concerns ongoing Commission actions) that may flow from the provision of false, fictitious, or fraudulent statement or representation, or false writing or document with intent of misleading or otherwise hindering the Commission or another authority. This benefit would also potentially arise because the proposed rule would grant the Commission discretion to permanently bar applicants that violated Rule 21F-8(c)(7) from submitting any future award applications.³³⁴ This benefit would also potentially arise from the proposed rule's deterrent effect to the extent that the proposed rule discourages individuals from engaging in the conduct prohibited by Rule 21F-8(c)(7), particularly when they are submitting their award applications, because they should recognize that it may not only lead to a denial of their current award claim but may also permanently disqualify them from obtaining a whistleblower award.

Individuals who are permanently barred under the proposed rule might subsequently have information about possible securities law violations that could be provided to the Commission. To the extent that these barred individuals' decision to report is based solely on the pecuniary motivation of obtaining a whistleblowing award, these individuals may decide not to report even if they have information about possible violations because they can no longer obtain a whistleblower award as a result of the proposed rule. We believe that this potential cost of the proposed rule could be mitigated by a number of factors.

First, the number of individuals who may be permanently barred by the proposed rule for submitting three or more frivolous applications and who might subsequently have information about possible securities law violations that could be provided to the Commission is likely to be a small fraction of the population of award applicants. Based on our experience to date, we have found that individuals that submitted three or more award applications make up 6.6% of the population of covered action award applicants. This estimate constitutes an upper bound of the actual fraction of applicants that submitted three or more

frivolous applications and subsequently had information about possible securities law violations that could be provided to the Commission.³³⁵ To the extent that our estimate is informative of the likely fraction of award applicants who may be permanently barred by the proposed rule, the potential cost associated with the proposed rule would be limited.

Second, as discussed above, the Commission has issued two final orders that have permanently barred the applicants from submitting any further whistleblower award applications based on violations of Rule 21F-8(c)(7). The proposed rule would clarify and codify the Commission's authority to bar applicants by providing that if the Commission finds that a claimant has violated paragraph (c)(7) of Rule 21F-8, the Commission may permanently bar the applicant from making any future award applications, and shall decline to process any other award applications that the claimant has already submitted. Given that the proposed rule codifies the Commission's current practice, we believe that individuals who have been barred on the basis of Rule 21F-8(c)(7) would have already taken such current practice into account when deliberating on whether to report, even in the absence of the proposed rule.

Finally, as discussed in the adopting release that accompanied the original whistleblower rules, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.³³⁶ Individuals that are permanently barred from applying for whistleblower awards may still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.³³⁷

We also acknowledge the possibility that individuals who have made fewer than three frivolous award applications³³⁸ might be discouraged from reporting possible securities law violations because their next award application could be determined to be frivolous, which would increase the likelihood of a permanent bar from making any future award applications.

³³⁵ To date, four applicants submitted three or more applications that were determined to be potentially meritorious and not frivolous.

³³⁶ See Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

³³⁷ *Id.* An example of a non-pecuniary element is a sense of "doing the right thing."

³³⁸ These individuals include those who are considering reporting a possible violation for the first time, those who have made one frivolous claim, and those who have made two frivolous claims.

³³³ To help promote the SEC's whistleblower program and establish a line of communication with the public, the Office of the Whistleblower operates a hotline where whistleblowers, their attorneys, or other members of the public with questions about the program may call to speak to the Office of the Whistleblower's staff. During FY 2017, the Office of the Whistleblower returned nearly 3,200 calls from members of the public, exceeding the number of calls returned the prior fiscal year. Since May 2011 when the hotline was established, the Office of the Whistleblower has returned over 18,600 calls from the public. See SEC Whistleblower Program 2017 Annual Report to Congress (Nov. 15, 2017), available at <https://www.sec.gov/files/sec-2017-annual-report-whistleblower-program.pdf>.

³³⁴ See *supra* text accompanying notes 184-189, 331.

We believe that this potential cost of the proposed rule could be mitigated by a number of factors.

First, as discussed above, the proposed rule would expressly provide that the Office of the Whistleblower shall as a preliminary matter advise any claimant of the Office's assessment that the claimant's award application for a Commission action is frivolous or lacking a colorable connection between the tip and the action for which the applicant has sought an award. If the applicant withdraws the application at that time, it would not be considered by the Commission in determining whether to exercise its authority to impose a bar. We believe that this aspect of the proposed rule should alleviate the concerns among those individuals who have made fewer than three frivolous award applications that their next award application could be determined to be frivolous, which would increase the likelihood of a permanent bar from making any future award applications. *Second*, the claims adjudication processes that are specified in Rule 21F-10 and Rule 21F-11 afford a whistleblower the opportunity to demonstrate the meritorious nature of her claim should her claim be preliminarily denied on the grounds of being frivolous. Thus, the claims adjudication processes should help ensure that potentially meritorious claims will be considered as such by the Commission. *Third*, as discussed above, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary elements.³³⁹ Individuals who are concerned about being permanently barred from applying for whistleblower awards may still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.³⁴⁰

7. Proposed Rule 21F-18

Proposed Rule 21F-18(a) provides that the Office of the Whistleblower may use a summary disposition process to deny any award application that falls within any of the following categories: (1) Untimely award application;³⁴¹ (2) noncompliance with the requirements of Rule 21F-9,³⁴² which concerns the manner for submitting a tip to qualify as

a whistleblower and to be eligible for an award; (3) claimant's information was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with the claimant; (4) noncompliance with Rule 21F-8(b),³⁴³ which requires an applicant to submit supplemental information that the Commission may require³⁴⁴ and to enter into a confidentiality agreement; or (5) failure to specify in the award application the submission that the claimant made pursuant to Rule 21F-9(a)³⁴⁵ upon which the claim to an award is based. In addition, the proposed rule would provide that other defective or non-meritorious award applications could be subject to the summary disposition process under appropriate circumstances. Proposed Rule 21F-18(b) specifies the procedures that shall apply to any award application designated for summary disposition.

The proposed rule could reduce the diversion of staff resources and time that it might otherwise take to process claims that may be rejected on straightforward grounds. An award application that is processed by the proposed summary disposition process would not require the Claims Review Staff to review the record, issue a Preliminary Determination, consider any written response filed by the claimant, or issue the Proposed Final Determination; these functions would be assumed by the Office of the Whistleblower. The summary disposition process incorporates two other modifications. *First*, the 30-day period for replying to a Preliminary Summary Disposition is shorter than the time period for replying to a Preliminary Determination provided for in Rules 21F-10(e)(2)³⁴⁶ and 21F-11(e)(2).³⁴⁷ This shorter period should be sufficient for a claimant to reply and that it is appropriate given that the matters subject to summary disposition should be relatively straightforward. *Second*, a claimant would not have the opportunity to receive the full administrative record upon which the Preliminary Denial was based. Instead, the Office of the Whistleblower would (to the extent appropriate given the nature of the denial) provide the claimant with a staff declaration that

contains the pertinent facts upon which the Preliminary Summary Disposition is based. This modification from the record-review process specified in Rules 21F-10 and 21F-11 should still afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Disposition. This should eliminate the delay that can arise when a claimant does not expeditiously request the record (which in turn delays the start of the 60-day period for a claimant to submit a response to a preliminary determination); elimination of these delays should help further expedite the summary adjudication process that we are proposing.

As with Proposed Rule 21F-8(e), staff resources that are freed up as a result of the proposed rule could be devoted to processing potentially meritorious award applications. This, in turn, could expedite the processing of potentially meritorious award applications. To the extent that faster processing of potentially meritorious award applications motivates whistleblowing, individuals may be more likely to come forward and report potential violations as a result of the proposed rule. Further, as noted in the discussion of proposed Rule 21F-8(e) above, staff resources that are freed up as a result of the proposed rule could be devoted to other work related to the whistleblower program.

We acknowledge the potential that certain aspects of the proposed rule might make it more difficult for whistleblowers to respond to the denial of award applications. The proposed rule might reduce the whistleblowing incentives of those individuals who consider the ease of responding to award application denials when deciding whether to come forward and report potential violations.

However, certain factors limit this potential for increased difficulties for whistleblowers. *First*, given that the matters subject to summary disposition should be relatively straightforward, we believe that the 30-day period for replying to a Preliminary Summary Disposition and the provision of a staff declaration (where applicable) should afford any claimant a sufficient opportunity to provide a meaningful reply to a Preliminary Summary Disposition. *Second*, as discussed above, the proposed rule may only be used to deny award applications that fall under certain restricted categories. *Third*, as discussed in the adopting release that accompanied the original whistleblower rules, whistleblowing is an individual decision that is generally guided by a complex mix of pecuniary elements and non-pecuniary

³³⁹ See Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

³⁴⁰ *Id.* An example of a non-pecuniary element is a sense of "doing the right thing."

³⁴¹ The time periods for submitting an award application are specified in Rule 21F-10(b) and Rule 21F-11(b). See 17 CFR 240.21F-10(b) & 11(b).

³⁴² 17 CFR 240.21F-9.

³⁴³ 17 CFR 240.21F-8(b).

³⁴⁴ The authority to require additional information of an applicant is delegated to the Office of the Whistleblower. See 17 CFR 240.21F-10(d).

³⁴⁵ 17 CFR 240.21F-9(a).

³⁴⁶ 17 CFR 240.21F-10(e)(2).

³⁴⁷ 17 CFR 240.21F-11(e)(2).

elements.³⁴⁸ Individuals who may be concerned with the ease of responding to award application denials may still come forward and provide information about possible violations if they are sufficiently motivated by non-pecuniary elements.

8. Proposed Interpretive Guidance Regarding the Meaning and Application of “independent analysis” as Defined in Exchange Act Rule 21F–4(b)(3)³⁴⁹

The proposed interpretive guidance helps to clarify the meaning of “independent analysis” as that term is defined in Exchange Act Rule 21F–4 and utilized in the definition of “original information.” As discussed earlier, a whistleblower’s examination and evaluation of publicly available information does not constitute “analysis” if the facts disclosed in the public materials on which the whistleblower relies and in other publicly available information are sufficient to raise an inference of the possible violations alleged in the whistleblower’s tip. In order for a whistleblower to be credited with “analysis,” the whistleblower’s examination and evaluation should contribute “significant independent information” that “bridges the gap” between the publicly available information and the possible securities violations. Assuming that a whistleblower’s submission meets the threshold requirement that it constitutes “independent analysis,” for the whistleblower to be eligible for an award the “information that . . . is derived from the . . . [whistleblower’s] analysis” must also be of such high quality that it leads to a successful enforcement action.

The interpretive guidance could potentially reduce the whistleblowing incentives of those individuals who wish to satisfy the “independent analysis” prong of the “original information” requirement by examining publicly available information and providing observations that do not go beyond the information itself and reasonable inferences to be drawn therefrom. In light of the interpretive guidance, these individuals may decide not to provide such public information knowing that such information would not be credited as “independent analysis” and therefore not eligible for a whistleblower award. To the extent that the provision of public information improves Commission enforcement or

otherwise provides a benefit, any potential reduction in such provision would be a cost associated with the interpretive guidance. Nevertheless, individuals who are aware that public information would not be credited with “independent analysis” may still come forward and provide public information to the Commission if they are sufficiently motivated by non-pecuniary elements.

The interpretive guidance could increase the whistleblowing incentives of those individuals who possess “significant independent information” that “bridges the gap” between the publicly available information (and reasonable inferences therefrom) and the conclusion that possible securities violations are indicated, but may decide against reporting to the Commission because they do not fully understand the meaning of “independent analysis” in the absence of the interpretive guidance. To the extent that these individuals come forward and report such significant independent information to the Commission in light of the interpretive guidance, the quantity and quality of reported information might increase, which in turn might improve the Commission’s ability to enforce Federal securities laws, detect violations and deter potential future violations. Further, the clarification afforded by the interpretive guidance might also reduce the number of award applications that are made solely on the basis of the provision of public information and do not meet the “independent analysis” threshold. To the extent that the number of such claims declines as a result of the interpretive guidance, staff resources could be freed up and devoted to processing potentially meritorious award applications and other work related to the whistleblower program as discussed earlier.³⁵⁰

C. Effects of the Proposed Rules on Efficiency, Competition, and Capital Formation

As discussed earlier, the Commission is sensitive to the economic consequences of its rules, including the benefits, costs, and effects on efficiency, competition, and capital formation. The Commission believes that the proposed amendments will make incremental changes to its whistleblower program. Thus, the Commission does not anticipate the effects on efficiency, competition, and capital formation to be significant.

The proposed rules could have a positive indirect impact on investment

efficiency and capital formation by increasing the incentives of potential whistleblowers to provide information on possible violations.³⁵¹ Providing such information could increase the effectiveness of the Commission’s enforcement activities. More effective enforcement could lead to earlier detection of violations and increased deterrence of potential future violations, which should assist in a more efficient allocation of investment funds. Serious securities frauds, for example, can cause inefficiencies in the economy by diverting investment funds from more legitimate, productive uses.³⁵²

Additionally, to the extent that the proposed rules increase deterrence of potential future violations, investors’ trust in the securities markets would also increase. This increased investor trust will promote lower capital costs as more investment funds enter the market, and as investors generally demand a lower risk premium due to a reduced likelihood of securities fraud.³⁵³ This, too, should promote the efficient allocation of capital formation.

At the same time, some proposed rules could reduce whistleblowing incentives in certain cases, although any such reduction in whistleblowing incentives—to the extent that it occurs—is justified in light of the positive indirect impact on investment efficiency and capital formation discussed earlier. Proposed Rule 21F–6(d) could reduce the whistleblowing incentives of those potential whistleblowers who anticipate receiving awards in excess of \$30 million and make their reporting decision by trading off the expected size of the award against the expected costs associated with whistleblowing.³⁵⁴ Proposed Rule 21F–8(e) might reduce the whistleblowing incentives of (i) those individuals who are permanently barred under the proposed rule from submitting award applications and (ii)

³⁵¹ See *supra* Section VII(B) for a discussion of how proposed Rules 21F–2(d)(1)(iii), 21F–4(d)(3), 21F–6(c), 21F–8(e), 21F–18, and the interpretive guidance could increase whistleblowing incentives.

³⁵² See Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34362.

³⁵³ See *id.* note 466, which explains the link between investor trust in the fairness of the market and capital cost (“If investors fear theft, fraud, manipulation, insider trading, or conflicted investment advice, their trust in the markets will be low, both in the primary market for issuance or in the secondary market for trading. This would increase the cost of raising capital, which would impair capital formation—in the sense that it will be less than it would or should be if rules against such abuses were in effect and properly enforced and obeyed.”). See also Ko, K. Jeremy, “Economics Note: Investor Confidence”, October 2017, available at https://www.sec.gov/files/investor_confidence_noteOct2017.pdf.

³⁵⁴ See *supra* Section VII(B)(4).

³⁴⁸ See Securities Whistleblower Incentives and Protections Adopting Release, 76 FR at 34355, note 433.

³⁴⁹ 17 CFR 240.21F–4(b)(3).

³⁵⁰ See *supra* Sections VII(B)(6) and VII(B)(7).

those individuals who have made fewer than three frivolous award applications. Proposed Rule 21F–18 might reduce the whistleblowing incentives of those individuals who consider the ease of responding to award application denials when deciding whether to come forward and report potential violations. The interpretive guidance might reduce the whistleblowing incentives of those individuals who wish to rely on the provision of solely public information to satisfy the “independent analysis” prong of the “original information” requirement for a whistleblower award. These potential reductions in whistleblowing incentives may be limited for reasons discussed earlier.³⁵⁵ Further, we reiterate our belief that any such reduction in whistleblowing incentives—to the extent that is occurs—is justified in light of the positive impact on investment efficiency and capital formation discussed earlier.

The proposed rules that provide the Commission with additional considerations for awards may have opposite, albeit indirect, impacts on investment efficiency and capital formation by potentially altering the level of monetary incentives that whistleblower would expect at different recovery levels. On one hand, proposed Rule 21F–6(d) could reduce the whistleblowing incentives of those individuals who anticipate receiving awards in excess of \$30 million by reducing their anticipated award to an amount of \$30 million or greater; on the other hand proposed Rule 21F–6(c) could enhance the whistleblowing incentives of those individuals who anticipate receiving awards below \$2 million by increasing their anticipated award to an amount of up to \$2 million.

The proposed rules could also improve other forms of efficiency. Proposed Rule 21F–3(b)(4) and proposed Rule 21F–6(d) could foster a more efficient use of the IPF by avoiding awards that are not reasonably necessary in light of the whistleblower program’s goals and the interests of investors and the broad public interest. Further, certain proposed rules could promote efficiency in the processing of award applications. By permanently barring applicants that make frivolous or fraudulent award applications, proposed Rule 21F–8(e) could help free up staff resources that could be used to expedite the processing of potentially meritorious award applications as well as the payment of awards. Staff resources that are freed up as a result of

proposed Rule 21F–18 could also expedite the processing of potentially meritorious award applications. As discussed in Sections VII(B)(6) and VII(B)(7) above, to the extent that faster award application processing and award payment motivate whistleblowing, individuals are more likely to come forward and report potential violations as a result of proposed Rule 21F–8(e) and proposed Rule 21F–18. To the extent that the proposed rules promote the timely reporting of possible violations by increasing whistleblowing incentives and prevent the provision of false, fictitious, or fraudulent statement or representation, or a false writing or document with intent of misleading or otherwise hindering the Commission or another authority,³⁵⁶ the efficiency in detecting violations would be enhanced in the sense that violations could be detected sooner, reducing losses associated with the misuse of resources. Greater efficiency in detecting violations could also speed up the public disclosure of such violations to securities markets. Price efficiency could be improved if earlier public disclosure of violations speeds up the incorporation of such news into security prices.

Similar to the effects on capital formation, the effects of the proposed rules on competition would be indirect, and would flow from their effects on whistleblowing incentives. To the extent that the proposed rules increase the likelihood of detecting misconduct by increasing whistleblowing incentives, the proposed rules could reduce the unfair competitive advantages that some companies can achieve by engaging in undetected violations.³⁵⁷ Conversely, to the extent that the proposed rules decrease the likelihood of detecting misconduct by reducing whistleblowing incentives, the proposed rules could increase the unfair competitive advantages that some companies can achieve by engaging in undetected violations.

Request for Comment

The Commission seeks commenters’ views on all aspects of its economic analysis of the proposed amendments. In particular, the Commission asks commenters to consider the following questions:

1. Are there costs and benefits associated with the proposed amendments that the Commission has not identified? If so, please identify them and if possible, offer ways of estimating these costs and benefits.

2. Do, and if so at what point, awards become unreasonably large in light of the goals of the whistleblower program? Please explain and provide details.

3. Are there effects on efficiency, competition, and capital formation stemming from the proposed amendments that the Commission has not identified? If so, please identify them and explain how the identified effects result from one or more amendments.

4. How will lowering award amounts based on dollar figures impact the incentives of whistleblowers to provide the Commission with information on misconduct? Will potential whistleblowers view the \$30 million floor as a cap? Why or why not?

5. Are there data sources or data sets that can help the Commission refine its estimates of the lost wages earned by whistleblowers from their previous jobs? Besides lost wages, are there other ways to determine the effectiveness of whistleblower awards?

6. Are there alternatives to the proposed rules that the Commission has not identified? If so, please identify and describe them.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”),³⁵⁸ the Commission solicits data to determine whether the proposed rule amendments constitute a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

Commenters should provide empirical data on (a) the potential annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

X. Regulatory Flexibility Act Certification

Section 603(a) of the Regulatory Flexibility Act³⁵⁹ requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules unless the Commission certifies that the proposed rules, if

³⁵⁵ See *supra* Sections VII(B)(4), VII(B)(6), VII(B)(7), and VII(B)(8).

³⁵⁶ See *supra* Section VII(B)(6).

³⁵⁷ See 76 FR at 34362.

³⁵⁸ Public Law 104–121, tit. II, 110 Stat 857 (1996).

³⁵⁹ 5 U.S.C. 603(a).

adopted, would not have a significant economic impact on a substantial number of small entities.³⁶⁰

Small entity is defined in 5 U.S.C. 601(6) to mean “small business,” “small organization,” and “small governmental jurisdiction” as defined in 5 U.S.C. 601(3)–(5). The definition of “small entity” does not include individuals. The proposed rules apply only to an individual, or individuals acting jointly, who provide information to the Commission relating to the violation of the securities laws. Companies and other entities are not eligible to participate in the whistleblower program as whistleblowers. Consequently, the persons that would be subject to the proposed rule are not “small entities” for purposes of the Regulatory Flexibility Act.

For the reasons stated above, the Commission certifies, pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, that the proposed rules would not have a significant economic impact on a substantial number of small entities.

Solicitation of Comments: We encourage the submission of comments with respect to any aspect of this Regulatory Flexibility Act Certification. To the extent that commenters believe that the proposed rules might have a covered impact, we ask they describe the nature of any impact and provide empirical data supporting the extent of the impact. We will place any such comments in the same public file as comments on the proposed amendments themselves.

XI. Statutory Basis

The Commission proposes the rule amendments, as well as the removal of references to various forms, contained in this document under the authority set forth in Sections 3(b), 21F, and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Securities, Whistleblowing.

Text of the Proposed Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn,

77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.21F is also issued under Pub. L. 111–203, § 922(a), 124 Stat. 1841 (2010).

* * * * *

■ 2. Section 240.21F–2 is revised to read as follows:

§ 240.21F–2 Whistleblower status, award eligibility, and confidentiality and retaliation protections.

(a) *Whistleblower status.* (1) You are a whistleblower for purposes of Section 21F of the Exchange Act (15 U.S.C. 78u–6) as of the time that, alone or jointly with others, you provide the Commission with information in writing that relates to a possible violation of the federal securities laws (including any law, rule, or regulation subject to the jurisdiction of the Commission) that has occurred, is ongoing, or is about to occur.

(2) A whistleblower must be an individual. A company or other entity is not eligible to be a whistleblower.

(b) *Award eligibility.* To be eligible for an award under Section 21F(b) of the Exchange Act (15 U.S.C. 78u–6(b)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in §§ 240.21F–4, 240.21F–8, and 240.21F–9. You should carefully review those rules before you submit any information that you may later wish to rely upon to claim an award.

(c) *Confidentiality protections.* To qualify for the confidentiality protections afforded by Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u–6(h)(2)) based on any information you provide that relates to a possible violation of the federal securities laws, you must comply with the procedures and the conditions described in § 240.21F–9(a).

(d) *Retaliation protections.* (1) To qualify for the retaliation protections afforded by Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u–6(h)(1)), you must satisfy all of the following criteria:

(i) You must qualify as a whistleblower under paragraph (a) of this section before experiencing the retaliation for which you seek redress;

(ii) You must reasonably believe that the information you provide to the Commission under paragraph (a) of this section relates to a possible violation of the federal securities laws; and

(iii) You must perform a lawful act that meets the following two criteria:

(A) First, the lawful act must be performed in connection with any of the activities described in Section 21F(h)(1)(A)(i) through (iii) of the Exchange Act (15 U.S.C. 78u–6(h)(1)(A)(i) through (iii)); and

(B) Second, the lawful act must relate to the subject matter of your submission to the Commission under paragraph (a) of this section.

(2) To receive retaliation protection for a lawful act described in paragraph (d)(1)(iii) of this section, you do not need to qualify as a whistleblower under paragraph (a) of this section before performing the lawful act, but you must qualify as a whistleblower under paragraph (a) of this section before experiencing retaliation for the lawful act.

(3) To qualify for retaliation protection, you do not need to satisfy the procedures and conditions for award eligibility in §§ 240.21F–4, 240.21F–8, and 240.21F–9.

(4) Section 21F(h)(1) of the Exchange Act (15 U.S.C. 78u–6(h)(1)), including any rules promulgated thereunder, shall be enforceable in an action or proceeding brought by the Commission.

■ 3. Section 240.21F–3 is amended by:

■ a. Revising paragraph (b)(1); and

■ b. Adding paragraph (b)(4).

The revision and addition read as follows:

§ 240.21F–3 Payment of awards.

* * * * *

(b) * * *

(1)(i) A *related action* is a judicial or administrative action that is brought by one of the entities listed in paragraphs (b)(1)(i)(A) through (D) of this section, that is based upon information that either the whistleblower provided directly to the entity or the Commission itself passed along to the other entity pursuant to the Commission’s procedures for sharing information, and which is the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than \$1,000,000.

(A) The Attorney General of the United States;

(B) An appropriate regulatory authority;

(C) A self-regulatory organization; or

(D) A state attorney general in a criminal case.

³⁶⁰ 5 U.S.C. 605(b).

(ii) The terms *appropriate regulatory authority* and *self-regulatory organization* are defined in § 240.21F-4.

(4)(i) Notwithstanding paragraph (b)(1) of this section, if a judicial or administrative action is subject to a separate monetary award program established by the Federal Government, a state government, or a self-regulatory organization, the Commission will deem the action a related action only if the Commission finds (based on the unique facts and circumstances of the action) that its whistleblower program has the more direct or relevant connection to the action.

(ii) In determining whether a potential related action has a more direct or relevant connection to the Commission's whistleblower program than another award program, the Commission will consider the nature, scope, and impact of the misconduct charged in the potential related action, and its relationship to the federal securities laws. This inquiry may include consideration of, among other things:

(A) The relative extent to which the misconduct charged in the potential related action implicates the public policy interests underlying the federal securities laws (such as investor protection) versus other law-enforcement or regulatory interests (such as tax collection or fraud against the Federal Government);

(B) The degree to which the monetary sanctions imposed in the potential related action are attributable to conduct that also underlies the federal securities law violations that were the subject of the Commission's enforcement action; and

(C) Whether the potential related action involves state-law claims and the extent to which the state may have a whistleblower award scheme that potentially applies to that type of law-enforcement action.

(iii) If the Commission does determine to deem the action a related action, the Commission will not make an award to you for the related action if you have already been granted an award by the authority responsible for administering the other whistleblower award program. Further, if you were denied an award by the other award program, you will not be permitted to readjudicate any issues before the Commission that the authority responsible for administering the other whistleblower award program resolved against you as part of the award denial. Additionally, if the Commission makes an award before an award determination is finalized by the

authority responsible for administering the other award scheme, the Commission shall condition its award on the meritorious whistleblower making a prompt, irrevocable waiver of any claim to an award from the other award scheme.

■ 4. Section 240.21F-4 is amended by:

■ a. Revising paragraph (c)(2);

■ b. In paragraph (d)(2), removing the period from the end of the paragraph and adding in its place “; and”;

■ c. Adding paragraph (d)(3); and

■ d. Revising paragraph (e).

The revisions and addition read as follows:

§ 240.21F-4 Other definitions.

* * * * *

(c) * * *

(2) You gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the PCAOB (except in cases where you were an original source of this information as defined in paragraph (b)(5) of this section), and your submission significantly contributed to the success of the action.

* * * * *

(d) * * *

(3) For purposes of making an award under §§ 240.21F-10 and 240.21F-11, the following will be deemed to be an administrative action and any money required to be paid thereunder will be deemed a monetary sanction under paragraph (e) of this section:

(i) A non-prosecution agreement or deferred prosecution agreement entered into by the U.S. Department of Justice or a state attorney general in a criminal case; or

(ii) A settlement agreement entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws.

(e) *Monetary sanctions* means:

(1) A required payment that results from a Commission action or related action and which is either:

(i) Expressly designated as disgorgement, a penalty, or interest thereon; or

(ii) Otherwise required as relief for the violations that are the subject of the covered action or related action; or

(2) Any money deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

■ 5. Section 240.21F-6 is amended by adding paragraphs (c), (d) and (e) to read as follows:

§ 240.21F-6 Criteria for determining amount of award.

* * * * *

(c) *Additional considerations in connection with certain smaller awards.*

When considering any meritorious whistleblower award application where the Commission—after applying the award factors specified in paragraphs (a) and (b) of this section—determines that the resulting payout to that whistleblower for the original information that he or she provided that led to one or more successful covered or related action(s), collectively, would be below \$2 million (or any such greater amount that the Commission may periodically establish through publication of an order in the **Federal Register**), the Commission may adjust the award upward as provided for in this paragraph (c).

(1) The Commission may make an upward adjustment that it determines is appropriate to ensure that the total payout to the whistleblower more appropriately achieves the program's objectives of rewarding meritorious whistleblowers and sufficiently incentivizing future whistleblowers who might otherwise be concerned about the low dollar amount of a potential award;

(2) The Commission shall not adjust an award upward under this paragraph (c) if any of the negative award factors specified in paragraph (b) of this section were found present with respect to the whistleblower's award claim, or if the award claim triggers § 240.21F-16 (concerning awards to whistleblowers who engage in culpable conduct);

(3) In no event shall the Commission make an upward adjustment under this section to raise a potential payout (as assessed by the Commission at the time it makes the award determination) above \$2 million (or by such other amount as the Commission may designate by order); and

(4) The total amount awarded to all whistleblowers in the aggregate may not be greater than 30 percent of the total monetary sanctions collected, or likely to be collected, in any action (as assessed by the Commission at the time it makes the award determination).

(d) *Additional considerations in connection with certain large awards where the monetary sanctions collected would equal or exceed \$100 million.*

When considering any meritorious whistleblower award application where the whistleblower's original information led to one or more successful covered or related action(s), collectively, that

resulted in the collection of \$100 million or more in monetary sanctions or will likely result in such collections (as assessed by the Commission at the time it considers the award application(s)), the Commission shall determine the award amount as specified in paragraphs (d)(1) through (4) of this section. (For purposes of this rule, the Commission may adjust the \$100 million threshold upward through publication of an order in the **Federal Register**.)

(1) When applying the award factors in paragraphs (a) and (b) of this section, the Commission shall make any upward or downward adjustments by considering the impact of the adjustments on both the award percentage and the approximate corresponding dollar amount of the award. If the resulting payout would be below \$30 million (or such greater alternative amount that the Commission may periodically establish through publication of an order in the **Federal Register**), then the downward adjustment provided for in paragraph (d)(2) of this section shall not be applicable.

(2) After completing the award analysis required by paragraph (d)(1) of this section and determining the total dollar amount of the potential award for any action(s) based upon the whistleblower's original information, the Commission shall consider whether that amount exceeds what is reasonably necessary to reward the whistleblower and to incentivize similarly situated whistleblowers. If the Commission finds that the total payout for any action(s) based upon the whistleblower's original information would exceed an amount that is reasonably necessary, it may adjust the total payout for the action(s) downward to an amount that it finds is sufficient to achieve those goals. As is the case with every aspect of any award determination under this section, the Commission shall not consider the balance of the Investor Protection Fund ("IPF") when determining whether to make an adjustment to an award under this paragraph (c).

(3) Any downward adjustment to a whistleblower's award for any actions based upon the whistleblower's original information under paragraph (d)(2) of this section shall under no circumstances yield a potential total payout on all the actions, collectively, (as assessed by the Commission at the time that it makes the award determination) of less than either \$30 million or such greater alternative amount that the Commission may periodically establish through

publication of an order in the **Federal Register**.

(4) Further, any adjustments under paragraph (d)(2) of this section shall in no event result in the total amount awarded to all meritorious whistleblowers, collectively, for each covered or related action constituting less than 10 percent of the monetary sanctions collected in that action.

(e) *Future adjustments.* Finally, in any order that adjusts any of the dollar amounts specified under paragraph (c) or (d) of this section, the Commission shall consider (among other factors that it deems relevant) whether the adjustment is necessary or appropriate to encourage whistleblowers to come forward and the potential impact any adjustment might have on the IPF.

■ 6. Section 240.21F-7 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 240.21F-7 Confidentiality of submissions.

(a) Pursuant to Section 21F(h)(2) of the Exchange Act (15 U.S.C. 78u-6(h)(2)) and § 240.21F-2(c), the Commission will not disclose information that could reasonably be expected to reveal the identity of a whistleblower provided that the whistleblower has submitted information utilizing the processes specified in § 240.21F-9(a), except that the Commission may disclose such information in the following circumstances:

* * * * *

■ 7. Section 240.21F-8 is amended by:

■ a. Revising the section heading.

■ b. Adding paragraphs (d) and (e).

The revision and addition read as follows:

§ 240.21F-8 Eligibility and forms.

* * * * *

(d)(1) The Commission will periodically designate on the Commission's web page a Form TCR (Tip, Complaint, or Referral) that individuals seeking to be eligible for an award through the process identified in § 240.21F-9(a)(2) shall use.

(2) The Commission will also periodically designate on the Commission's web page a Form WB-APP for use by individuals seeking to apply for an award in connection with a Commission-covered judicial or administrative action (15 U.S.C. 21F(a)(1)), or a related action (§ 240.21F-3(b)(1)).

(e) Submissions or applications that are frivolous or fraudulent, or that would otherwise hinder the effective and efficient operation of the Whistleblower Program may result in

the Commission issuing a permanent bar as part of a final order in the course of considering a whistleblower award application from you. If such a bar is issued, the Office of the Whistleblower will not accept or act on any other applications from you, in the following circumstances:

(1) If you make three or more award applications for Commission actions that the Commission finds to be frivolous or lacking a colorable connection between the tip (or tips) and the Commission actions for which you are seeking awards; or

(2) If the Commission finds that you have violated paragraph (c)(7) of this section. Before any Preliminary Determination or Preliminary Summary Disposition is issued, the Office of the Whistleblower shall advise you of any assessment by that Office that your award application is frivolous or lacking a colorable connection between the tip and the action for which you have sought an award. If you withdrawal your application at that time, it will not be considered by the Commission in determining whether to exercise its authority under paragraph (e)(1) of this section. The Commission will consider whether to issue a permanent bar in connection with an award application that would trigger such a bar; the Preliminary Determination or Preliminary Disposition must state that a bar is being recommended and the applicant would thereafter have an opportunity to submit a response in accordance with the award processing procedures specified in §§ 240.21F-10(e)(2) and 240.21F-18(b)(3).

■ 8. Section 240.21F-9 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. In paragraphs (c) and (d), removing the parenthetical phrase "(referenced in § 249.1800 of this chapter)" wherever it appears; and

■ c. Adding paragraph (e).

The revisions and addition read as follows:

§ 240.21F-9 Procedures for submitting original information.

(a) To submit information in a manner that satisfies § 240.21F-2(b) and (c) you must submit your information to the Commission by any of these methods:

(1) Online, through the Commission's website located at www.sec.gov, using the Commission's electronic TCR portal (Tip, Complaint or Referral);

(2) Mailing or faxing a Form TCR to the SEC Office of the Whistleblower at the mailing address or fax number designated on the SEC's web page for making such submissions; or

(3) By any other such method that the Commission may expressly designate on

its website as a mechanism that satisfies § 240.21F-2(b) and (c).

(b) Further, to be eligible for an award, you must declare under penalty of perjury at the time you submit your information pursuant to paragraph (a)(1), (2), or (3) of this section that your information is true and correct to the best of your knowledge and belief.

(e) You must follow the procedures specified in paragraphs (a) and (b) of this section the first time you provide the Commission with information that you rely upon as a basis for claiming an award. If you fail to do so, then you will be deemed ineligible for an award in connection with that information (even if you later resubmit that information in accordance with paragraphs (a) and (b) of this section). Notwithstanding the foregoing, the Commission, in its sole discretion, may waive your noncompliance with paragraphs (a) and (b) of this section if the Commission determines that the administrative record clearly and convincingly demonstrates that you would otherwise qualify for an award and you demonstrate that you complied with the requirements of paragraphs (a) and (b) of this section within 30 days of the first communication with the staff about the information that you provided.

■ 9. Section 240.21F-10 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 240.21F-10 Procedures for making a claim for a whistleblower award in SEC actions that result in monetary sanctions in excess of \$1,000,000.

(b) To file a claim for a whistleblower award, you must file Form WB-APP, Application for Award for Original Information Provided Pursuant to Section 21F of the Securities Exchange Act of 1934. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail or fax (or any other manner that the Office permits). All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

(c) If you provided your original information to the Commission anonymously, you must disclose your identity on the Form WB-APP, and your identity must be verified in a form and manner that is acceptable to the Office of the Whistleblower prior to the payment of any award.

(d) Once the time for filing any appeals of the Commission’s judicial or administrative action has expired, or

where an appeal has been filed, after all appeals in the action have been concluded, the staff designated by the Director of the Division of Enforcement (“Claims Review Staff”) will evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F-8(b). Following that evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

■ 10. Section 240.21F-11 is amended by revising paragraphs (b) and (d) to read as follows:

§ 240.21F-11 Procedures for determining awards based upon a related action.

(b) You must also use Form WB-APP to submit a claim for an award in a potential related action. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail or fax (or any other manner that the Office permits) as follows:

(1) If a final order imposing monetary sanctions has been entered in a potential related action at the time you submit your claim for an award in connection with a Commission action, you must submit your claim for an award in that related action on the same Form WB-APP that you use for the Commission action. For purposes of this paragraph (b)(1) and paragraph (b)(2) of this section, a final order imposing monetary sanctions is entered on the date of a court or administrative order imposing the monetary sanctions; however, with respect to any agreement covered by § 240.21F-4(d) (such as a deferred prosecution agreement or a nonprosecution agreement entered by the Department of Justice), the Commission will deem the date of the entry of the final order to be the date of the earliest public availability of the instrument reflecting the arrangement if evidenced by a press release or similar dated publication notice; otherwise, the date of the last signature necessary for the agreement.

(2) If a final order imposing monetary sanctions in a potential related action has not been entered at the time you submit your claim for an award in connection with a Commission action,

you must submit your claim on Form WB-APP within ninety (90) days of the issuance of a final order imposing sanctions in the potential related action.

(d) Once the time for filing any appeals of the final judgment or order in a potential related action has expired, or if an appeal has been filed, after all appeals in the action have been concluded, the Claims Review Staff will evaluate all timely whistleblower award claims submitted on Form WB-APP in connection with the related action. The evaluation will be undertaken pursuant to the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 240.21F-8(b). Following this evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

■ 11. Section 240.21F-12 is amended by:

- a. Revising the introductory text of paragraph (a);
- b. In paragraph (a)(2), removing the parenthetical phrase “(referenced in § 249.1800 of this chapter)”; and
- c. Revising paragraphs (a)(3) and (6).

The revisions read as follows:

§ 240.21F-12 Materials that may form the basis of an award determination and that may comprise the record on appeal.

(a) The following items constitute the materials that the Commission, the Claims Review Staff, and the Office of the Whistleblower may rely upon to make an award determination pursuant to §§ 240.21F-21F-10, 240.21F-11, and 240.21F-18:

(3) The whistleblower’s Form WB-APP, including attachments, any supplemental materials submitted by the whistleblower before the deadline to file a claim for a whistleblower award for the relevant Notice of Covered Action, and any other materials timely submitted by the whistleblower in response either:

- (i) To a request from the Office of the Whistleblower or the Commission; or
- (ii) To the Preliminary Determination or Preliminary Summary Disposition;

(6) Any other documents or materials from third parties (including sworn declarations) that are received or

obtained by the Office of the Whistleblower to resolve the claimant's award application, including information related to the claimant's eligibility. (Neither the Commission, the Claims Review Staff, nor the Office of the Whistleblower may rely upon information that the third party has not authorized the Commission to share with the claimant.)

* * * * *

■ 12. Section 240.21F-13 is amended by revising paragraph (b) to read as follows:

§ 240.21F-13 Appeals.

* * * * *

(b) The record on appeal shall consist of the Final Order, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order (including, but not limited to, the Notice of Covered Action, whistleblower award applications filed by the claimant, the Preliminary Determination or Preliminary Summary Disposition, materials that were considered by the Claims Review Staff in issuing the Preliminary Determination or that were provided to the claimant by the Office of the Whistleblower in connection with a Preliminary Summary Disposition, and materials that were timely submitted by the claimant in response to the Preliminary Determination or Preliminary Summary Disposition). The record on appeal shall not include any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission and the Claims Review Staff in deciding the claim (including the staff's Draft Final Determination in the event that the Commissioners reviewed the claim and issued the Final Order). When more than one claimant has sought an award based on a single Notice of Covered Action, the Commission may exclude from the record on appeal any materials that do not relate directly to the claimant who is seeking judicial review.

■ 13. Add § 240.21F-18 to read as follows:

§ 240.21F-18 Summary disposition.

(a) Notwithstanding the procedures specified in §§ 240.21F-10(d) through (g) and in 240.21F-11(d) through (g), the Office of the Whistleblower may determine that an award application that meets any of the following conditions for denial shall be resolved through the summary disposition process described further in paragraph (b) of this section:

(1) You submitted an untimely award application;

(2) You did not comply with the requirements of § 240.21F-9 when submitting the tip upon which your award claim is based;

(3) The information that you submitted was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and those staff members otherwise had no contact with you;

(4) You did not comply with § 240.21F-8(b);

(5) You failed to specify in the award application the submission pursuant to § 240.21F-9(a) upon which your claim to an award is based; and

(6) Your application does not raise any novel or important legal or policy questions and the Office of the General Counsel concurs that the matter is appropriate for summary disposition.

(b) The following procedures shall apply to any award application designated for summary disposition:

(1) The Office of the Whistleblower shall issue a Preliminary Summary Disposition that notifies you that your award application has been designated for resolution through the summary disposition process. The Preliminary Summary Disposition shall also state that the Office has preliminarily determined to recommend that the Commission deny the award application and identify the basis for the denial.

(2) Prior to issuing the Preliminary Summary Disposition, the Office of the Whistleblower shall prepare a staff declaration that sets forth any pertinent facts regarding the Office's recommendation to deny your application. At the same time that it provides you with the Preliminary Summary Disposition, the Office of the Whistleblower shall, in its sole discretion, either:

(i) Provide you with the staff declaration; or

(ii) Notify you that a staff declaration has been prepared and advise you that you may obtain the declaration only if within fifteen (15) calendar days you sign and complete a confidentiality agreement in a form and manner acceptable to the Office of the Whistleblower pursuant to § 240.21F-8(b)(4). If you fail to return the signed confidentiality agreement within fifteen (15) calendar days, you will be deemed to have waived your ability to receive the staff declaration.

(3)(i) You may reply to the Preliminary Summary Disposition by submitting a response to the Office of the Whistleblower within thirty (30) calendar days of the later of:

(A) The date of the Preliminary Summary Disposition; or

(B) The date that the Office of the Whistleblower sends the staff declaration to you following your timely return of a signed confidentiality agreement.

(ii) The response should identify the grounds for your objection to the denial (or in the case of paragraph (a)(5) of this section, correct the defect). The response must be in the form and manner that the Office of the Whistleblower shall require. You may include documentation or other evidentiary support for the grounds advanced in your response.

(4) If you fail to submit a timely response pursuant to paragraph (b)(3) of this section, the Preliminary Summary Disposition will become the Final Order of the Commission. Your failure to submit a timely written response will constitute a failure to exhaust administrative remedies.

(5) If you submit a timely response pursuant to paragraph (b)(3) of this section, the Office of the Whistleblower will consider the issues and grounds advanced in your response, along with any supporting documentation that you provided, and will prepare a Proposed Final Summary Disposition. The Office of the Whistleblower may supplement the administrative record as appropriate. (This paragraph (b)(5) does not prevent the Office of the Whistleblower from determining that, based on your written response, the award claim is no longer appropriate for summary disposition and that it should be resolved through the claims adjudication procedures specified in either § 240.21F-10 or § 240.21F-11).

(6) The Office of the Whistleblower will then notify the Commission of the Proposed Final Summary Disposition. Within thirty (30) calendar days thereafter, any Commissioner may request that the Proposed Final Summary Disposition be reviewed by the Commission. If no Commissioner requests such a review within the 30-day period, then the Proposed Final Summary Disposition will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will consider the award application and issue a Final Order.

(7) The Office of the Whistleblower will provide you with the Final Order of the Commission.

(c) In considering an award determination pursuant to this rule, the Office of the Whistleblower and the Commission may rely upon the items specified in § 240.21F-12(a). Further, § 240.21F-12(b) shall apply to summary dispositions.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 14. The general authority citation for part 249 continues to read as follows and sectional authorities for §§ 249.1800 and 249.1801 are removed:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350;

Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Subpart S—[Removed and Reserved]

■ 15. Remove and reserve subpart S. By the Commission. Dated: June 28, 2018.

Brent Fields,
Secretary.

[FR Doc. 2018–14411 Filed 7–19–18; 8:45 am]

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